Cover note for *Impact Summary: Proposed bill to amend the Resource Management Act 1991*

Please note that:

A. The following proposals (set out in this RIS) are not part of the Resource Management Amendment Bill:

- Enable the Environment Court to hear challenges relating to resource consent notification decisions (3.2.3)
- Make explicit that deemed permitted activities do not contravene Part 3 of the RMA (3.3.1)

B. Additional policy analysis and detail of the following proposals is included in the separate *Impact Summary: Additional proposals for proposed bill to amend the Resource Management Act 1991*:

- Enabling the EPA to take enforcement action under the RMA (3.1.12)
- Clarification for alternate Environment Court Judges appointments (3.3.2)[1]
- Provide legal protection for special advisors to the Environment Court (3.3.3)

C. The original version of this RIS (published in November 2018) has been updated in this version to clarify that financial contributions conditions are not to be used on notices of requirement lodged by the Minister of Education (3.1.11)

[1] Note that the analysis contained in the additional RIS supersedes that contained in this RIS. This policy has been further clarified through consultation undertaken with the Courts.

Impact Summary: Proposed bill to amend the Resource Management Act 1991

Section 1: General information

Purpose

1. The Ministry for the Environment (the Ministry) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement (RIS), except as otherwise indicated. This analysis and advice has been produced for the purpose of informing key policy decisions to be taken by Cabinet in relation to a proposed package of amendments to resource management legislation.

Key Limitations or Constraints on Analysis

2. There is an implicit role of making value judgements in a resource management system. The current Government considers that some key principles must be adhered to in any reform of the resource management system. These include upholding Part 2 of the Resource Management Act 1991 (RMA), providing for local decision-making and meaningful participation, and achieving good environmental outcomes.

3. Cabinet has confirmed the Cabinet Environment, Energy and Climate Committee's work programme. This includes considerably improving the effectiveness of the resource management system [CAB-MIN-18-0246].

4. The Minister for the Environment (the Minister) has agreed to the scope of a narrow bill to amend the RMA, to be progressed in 2018, which reduces complexity, increases certainty, and ensures that public participation is enabled where appropriate in resource consent processes. The Minister has noted that a more comprehensive reform of the resource management and planning system will be needed to address wider issues.

5. The problems addressed in the proposed bill have been identified through the Ministry's analysis, and feedback from council practitioners and other stakeholders. We have used evidence from previous consultation, for example, the RIS and Select Committee process for the Resource Legislation Amendment Bill 2015 (RLAB), and limited consultation with selected council practitioners to inform our views.

6. An indicative quantification of costs, or avoided costs to councils has been undertaken using data obtained from councils through the Ministry's National Monitoring System (NMS). The actual impact of the proposals will be better understood following public input through the Select Committee process. Future monitoring will also be undertaken to evaluate the implementation of the proposals. Comprehensive and systemic analysis has not been carried out because the amendments focus on a narrow range of legislative concerns.

7. The changes to be included in the proposed bill that are outlined in this impact summary broadly fit the following criteria:

    - problem well-defined – the scope and scale of the problem is reasonably well-known and requires minimal further policy development and consultation

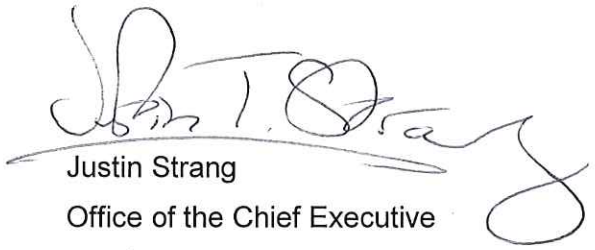
- statutory fix required – the problem is created by the legislation and is not better addressed through national direction, regulation or guidance

- simple solution – the problem is anticipated to require relatively straightforward amendments and minimal consequential changes

- cost effective – the solution is generally easy for councils to implement and does not require major changes to existing systems and processes.

8. The criteria ensure that the proposed changes have minimal implementation costs users of the system, particularly councils. This is important given that recent changes in the system from the Resource Legislation Amendment Act 2017 (RLAA) are still being implemented.

