Impact Summary: Linking the Zero Carbon Act 2019 with the Resource Management Act 1991

Section 1: General information

Purpose

1. This is the third Regulatory Impact Statement (RIS) for the Resource Management Amendment Bill 2019 (the RM Bill). This RIS covers two key policy proposals resulting from consideration of submissions received on the RM Bill and other relevant consultation, such as on the Zero Carbon Bill and the National Policy Statement for Urban Development.
2. The Ministry for the Environment is solely responsible for the analysis and advice set out in this RIS. This analysis and advice has been produced to inform Cabinet's final decisions to proceed with policy changes in relation to the Departmental Report for the RM Bill.

Key Limitations or Constraints on Analysis

Timing

3. The Government is undertaking a comprehensive review of the resource management system with a focus on the RMA. The Minister for the Environment has appointed an external expert panel to lead the review. The Resource Management Review Panel (the Panel) will provide a report with recommendations for reforming the RMA is due mid-2020. The Government is also proceeding with some early reforms through a 'stage 1' RM Bill, which is currently at select committee.
4. The RM Bill as introduced did not address the issue of better aligning the RMA with the Climate Change Response (Zero Carbon) Amendment Act 2019 (ZCA), but there is an opportunity to do so now by introducing amendments through the committee stages. Cabinet has agreed that the RM Bill can address problems "where there is a clear need to act in advance of decisions on a more comprehensive review" [ENV-19-MIN-0036].
5. Preparing proposals for inclusion in the RM Bill at this time has a significantly constrained the time available to undertake consultation, gather evidence and data, and analyse options.

Consultation and testing

6. The Ministry for the Environment has undertaken consultation on both the ZCA and the RM Bill. The general topic of the alignment between the RMA and the ZCA has been raised as an issue by a number of submitters in both consultations. The preferred option for amendment of the RMA (as put forward in this impact analysis) is consistent with the weight of the submissions received in the earlier processes that referred to the misalignment between the RMA and the ZCA.

7. However, due to the time constraint, the specific issues and options addressed in this impact analysis have not been subject to public consultation prior to this policy decision going to Cabinet. The proposals will be of interest to iwi/Māori as Treaty partners, resource management system stakeholders and the general public. The proposals impact most directly on local government and resource consent applicants and wider stakeholders who most regularly engage in the resource management process.
8. The Ministry for the Environment acknowledges that the lack of consultation constrains the analysis put forward in this impact assessment. Without consulting on these proposals, there is limited understanding as to what the economic costs and benefits to the affected parties may be, particularly as these proposed changes are to primary legislation. Because of the time and consultation constraints, affected and interested parties have not been given appropriate opportunities to comment through the process. The Ministry for the Environment intends to mitigate the risk of inadequate consultation by the consultation that will occur before the proposed statutory commencement date of 31 December 2021. This consultation will primarily occur through the proposed national environmental standard (NES) (or other national direction) under the RMA.
9. This more detailed consultation will allow the impacts on affected parties to be more thoroughly assessed with better information after there has been time for all parties to fully consider the implications. More importantly, the envisaged RMA national direction provide vehicles for directly mitigating any risks or undue impacts on affected parties.

Responsible Manager (signature and date):

Craig Salmon
(Acting) Director, Climate Change
Ministry for the Environment

:

Quality Assurance Reviewing Agency:

10. Regulatory Impact Assessment Panel, The Ministry for the Environment.

Quality Assurance Assessment:

11. The Regulatory Impact Analysis Panel at the Ministry for the Environment has reviewed the Regulatory Impact Summary Assessment “Linking the Zero Carbon Act 2019 with the Resource Management Act 1991 (RMA). The panel considers the RIS partially meets the quality assurance criteria for Regulatory Impact Assessments.
12. The RIS clearly explains the rationale for the proposed amendments to the RMA, which repeal amendments made to the Act in 2004, on the basis of a changed policy framework in favour of a comprehensive set of domestic policies that complement emissions pricing through the Emissions Trading Scheme (ETS). There are risks to proceeding with this change to primary legislation without formal consultation that cannot be adequately mitigated by means of future consultation

on a supporting National Environmental Standard. Stakeholder consultation and engagement would have significantly strengthened the options analysis and economic assessment and given greater confidence about the benefits of the proposal. The further policy measures will need to be subject to consultation for a full perspective, careful analysis and subsequent evaluation of their impacts in practice.

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

13. The overarching issue being addressed is alignment between the RMA and the ZCA, in order to help build a coherent and effective set of policies to progress a well-managed and timely transition to a low-emissions economy. There are two dimensions to this:
    a. statutory alignment i.e. the way the two pieces of legislation reference and interface with each other, and
    b. practical alignment i.e. the way the planning processes, practice of authorities exercising functions under the RMA, and the activities and investment decisions controlled by the RMA, can best support the imperative to reduce New Zealand's greenhouse gas emissions to net zero over the next 30 years.
14. The recently enacted ZCA expressly provides for persons exercising powers and functions under other legislation to take into account the 2050 target and emission budgets and reduction plans. However, this general 'permissive consideration' does not of itself remove all legal uncertainty and may not prevail over more specific provisions in other legislation. RMA matters tend to be highly litigious, and there is considerable scope for any legal ambiguity to be contested.
15. The passage of the RM Bill provides a window of opportunity to address the inconsistencies presented by the statutory bar and the Supreme Court's decisions, in time for these amendments to support the achievement of the first emissions budget under the ZCA.
16. The main problem at hand relates to the 2004 amendments to the RMA and the way these have subsequently been interpreted by the courts, and the effect they are having in practice. This is now creating a tension with other aspects of climate change policy which has evolved significantly over the last 15 years, most notably through the major changes brought in by the recent ZCA.
17. Under the 2004 amendments to the RMA, local authorities are prohibited from considering discharges to air of greenhouse gas emissions when exercising their resource consenting and rule-making functions under the RMA, except to the extent that the use and development of renewable energy enables a reduction in the discharge to air of greenhouse gases.
18. The 2004 amendments were intended to ensure greenhouse gas emissions from significant new point sources would be addressed consistently and cost-effectively at the national level. This was expected to occur through a proposed carbon tax at the time.[1] The NZ Emissions Trading Scheme (NZ ETS) was later

[1] (5 August 2003) 610 NZPD (Resource Management (Energy and Climate Change) Amendment Bill – First Reading, Hon Pete Hodgson).

implemented instead as the preferred mechanism for introducing a price on greenhouse gas emissions. The national emissions pricing mechanism was also intended to be supported by national direction and guidance under the RMA. At the time the intention was to pursue a NES on discharges to air, however this was never developed.