9. The proposed bill also includes a proposed new planning process for freshwater, which is not addressed in this impact summary. That proposal does not meet all of the criteria in paragraph 7 above, but is subject to separate analysis in the impact statement - *A new planning process for freshwater.*



Justin Strang
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Date: 13 September 2019

Section 2: Problem definition and objectives

2.1 Background

10. The RMA is New Zealand's primary environmental statute, covering environmental protection, natural resource management and our urban planning regime. Since its inception, the RMA has been subject to numerous reviews and reforms. Recent changes include the RLAA, the Resource Management Amendment Act 2013, and the Resource Management (Simplifying and Streamlining) Amendment Act 2009. RISs for these previous reforms are available on the Ministry website.[2] The RLAA was the most comprehensive package of reforms to the RMA since its inception in 1991, and required a significant implementation programme.

11. The primary purpose of the RMA is to promote the sustainable management of New Zealand's natural and physical resources. To achieve this purpose, the RMA assigns different roles and responsibilities to central and local government, requiring authorities and the Minister for the Environment. Central government has responsibility for administering the RMA, providing national direction and responding to national priorities relating to the management of the environment and environmental issues. Most of the everyday decision-making under the RMA is devolved to city, district, regional and unitary councils.

2.2 What is the policy problem or opportunity?

12. A discrete set of problems with the existing legislation has been identified through Ministry analysis and feedback from councils and other stakeholders. These problems are independent of each other and a wider review of the resource management system has not been undertaken at this stage. Evidence developed from the RLAB process, such as submissions to the Select Committee, has informed further analysis where relevant.

13. The primary problems are:

    - some tools and processes in the RMA create complexity and uncertainty
    - opportunities for public participation are limited.

14. The specific problems this bill seeks to address include:

    <u>Some RMA tools and processes create complexity and uncertainty:</u>

    - some regulation-making powers create complexity and uncertainty in the system as they have the potential to undermine local decision-making
    - there are differences in RMA interpretation regarding placing resource consent applications on hold, resulting in inconsistent practices by councils
    - some tools under the RMA (relating to timing for resource consent applications to be made following a state of emergency, timing for filing prosecutions, and maximum infringement fees) are unreasonable or do not adequately deter offending and therefore reduce certainty in regard to compliance in the system

[2] http://www.mfe.govt.nz/rma/reforms-and-amendments

- there is uncertainty amongst councils about when a consent review can commence following a new plan becoming operative and whether the effects of multiple consents can be considered. This is creating difficulties in achieving implementation of the National Policy Statement for Freshwater Management 2014 (Freshwater NPS) in a timely manner

- there is some tension between different parts of the RMA. The current subdivision presumption is 'permitted unless restricted', whilst consent authorities are enabled under section 106 to decline subdivision, in certain circumstances, such as in areas with high risk of natural hazards

- there is uncertainty amongst councils about their ability to use contribution regimes that work for them, resulting in difficulties in funding infrastructure

- there is uncertainty for the Crown regarding costs that may be imposed by councils as financial contributions on designations for state schools, which provide required education facilities for children of resident populations.

Opportunities for public participation are limited:

- there are legislative barriers to people participating in resource consent processes for residential and subdivision activities (unless non-complying). There is no right of appeal for these activities, or ability to appeal objections, and appeals are limited to matters raised in submitters' submissions for all other resource consents

- the existing avenue to challenge notification decisions on resource consents can be too expensive and time consuming, reducing access to justice.

15. There are also two other technical matters which require clarification in the RMA; one of these is an amendment to reflect the intent of the policy which was not reflected in the original drafting of the RLAA.

16. As noted, the identified problems are based on formal and informal feedback from stakeholders on the implementation of the RLAA amendments, and problems with other aspects of the RMA.

17. Further elaboration of the problem statement in relation to each specific proposal is outlined in section 3 of this RIS.

2.3 Objectives of the proposed bill

18. Reflecting the problems outlined above, the primary objectives for the proposals are:

- to reduce complexity and increase certainty

- to improve public participation.

19. In part, these objectives reflect a change in Government priorities, particularly in relation to the weighting of public participation and the role of local decision-making in the RMA. These problems have been identified in the context of recent legislative change in the

resource management system. This context makes the simplicity of the problem and its solution, as well as the cost-effectiveness of its implementation, a relevant factor for identifying proposals.

20. Some of the changes proposed in this bill reverse a limited number of the amendments made through RLAA (some of which came into force in October 2017), which councils are currently implementing. It is therefore important that these changes are made promptly, to limit the resources that councils need to invest in implementation, such as the need to make changes to their planning documents, which can be a costly and lengthy process.

21. In order to ensure that the scope of the proposed bill is manageable, amendments have only been included where they meet the following criteria:

    - problem well-defined – the scope and scale of the problem is reasonably well-known and requires minimal further policy development and consultation
    - statutory fix required – the problem is created by the legislation and is not better addressed through national direction, regulation or guidance
    - simple solution – the problem is anticipated to require relatively straightforward amendments and minimal consequential changes
    - cost effective – the solution is generally easy for councils to implement and does not require major changes to existing systems and processes.