19. Subsequently, the Supreme Court has interpreted the statutory bar on considering greenhouse gas emissions under the 2004 amendments as also precluding local authorities from considering the climate change effects that may result from the end use of activities.[2] The majority in *West Coast ENT v Buller Coal* found that it is not open to territorial authorities and regional councils to regulate activities by reference to the effect on climate change of discharges of greenhouse gases which results indirectly from activities under the RMA[3]. This is the case except to the extent that the use and development of renewable energy enables a reduction in the discharge into air of greenhouse gases. The Court's interpretation of the renewable energy exemption also limited the scope of this exception.[4]
20. In practice, local authorities do not consider the effects of greenhouse gas emissions, even in urban form decisions. For example, the Auckland Unitary Plan includes a compact city vision. However, nowhere does the vision or plan mention that this will have material benefits to reduce greenhouse gas emissions, nor does it enable intensification decisions to be made on this basis.
21. The net effect of the Supreme Court decisions and the resulting impact on the perceptions and practice of councils and resource management practitioners is arguably more restrictive than Parliament's original intent when passing the 2004 amendments. Now 15 years later it is increasingly misaligned with the more urgent and far-reaching aims of climate change policy to achieve a low emissions climate-resilient economy.
22. The passing of the ZCA has illustrated the growing inconsistency between the two acts. The ZCA expressly permits decision-makers acting under other legislation to take into account the new statutory emissions targets, emissions budgets and reduction plans mandated under the ZCA.[5] However, under the RMA local authorities are effectively prohibited from taking these into account.
23. The removal in 2004 of council's ability to consider greenhouse gas emissions from RMA activities reflected the climate change policy context of the time, in which the goal was for New Zealand to respond to climate change matters at the

[2] *West Coast Ent v Buller Coal Ltd* [2012] NZSC 87 at [170] to [175]

[3] The majority found, with the Chief Justice dissenting, that the legislative scheme under which climate change arguments are excluded in relation to the use of a power station would be subverted if the same arguments could deployed in relation to its zoning. Such an outcome, the Court found, would subvert the whole scheme of the RMA as amended in 2004. The majority in *Buller* was satisfied that in s 104(1)(a) the words "actual or potential effects on the environment" in relation to an activity which is under consideration by a local authority do not extend to the impact on climate change of the discharge into air of greenhouse gases that result indirectly from that activity. See *West Coast ENT Incorporated v Buller Coal Ltd* [2013] NZSC 87 at [168] – [175].

[4] The majority found, with the Chief Justice dissenting, that this exception only applies to applications involving the use and development of renewable energy. It is not open to local authorities to consider the dis-benefits of non-renewable energy, in other applications, outside of this explicit exception. See *Greenpeace New Zealand Inc v Genesis Power Ltd* [2008] NZSC 112 at [62].

[5] Section 5ZK, Climate Change (Zero Carbon) Amendment Act 2019.

least cost to the economy, by means of a pre-eminent carbon pricing scheme.[6] Non-price measures, including RMA regulation, were assumed to be duplicative and unnecessary unless a strong case could be made for them.

24. In contrast, now the pre-eminent policy goal is to achieve the necessary transition to net zero carbon emissions by the second half of this century. This must be done while ensuring the economic implications of this are manageable. That these impacts are well-managed is still a critically important focus for climate policy, however the primary objective has now shifted to achieving the low emissions outcome.
25. The NZ ETS is remains a critical lever to drive emissions reduction in New Zealand. Pricing emissions is an efficient and effective tool that works as part of a wider policy package to ensure a cost-effective and just transition. But there are also many emissions reductions options available that are not responsive to the NZ ETS price signal, but can be cost-effectively captured through other regulatory measures, sector specific policies and direct government investment. Examples of additional policies include the One Billion Trees Programme, the renewable energy strategy, the proposed Clean Car package, the state sector decarbonisation capital investment programme, and expanding the waste levy.
26. Over half of the submitters to the RM Bill, and many submitters to the Zero Carbon Bill (ZCB) identified the inconsistency between the statutory bar on considering greenhouse gas emissions as introduced by the 2004 RMA amendments (sections 70A and 104E), and the overall framework legislated for under the ZCA. The principal contention of these submitters was that, as New Zealand's principal environmental statute, the RMA should be fully available and used to support the transition to a low emissions economy.
27. The passage of the RM Bill provides a window of opportunity to address the inconsistencies presented by the statutory bar and the Supreme Court's decisions, in time for these amendments to support the achievement of the first emissions budget under the ZCA.

2.2 Who is affected and how?

Local authorities

28. Local authorities who exercise decision-making functions under the RMA will be affected by any changes through the RM Bill, as it will alter what may be considered under their existing functions in rule-making and granting consents.

Applicants under the RMA

29. Future applicants for new or renewed resource consents under the RMA will also be directly affected by any proposed changes. The basis for what a resource consent may be decided on will change if climate change mitigation is reintroduced into the RMA. An application will still be subject to the general process of consenting (i.e., that an applicant must avoid, remedy, mitigate the effect of their application). This will be supplemented with further guidance through specific national direction and the emissions reduction plans and national adaptation plans. Industry members who are subject to the NZ ETS, and

[6] (5 August 2003) 610 NZPD (Resource Management (Energy and Climate Change) Amendment Bill – Instruction to Committee, Dr Paul Hutchison).

iwi/Māori as Treaty partners and applicants through the RMA processes, are likely to consider themselves be particularly impacted.

Treaty partners, wider RMA stakeholders and the general public

30. There will also be potential impacts on all RMA participants in terms of the way they engage with and contribute to RMA plan-making processes. This includes potential impacts on tangata whenua, as applicants under the RMA, and more broadly as Treaty partners in developing national direction.

Scale of impacts through resource consenting

31. It is unclear how large the marginal impact of considering greenhouse gas emissions will be. There will be few, if any, activities that will only require resource consent because of their greenhouse gas emissions alone. Many activities that require resource consent do generate some greenhouse gas emissions, but are only one part of an activity (or activities) which have a range of other environmental effects that will be being considered. Determining the quantum of greenhouse gas emissions is normally a simple calculation.

32. The main impact will therefore likely be in terms of any additional limits or controls on proposed activities that may be imposed to avoid, remedy or mitigate the adverse effects of their greenhouse gas emissions[7]. More analysis on the potential impact of this consideration in resource consenting is included in appendix 1.

2.3 What are the objectives sought in relation to the identified problem?

Objective 1: Statutory alignment between the RMA and ZCA

33. The recently enacted ZCA expressly provides for persons exercising powers and functions under other legislation to take into account the 2050 target and emission budgets and reduction plans. However, this general 'permissive consideration' does not of itself remove all legal uncertainty and may not prevail over more specific provisions in other legislation. RMA matters tend to be highly litigious, and there is considerable scope for any legal ambiguity to be contested long and hard.

34. It is therefore desirable to provide legal clarity to ensure consistency between the RMA and the ZCA. At the very least this requires consideration of how the RMA may need to be amended in light of the ZCA.

Objective 2: Ensuring that the tools, processes and practice under the RMA are able to support New Zealand's transition to a low emissions economy

35. As New Zealand's key environmental statute, the RMA is potentially a powerful lever to support the transition to a low emissions economy, particularly in its ability to facilitate local authorities in contributing to the national effort where it is

[7] This raises the question of 'double jeopardy' where emitters already face an emissions price through the NZETS. However, it will be open for RMA consenting processes to recognise exposure to the NZETS as effective and appropriate mitigation, especially if the NZETS is effectively levying a charge that reflects the social cost of greenhouse emissions in the international and national context of responding to climate change under the Paris Agreement and the ZCA. Also, the possibility of 'double jeopardy' is not unique to greenhouse gas emissions. Many other activities that are subject to RMA controls are also subject to overlapping regulation and costs imposed by other legislation to address their effects. For example, building and construction, or health and safety.

most appropriate. The tools, processes and practice under the RMA are far-reaching in their ability to influence outcomes across the industrial, transport, land-use and energy sectors.[8] Both the Productivity Commission and the Interim Climate Change Committee have cited the need for the RMA to support core climate change policies, and for it to better enable emissions reductions.

Section 3: Options identification

3.1 What options have been considered?

The status quo

36. The status quo does not address either of the two objectives set out in section 2.3 above.

37. There will continue to be poor statutory alignment between the RMA and the Climate Change Response Act 2002 (CCRA). The tools, processes and practice under the RMA will remain underutilised as a direct lever to support New Zealand's low emissions transition.

38. Under the status quo, local authorities will continue to be prohibited from considering the effects on climate change of greenhouse gas discharges to air when making rules and granting consent applications.[9] Local authorities will continue to be precluded from considering the downstream effects of an activity that may result in greenhouse gas emissions.[10]

39. There is no clear responsibility to take climate change mitigation into account in regional and district planning responsibilities to design urban form. There will be continued uncertainty and ambiguity over what may be considered in planning and zoning decisions.

40. The RMA, as interpreted by the courts, will continue to expressly prohibit local authorities from taking into account discharges to air of greenhouse gas emissions and any relevant disadvantages of non-renewable energy development.

41. The Government has now clearly signalled that it favours a comprehensive set of domestic policies that complements emissions pricing[11]. Maintaining the status quo would maintain climate change policy in the 2004 position of relying heavily on a national pricing mechanism alone to promote least-cost abatement. This

[8] Both the Productivity Commission and the Interim Climate Change Committee have cited the need for the RMA to support core climate change policies, and for it to better enable emissions reductions.

[9] The Court identified that section 7(i) is a consideration for climate change adaptation only.

[10] Due to the case law since the introduction of this prohibition in 2004. Recent submissions received on the NPS Urban Development (NPS-UD) and the RM Bill from regional councils have confirmed that they believe they cannot take downstream emissions into account, or the broader climate change objectives set by the Government. For example, see the Greater Wellington Regional Council submission on the NPS-UD and Waikato Regional Council submission on the RM Bill.

[11] The Government has already taken action to reduce domestic emissions through policies such as the One Billion Trees Programme, the renewable energy strategy, the proposed Clean Car Packages and expanding the waste levy. We do not know the abatement potential of these initiatives combined, but the Government has agreed that a cross-sectoral approach is appropriate (Government's response to the Productivity Commission's low emissions economy report). This is particularly important in light of our first nationally determined contribution for 2030, which we are currently not on track to meet.

would severely constrain the role of the RMA in climate change mitigation, despite important developments in climate change policy more broadly.[12]

Option 1 – reforming the RMA through the comprehensive review of the resource management system

42. The review will address both the objectives in section 2.3 above.
43. Climate change, and the interaction between the RMA and CCRA is explicitly included within the scope of the comprehensive review of the resource management system. The review also covers interactions between the RMA and the Local Government Act 2002, and between the RMA and the Land Transport Management Act 2003, and builds on current work across other key resource management issues such as freshwater and urban development.
44. The Panel is due to report back to the Minister for the Environment with a suite of reform proposals by 31 May 2020, after which government would commence a period of engagement and consultation with system stakeholders, the public and iwi/Māori as Treaty Partners.
45. The benefit of this option is that any changes to the RMA will happen in an integrated way alongside other environmental and development outcomes the resource management system has to deliver. These decisions will be made by an established panel of experts who have considerable expertise in relevant areas of the RMA and environmental law.
46. There are several key drawbacks for option 1. The Government will need time to respond to the Panel's advice, and Cabinet will be responsible for making any changes. Any recommendations made to include climate change mitigation are unlikely to result in legislative change before the end of 2021. The opportunity to link the first emissions budget and the RMA will therefore be missed.

Option 2 – develop an NES under the current provisions (sections 70B and 104F) to regulate discharges to air of greenhouse gas emissions

47. This option does not address the formal statutory alignment of the RMA and the ZCA (i.e. objective 1 in section 2.3 above), but would create a new tool under the RMA. It would go some way to address the second objective of practical alignment to support the low emissions transition.
48. Under this option there will be no changes to the primary legislation, instead an NES will be promulgated on regulating discharges to air of greenhouse gas emissions, as envisaged by the 2004 amendments. Issuing an NES provides an opportunity for the Government to set clear directives to relevant stakeholders. It could help manage the transition in a long term way by acting as a regulatory back stop to support emissions pricing.

[12] This does not negate the fact that the NZ ETS remains one of the most important tools the Government has available to drive emissions reductions in New Zealand. However, to date, the NZ ETS has been not been effective in reducing domestic emissions. It is undergoing structural reform to allow for setting an overall limit on the total number of emissions that are available to be traded within the scheme and replacing the current price ceiling mechanism (the fixed price option). An increased carbon price, will help New Zealand drive emissions down, as pricing emissions is an efficient and effective tool that works as part of a wider policy package to ensure a cost-effective and just transition. However, there are some areas where emissions will continue to be unresponsive or slow to respond to the emissions price. Direct investment opportunities, other regulatory measures and sector specific policies have an important role in reducing in New Zealand's overall emissions, and the economic cost of those reductions over time.

49. An NES could potentially address the following policy issues:

a. *The NZ ETS price signal is currently too low to drive change at pace in some sectors*

i. Uncertainty about future emissions prices means that price is often not fully factored into decision making. The Interim Climate Change Committee estimates that switching away from coal to electricity or biomass will become economic with emissions prices between $60-$120 tonnes of carbon dioxide. Switching away from natural gas only becomes economic above $120 tonnes of carbon dioxide. As of February 2020, the current New Zealand Unit price sits just below $30.

ii. An NES that regulates discharges to air of greenhouse gases could help accelerate the transition away from fossil fuelled process heat. Coal is currently the cheapest form of energy used to supply process heat. It is also the most emissions-intensive. Coal boilers have an economic life span of approximately 25 years, and are often repaired and maintained to be used for much longer periods (some coal burners have been in use for over 40 years).

iii. National direction is a potentially important lever to incentivise the necessary change at a faster rate than the NZ ETS will provide. An NES could ensure that over time existing boilers are replaced and not extended, or it could require a phase out of coal through the consenting process.

b. *National direction could help avoid economic path dependencies in process heat*

i. Industrial sector energy investment decisions are long term. An NES could be used to ensure that new investments do not lock in emissions through building new long-lived fossil fuelled assets. If new assets are built there is concern that these will become stranded assets in response to higher emissions prices or new climate change policies.

ii. Firms are often reluctant to replace legacy fossil fuel facilities before the end of their technical lives. An NES is a regulatory lever which could be used to phase out these, large, emissions intensive facilities. It could require the conditions of existing resource consents to be reviewed so that the consent aligns with the NES.

iii. Delayed action on emissions reductions in process heat is likely to require steeper reductions in the future. This is likely to increase the cost of transitioning the economy in the long term and will create future uncertainty for businesses.

c. *There are information gaps and behavioural barriers that price cannot resolve*

i. A higher emissions price cannot resolve widespread information failures in process heat. Many firms have poor information about their energy use and emissions and there is

often a lack of visibility of the costs and benefits of energy efficiency and emissions reduction projects for senior managers and directors. Energy is generally managed at facility or plant level where energy efficient opportunities are measured in energy units, rather than as sources of emissions reductions, cost savings or productivity benefits. These barriers compound so that investments to reduce energy emissions are undervalued and not prioritised over other investment options.[13]

ii. As with other existing NESs, an NES for greenhouse gas discharges would be accompanied by technical guidance to help resolve information barriers.

iii. An NES could also potentially directly encourage large industrials to raise the environmental and emissions performance of their plants and adopt best practices or Best Available Technologies (BAT). BAT refer to the most effective techniques for preventing or reducing emissions or environmental effects that are technically feasible and economically viable within a sector.

iv. An NES could provide an integrated mechanism to encourage adoption of BAT across discharges (including greenhouse gas emissions). BAT can raise the emissions performance of new industrial plans and ensure that businesses do not face unreasonable compliance costs that could deter new investment.

50. Under this option, the 11 regional councils and 6 unitary authorities would be empowered to consider discharges of greenhouse gas emissions to air. The RMA would be enabled to help facilitate emissions reductions in a narrow and regulated way, and only where the consideration applies.[14] This will mitigate the risk of 'ad hoc' decision making by regional councils, which was a key consideration leading to the 2004 amendment.[15]

51. However option 2 will not empower local authorities more widely to ensure that low emissions development, and the net effect on greenhouse gas emissions are a principle for consideration in urban development (and other land use decisions) for both redevelopment and greenfield. Urban areas are a major source of greenhouse gas emissions globally, and managing emissions from urban areas without appropriate regulation is challenging. This concern has been raised by submitters to both the ZCA and the RM Bill as introduced.

52. Under the NES-only option 2, there will remain significant legal uncertainty as a result of the *Buller Coal* case, as discussed in Section 2.1 above. In particular, an NES will not resolve the ambiguities on councils considering indirect sources of emissions (for example, in urban planning decisions). Because of this Court

[13] MBIE *Accelerating renewable energy and energy efficiency, Discussion Document, December 2019*

[14] Following the model of the NES Plantation Forestry (NES-PF) which has created standardised rules nationally, to remedy the inconsistency in regional and district planning rules under the RMA. The NES-PF sets in place a nationally consistent management framework.

[15] (5 August 2003) 610 NZPD (Resource Management (Energy and Climate Change) Amendment Bill – First Reading, Jeanette Fitzsimons).

decision, there is also legal uncertainty as to whether or not it is legal for the Government to promulgate any other national direction (outside of renewable energy) on climate change mitigation (or amend existing national direction to include climate change mitigation objectives, for example, the NPS on Urban Development[16]). There needs to be positive changes to the primary legislation (such as removing the statutory bar, or changing Part 2) to reverse the existing presumption.

Option 3 – enabling immediate changes to the RMA now for climate change mitigation and begin development of an NES

53. This option will create a formal link between the RMA and the CCRA, and align the policy frameworks underpinning both Acts. Regional councils and territorial authorities will be required to consider the emissions reduction plans and national adaptation plans under the CCRA when making their regional plans, policy statements and district plans under the RMA (sections 61, 66 and 74). This responds to those submissions on both the RM Bill and the ZCB, which sought to link the CCRA and the RMA.

54. To create clarity for local authorities to make any decisions on the basis of climate change mitigation, the statutory bar (under sections 70A and 104E) will need to be repealed. Given the implications of removing these sections on councils, the Government will need to develop a clear and targeted NES, or other national direction, to ensure the regional contribution to climate change mitigation is focused where it is most valuable and appropriate.

55. Under this option repealing sections 70A, 70B, 104E and 104F would not come into force until December 2021 to clearly align with the publication of the first emissions reduction plan under the CCRA.

56. As with option 2, this option includes development of an NES, and has all the same advantages. It has the additional advantage that the NES would be developed under an amended RMA that is more clearly aligned with the ZCA and therefore better placed to more easily contribute to the transition to a low-emissions climate-resilient economy. For example this option would allow consideration when planning for urban form, as well as assessing the impacts of direct greenhouse gas emissions.

57. Option 3 also overcomes the disadvantages of option 2 above by explicitly creating statutory alignment with the ZCA. Under option 2, there will be no formal link between the RMA and the CCRA through reference to emissions reduction plans, budgets or targets in the ZCA.

58. The Government will also need to develop and consult on a NES (or other national direction) on climate change before 31 December 2021 to support this commencement date. It will provide standardised rules nationally, to ensure consistency in regional and district planning rules under the RMA, and set in place a nationally consistent management framework.

59. In the interim, under this option, the call in provisions under the RMA will act as a protective measure to ensure that consent applications and plan changes that

[16] We have been advised that the legal position is unclear as to whether or not this would be subject to judicial review as it may be illegal for councils to consider climate change mitigation objectives, due to the position of climate change in the RMA. This is despite that one of the five objectives of the Urban Growth Agenda is to reduce emissions.

may result in significant emissions are not rushed through to avoid commencement of the amendments.

60. In order to insert these changes into the RM Bill, timeframes have meant that there are considerable constraints on analysis and consultation. It is important to acknowledge that this option requires successful development of national direction, in a relatively short timeframe, to ensure the risks of this proposal are fully mitigated. In past RMA proposals, the government has agreed to develop national direction to support decision makers on various topics but has not always been able to take the development through to completion. Although there is a strong intention and available funding to develop national direction on climate change, there is are still similar risks associated with this aspect of the proposal.

61. There is now a statutory obligation in place for the Government to publish an emissions reduction plan every five years, to meet the relevant emission budget (or budgets).[17] At a minimum, this is a mitigation in that there will be consultation and some level of central guidance to local authorities from the development of this plan.

Table 1: Key pros and cons of the identified options

Option	Pros	Cons
Option 1: Reforming the RMA as part of the comprehensive review of the resource management system	*Integration across other resource management outcomes* The review panel will consider and make recommendations in an integrated way, considering all environmental and development outcomes the resource management system should deliver. *An expert panel already appointed to advise on changes* The review panel of experts has been established to advise on appropriate changes. It is a well signalled review process that includes (and will continue include) comprehensive engagement with stakeholders and the public.	*Timeframes* The key concern on this option is that timeframes for the outcomes of this review are uncertain, and are very unlikely to result in changes to legislation prior to the end of 2021 (in time for the first emissions reduction plan). *Uncertainty as to the outcome of the review* It is not definitive as to whether or not the outcome of the review will result in changes to climate change mitigation in functions and decision making under the resource management system.

[17] Section 5ZA of the Zero Carbon amendment.

Option 2: Develop an NES under the current provisions (sections 70B and 104F)	*No changes to the primary legislation* Instead an NES will be promulgated on regulating discharges to air of greenhouse gas emissions, as envisaged by the 2004 amendments. The time and consultation constraints under option 1 do not apply to this option. *Creating standardised rules across regions* Issuing an NES provides an opportunity for the Government to set clear directives to industry. It could help manage the transition in a long term way by acting as a regulatory back stop to support emissions pricing.	*The wider uncertainty of climate change mitigation in the RMA will not be resolved* An NES for discharges to air of greenhouse gases will not resolve the preclusion on local government from considering the downstream effects of climate change. Sections 70B and 104F are specific exemptions from the statutory bar, and will not reverse the presumption from the Supreme Court's decision.
Option 3 (the preferred option): Enabling immediate changes to the RMA for climate change mitigation **and** developing an NES and/or other national direction and guidance.	*Overlapping benefits with option 2* Under this option, there will be the same benefits from issuing an NES. However, wider uncertainty around the diffuse sources of emissions, and climate change mitigation in urban planning decisions will be resolved. *Responds to submissions* This option responds to submissions on the RM Bill, the ZCB and the NPS-UD. *Downstream climate change mitigation consideration* Under this option, planning and zoning decisions would now be able to take into account emissions reductions, alongside other	*Timeframes* In order to insert these changes into the RM Bill, timeframes have meant that there are considerable constraints on analysis and consultation. *Uncertainty around national direction* It is important to acknowledge that this option requires successful development of national direction, in relatively short timeframe, to ensure the risks of this proposal are fully mitigated. In past RMA proposals, the Government has agreed to develop national direction to support decision makers and has not taken it forward. Although there is a strong intention and available

	matters that regional and territorial authorities must consider, when developing regional policy statements, plans and district plans	funding to develop national direction on climate change, there remains a risk that national direction will not be completed in a timely manner.

3.2 Which of these options is the proposed approach?

62. Option three is the preferred option as it progresses procedural changes through the RM Bill to address the inconsistency between the two Acts in time for the first emissions reduction plan. It also responds to the majority of submissions on this issue. These changes are outlined below.

Reference to emissions reduction plans and national adaptation plans

63. The Minister for Climate Change must publish the first emissions reduction plan by 31 December 2021. Section 5ZG of the CCRA requires emissions reduction plans to set out "the policies and strategies for meeting the next emissions budget, and may include policies and strategies for meeting emissions budgets that have been [already] notified".

64. Emissions reduction plans are not regulatory instruments and will not themselves give effect to these strategies and policies, nor will they be binding. The plans are tools to ensure accountability of the government of the day for making the policy decisions necessary to meet emissions budgets, and ultimately the targets set in the CCRA. The accountability measure for emission reduction plans is in the Climate Change Commission assessing the annual progress of reducing domestic emissions.

Amending section 61, 66, and 74 is the best option for referencing emissions reductions plans in the RMA

65. Sections 61, 66, and 74 set out the matters that regional councils and territorial authorities must take into account when making regional policy statements, regional plans, and district plans (respectively).

66. The sections already include references to other legislative regimes, including to management plans and strategies prepared under other Acts. Emissions reduction plans are similar documents in that they outline the government's policies and strategies for taking the mitigation action necessary to meet emissions budgets.

67. These sections are therefore best positioned to include references to emissions reduction plans. The effect of this would be that the emissions reduction plans have to be taken into account when local authorities prepare their relevant policy statement or plan.

68. This could be made even clearer by giving the Minister for the Environment a power to publish a direction setting out which parts of an emissions reduction plan local authorities need to take into account. This would clarify which specific parts of the emissions reduction plan are relevant to local authorities' plans under sections 61, 66, and 74.

69. We consider that the national adaptation plan (NAP) could be referenced similarly to emissions reduction plans in sections 61, 66 and 74.

Providing clarity for local authorities will require further amendments to the RMA

70. For the reasons discussed in section 2.1, achieving legal clarity would require further amendment to the RMA. In particular, it would be necessary to repeal sections 70A and 104E. In conjunction with the above amendments to sections 61, 66, and 74, this would send a clear signal that local authorities must consider emissions reduction plans, and are empowered to take the effects of greenhouse gas emissions on climate change into account in their planning and consenting.

71. This proposal would be delayed to take effect in December 2021 to coincide with the gazettal of the first emissions reduction plan. This would allow time for development of guidance and national direction to support local authorities making consistent rules for climate change mitigation.

72. Progressing this legislative amendment now as part of the RM Bill process will not overly burden local authorities, as the breadth of what can be considered under these sections is broad. The main advantage of progressing these amendments now is to provide clarity and certainty to local authorities. It will allow them time to develop capability, in order to be ready to play a full role in response to the emissions reductions plan that will be gazetted under the ZCA by December 2021. Amending these sections will have no actual effect on council decision making until after the emissions reduction plan and the national adaptation plan are published. By this time, the Government intends to have a NES, or other national direction, in place to ensure that councils know where climate change mitigation may be taken into account. This will avoid the “ad hoc decision making” concerns that led to the development of the 2004 amendments.

Ministerial power to direct local authorities to specific provisions in the emissions reduction plans and national adaptation plans

73. To support this new matter that must be considered, the Minister for the Environment will have a power to publish a direction setting out which parts of the emissions reduction plans and national adaptation plans local authorities must take into account. This would clarify which specific parts of the emissions reduction plan are relevant to local authorities’ plans under sections 61, 66 and 74.

Deferring commencement of these amendments to align with publication of the first emissions reduction plan

74. This proposal defers amendment of the above legislative changes until December 2021 to coincide with the first emissions reduction plan, which will be published on 31 December 2021. The national adaptation plan will be published, at the latest, in mid-2022. Deferring commencement will enable the Government to develop and consult on national direction to support local decision-making under the RMA. During this time the Government will also develop the emissions reduction plan.

Call in provisions to help prevent a “gold rush” effect

75. The proposal to defer the commencement of these amendments could encourage a “gold rush” effect. That is, applications may be made for new projects that could lock-in significant long term greenhouse gas emissions, prior to the change coming into force, so as to not be subject to the new consideration. This would be a perverse outcome. In order to address this, it is proposed to introduce an interim measure, with immediate effect, that will only relate to matters of national significance where the ‘call in’ provisions of section 142 of the RMA are utilised.

76. Under section 142, the relevant Minister can 'call in' a matter of national significance, including an application for a resource consent or plan change, that is or is part of a proposal of national significance, and refer the matter to a board of inquiry or the Environment Court for decision. In these instances the new decision-maker is bound by the same limits as the original decision-maker[18] and is subject to sections 70A and 104E in respect of greenhouse gas emissions.

77. As a transitional measure, these changes propose that this restraint be removed, section 104E (until repealed on 31 December 2021) would not apply to a decision-maker under sections 149P (board of inquiry) and 149U (Environment Court). This means that while the emissions reduction plan and national direction are being developed to provide councils with assistance and direction on mitigation issues for matters called in, an appointed decision-maker could consider the effects of a discharge of greenhouse gases on climate change. This would reduce the risk of new projects being brought forward, ahead of an NES being in place that could lock in significant long-term greenhouse gas emissions.

Responding to weight of RM Bill and ZCB submissions on climate change and RMA interface

78. The specific amendments being proposed under option 3 were identified by over half the submitters to the RM Bill, and many submitters to the ZCB. Over 300 submissions to the ZCB asked for changes to the RMA to enable greenhouse gas emissions to be considered under the RMA.

79. The principal contention of these submitters is that the effectivity of the framework under the ZCA will be reduced by current law under the RMA. Many contended that, as New Zealand's key environmental statute, the RMA, should be available to support the transition to a low emissions economy. Some councils submitted in support of this.[19]

80. The weight of these submissions was that these amendments should proceed without delay. However, some submitters calling for the policy frameworks underpinning the RMA and ZCA to be strongly aligned also considered that the regulatory interface issues would be best addressed through the comprehensive review. This would ensure that reducing greenhouse gas emissions can be considered in an integrated way alongside other environmental outcomes the RMA needs to deliver.

81. Proceeding with option 3 now does not preclude the review panel from making further suggestions for legislative reform (or recommending in their final report that the status quo remain). The panel still has an important role in assessing climate change outcomes in other fundamental sections of the RMA. The specific changes proposed for legislative reform now under option 3 are not likely to run at odds with wider reforms that might eventuate from the comprehensive review under option 2.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of impacts

[18] Sections 149P(2) and 149U(2) of the RMA.

[19] For example, Greater Wellington Regional Council and Waikato Regional Council.

82. This impact assessment has been prepared in very short timeframes to allow consideration of the proposal for inclusion of climate change amendments during the committee stages of 'stage 1' RM Bill currently before the House. This has created a significant constraint on the time available to undertake consultation and gather the evidence and data that would be required to make a robust assessment of monetised costs and benefits. As a result the assessment of impacts in this section is essentially a qualitative policy analysis, rather than a quantified cost benefit analysis.
83. Risks and costs which might arise can be considered more fully in advance of the proposed amendments coming into force, through the national direction under the RMA. There may be impacts on some specific sectors where the Government wants to accelerate the transition. This is likely to result in some costs from participants in the relevant sector.
84. In the interim, this proposal will have a limited impact on local authorities' functions, prior to the amendments taking effect. There may be some impact on both local authorities' and applicants, where nationally significant proposals are called in by the relevant Minister with reference to climate change mitigation. For example, councils may have to make submissions on the called-in proposal. Applicants will have some uncertainty around the basis of decision making, where these proposals have potentially significant emissions.

Affected parties	**Comment**:
Local authorities	We do not anticipate that amending sections 61, 66 and 74 will create any significant additional resourcing or cost pressures on local authorities, than what already exists under these sections. Decision makers under these sections are already required to consider a wide breadth of material. Specifying both the emissions reduction and national adaptation plans will ensure that they are integrated into council decision making. The Minister will publish a direction as to what parts of the plans local government must consider when they are drafting their regional policy statements, plans and district plans. This will reduce the need for local government to spend considerable time attempting to interpret and apply all parts of the emissions reduction and national adaptation plans. Although the impact of these changes has the potential to be significant, legally they are procedural changes to existing RMA processes. To mitigate the risks associated with the impacts and flow-on effects, the changes to the RMA now will result in the development of a NES, or other national direction. There are costs to local government in implementing national direction, which can vary depending on the scale and substance of the regulation. These costs are ongoing, although they are likely to be higher in the first stages of implementation.

Applicants	By removing the statutory bar for emissions under the RMA, the basis on which a consent can be granted will change, as decision makers will have new climate change considerations to take into account. This will affect applicants to the RMA. As this will not take effect until December 2021, there will therefore be no impact at the regional level until the commencement of these reforms. In this time the Government will consult on the development of an NES, to mitigate the risks applicants raise that may be associated with this proposal. Including a new climate change consideration in the RMA could be seen as adding more complexity to consent processes. Taking a regulatory approach to climate change mitigation through the RMA has the potential to double up with the NZ ETS price mechanism, as a means of least-cost abatement. Resource consent applicants may be left uncertain as to whether or not a proposal will be declined on the basis of its future emissions. Consultation on these matters would enable a much fuller understanding of the potential impacts that these changes may have on local authorities and applicants. National direction will be used to mitigate the risks above. It would be premature to assess and attempt to mitigate the risks here, when this is better done through these instruments, with full stakeholder engagement.
The Ministry for the Environment	The proposals to amend sections 61, 66 and 74 are not anticipated to require significant resources from the Ministry for the Environment. The Minister for the Environment will publish a direction as to what parts of the plan local government should consider. This direction will be considered and developed as the Ministry leads work on drafting the emissions reduction plan. As with the regulated parties, the costs associated with developing a NES, or other national direction, can vary significantly.
Wider government	There may be costs on other Government agencies, where expert advice sits within other agencies.
Other parties	In the time available it has not been possible to meaningfully analyse the extent that the proposals (by bringing in greenhouse gas considerations) would increase either the number of activities requiring resource consent, or the complexity of consent applications. Attached in appendix 1 is a survey of the Ministry for the Environment's National Monitoring System, which lists potential air discharge consents that may have been subject to consideration, had these discharges been regulated under the RMA. It is important to note, that the scale of these impacts would be critically dependent on the national direction and guidance that would accompany the statutory change. The process of developing a NES (or other national direction) will enable affected parties to be consulted and all such implications to

	be identified, assessed and most importantly, reduced /mitigated / managed. Although the proposals put forward in this set of amendments are unlikely to require significant additional costs, the result of this proposal will be the development of national direction. Depending on what form this takes (although it is likely to be a NES), there are costs associated with developing and implementing national direction. These costs are distributed across government, local government and stakeholders, including iwi/Māori. There may be costs associated with further scrutiny of local authority decision-making on the basis of climate change (either positive or negative). Although this happens to some extent now, removing the statutory bar will draw further attention to particular public decisions.

Expected benefits of proposed approach, compared to taking no action	
Regulated parties	The RMA has the unique ability to influence outcomes in multiple sectors. The proposed approach enables local authorities and their communities to have a greater degree of control and responsibility over decisions that will influence New Zealand's ability to meet our domestic and international climate change targets.
Regulators	The RMA would be more readily available to the Government as a direct lever to support emissions reductions. The proposed amendments will ensure that the RMA is not inconsistent with the outcomes of the ZCA. The national direction that results from these proposals can be lifted up to sit within a future system. The anticipated work on a NES, or other national direction, is an opportunity for the Government to set clear directives to applicants under the RMA. It can be used as a tool to help manage the transition in a long term way by acting as a regulatory backstop to support emissions pricing.
Wider government	N/A
Other parties	There has been significant interest from environmental non-governmental organisations and community groups for re-enabling climate change mitigation in the RMA.
Net Benefit	No attempt to monetise the net-benefits has been made at this stage, due to the time constraints noted above. There is likely to be net benefits as a result of developing national direction to accelerate emissions reductions in particular sectors, and enabling councils to consider emissions reduction plans. In theory it would be possible to estimate the additional marginal emissions reductions that might be generated through this proposal and value these using some reasonable future shadow price of carbon, but on current knowledge these estimates would be highly

	speculative. It will however be possible to undertake this analysis in a rigorous way over the period to December 2021 as the ZCA emissions budgets and emissions reduction plans get developed, along with the proposed national direction under the RMA.
Non-monetised benefits	Climate change is a matter of significant importance. New Zealand is committed to playing its part and taking action on climate change as part of the global effort. In order to achieve the purposes of the ZCA, it is important that the RMA provides a pathway for local government, to effectively assess activities that may have impacts on climate change.

4.2 What other impacts is this approach likely to have?

85. One of the main concerns behind the 2004 amendments was to avoid the 'double jeopardy' where emitters would be taxed on their greenhouse gas emissions (by the carbon tax proposed at the time) and also be subject to RMA consent decisions or conditions that could also impose costs.[20]

86. This concern with 'double jeopardy' at the time was bound up in a wider concern for economic efficiency and aim that any climate change responses were at least economic cost. It was thought that some councils might adopt a stronger, more costly response to climate change at local level, thereby distorting the outcome that would result from the operation of a carbon tax playing out across the economy as a whole. If this resulted in sub-optimal location decisions for greenhouse gas intensive activities, then there could also be negative impacts for regional economies and labour markets.

87. Today, with the strengthening of climate polices and New Zealand's ratification of the Paris Agreement and enactment of the ZCA, there is more concern that the transition to a low emissions economy might not occur quickly enough. This would risk imposing higher costs than necessary if deeper and faster emissions cuts are required in the future due to delayed action now.

88. The issue of double jeopardy for resource consent applicants remains, although emitters now face an emissions price through their NZ ETS surrender obligations rather than a more direct carbon tax. This provides more flexibility for how emitters meet their NZ ETS obligations. It will also potentially be open for RMA consenting processes to recognise exposure to the NZ ETS as an effective and appropriate mitigation. This will be the case especially if the NZ ETS is effectively levying a charge that reflects the social cost of greenhouse emissions in the international and national context of responding to climate change under the Paris Agreement and the ZCA.

89. It is noteworthy, that the possibility of 'double jeopardy' is not unique to greenhouse gas emissions. Many other activities that are subject to RMA controls are also subject to overlapping regulation and costs imposed by other legislation to address their effects. For example, building and construction, or health and safety.

[20] (5 August 2003) 610 NZPD (Resource Management (Energy and Climate Change) Amendment Bill – First Reading, Jeanette Fitzsimons).

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

90. There has been no opportunity to formally consult on the amendments being proposed. However, the issues have been raised by submitters to both the RM Bill and the ZCB before that, and the weight of these submissions is supportive of the proposed approach. Around 300 submissions to the ZCB expressed concerns around the relationships between, and alignment of, the ZCB and the RMA. In particular, that the effectivity of the ZCB would be lessened because of the prohibition on councils from considering greenhouse gas emissions. Approximately 200 submissions to the RM Bill had similar concerns, and asked for changes through the Bill now, as opposed to waiting for the wider comprehensive reform.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

How will the proposed approach be given effect?

91. The amendments will be implemented via primary legislative changes to the RMA.

Communications

92. There will be a communications strategy for publically announcing the commencement of these amendments to the RMA that will give effect to these proposals. This will include engagement with local government and key stakeholders on how these amendments will change decision making functions. This will be followed by public consultation on the development of national direction.

When will the new arrangements come into effect? Does this allow sufficient preparation time for regulated parties?

93. These amendments will not come into force, or be operationalised, until 31 December 2021. In the case of sections 61, 66 and 74, the emissions reduction plan will not be available until then for local authorities to have regard to. This will allow time for the government to issue national direction to support local government decision makers in making any relevant decisions with reference to climate change.

How will implementation risks be managed or mitigated?

94. These amendments will not come into force or be operationalised until 31 December 2021. During this time the Climate Change Commission, and the Ministry for the Environment, will consult on both the first set of emissions budgets and the first emissions reduction plan.

95. Officials also intend to develop a NES, or other national direction, to support the removal of the statutory bar. Ensuring that implementation of the changes made now is managed in an efficient and equitable way, will be dependent on full consultation for the national direction. Stakeholders will have an opportunity to engage in the development of national direction, to ensure that implementation

after 31 December 2021 is managed to have the least impact on local authorities and applicants.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

96. The new arrangements will be primarily monitored through the Ministry's engagement with local government. This will require collecting new data from local authorities, as they make regional plans, policy statements and district plans, to understand how the amendments to sections 61, 66 and 74 are being given effect to. The amendments will not apply to plans and policy statements already in place; local authorities will not be required to update their existing instruments to reflect the proposed changes.
97. The Ministry for the Environment would be responsible for the on-going administration of the new arrangements. Aligning implementation of the proposals with the RM Bill will ensure sufficient time to socialise the changes with stakeholders, before they come into effect with the emissions reduction plan in December 2021.
98. The wider role of the resource management system in supporting the achievement of the 2050 target and emissions budgets, and the effective implementation of the government's emissions reduction plans, will be matters for the Climate Change Commission to monitor and evaluate over time, and for the government to review in response.

7.2 When and how will the new arrangements be reviewed?

99. The Ministry for the Environment has a regulatory stewardship role over the RMA and is constantly monitoring and reviewing the system for opportunities for continuous improvement. The comprehensive review of the resource management system also provides an opportunity to consider any further amendment to the RMA or wider system to support better alignment and reinforcement of the ZCA.