2.4 Who is affected and how?

22. These proposals aim to change the behaviour of councils and users of the resource management system, primarily applicants. The specific proposals are expected to:

    - strengthen deterrence of non-compliance with the RMA by users of the system
    - increase quality and quantity of prosecutions by councils
    - improve consistency in resource consenting practices of consent authorities
    - facilitate further implementation of the NSP FM by councils
    - provide more meaningful participation opportunities in the resource consent process for submitters and appellants.

23. Based on initial engagement, we expect that these changes will be supported by many users of the RMA system. Another indication of stakeholder views are the submissions made through the RLAB process. The proposals which seek to reverse RLAA amendments were opposed by the majority of submitters at that time.

24. Some groups, such as developers, may oppose certain changes such as expanding the parties that can be notified and therefore appeal residential and subdivision resource consents. This is because the changes may increase time and cost for notification decisions and appeals. Conversely, however, some developers and network utility

operators were opposed to the preclusion on notification and appeals during the RLAB process. This is because the preclusions restricted their own ability to submit on and appeal consents, particularly on conditions of consent imposed by councils.

25. We have undertaken limited consultation with practicing planning professionals in councils on the proposals. Generally, the feedback has been supportive.

2.5 Are there any constraints on the scope for decision-making?

26. As noted above, the scope of the changes has been deliberately kept narrow given the level of change in the system in recent years. It is intended that this will minimise the impact on users of the system when implementing the changes, particularly for councils. The changes aim to address a small set of problems that require legislative change. Changes that reverse particular RLAA amendments will avoid costs for councils as they will no longer have to undertake changes to planning documents to give effect to those amendments.

27. A wider, comprehensive analysis of the system and the problems associated with it has not been undertaken. This is because the Government intends to begin a longer-term, more comprehensive review of the resource management system in 2019 that builds on the current programme of work to address key priorities across urban development, climate change and freshwater.

28. The changes proposed in this bill are largely discrete and stand-alone, so they would not be impacted by, or impact on, longer-term changes.

Section 3: Options identification

29. The following section outlines the options considered for each individual proposal. The majority of these individual proposals have been assessed as broadly meeting the overarching criteria of this proposed bill as outlined in section 2 of this RIS. The sections are organised by high-level objective, also outlined in section 2. The objectives and specific proposals are outlined below in table 1:

Table 1: Objectives for the reform and specific proposals

Primary Objectives	**Reduce complexity and uncertainty with RMA tools and processes**								**Increase opportunities for public participation**		**Minor/technical fixes**
Desired outcomes	Councils have more certainty that local decision-making will not be overridden in certain circumstances	Councils are able to place consent applications on hold at the request of the applicant, and in instances where they are waiting for a charge to be paid	Infringement fee amounts for persons and persons other than natural persons are adequate to deter non-compliance	Sufficient time is provided for councils to make the decision to take a prosecution	A fair timeframe is provided for applicants in emergency circumstances to apply for resource consent	Processes are clarified to ensure better and more timely implementation of the National Policy Statement for Freshwater Management 2014	The RMA promotes appropriate subdivision and the legislation is consistent in regard to decision-making	All councils are able to use a contribution regime	Adequate opportunity for public participation in the resource consent processes is ensured	Adequate access to justice in relation to resource consent decisions is ensured	
Reform proposals	3.1.1 Repeal section 360D regulations (remove duplicating rules) and consequential change to section 360E 3.1.2 Repeal section 360G regulations to prescribe fast track activities or information requirements 3.1.3 Repeal section 360H regulations to preclude notification for certain activities or who is an affected party for limited notification	3.1.4 Allow applicant led flexibility in processing of their non-notified resource consent applications 3.1.5 Allow councils to stop the resource consent application 'statutory clock' if a charge has not been paid	3.1.6 Increase infringement fees and introduce a split for natural and persons other than natural persons	3.1.7 Extend the statutory limitation period for filing charges	3.1.8 Extend the timeframe for applying for a resource consent for emergency works under section 330B (emergency works under the Civil Defence Emergency Management Act 2002)	3.1.9 Enable the effects of multiple resource consents to be considered when reviewing consents; and address the timing for when a review can be undertaken Enable review of consent conditions while other unrelated plan provisions are under appeal	3.1.10 Reverse the subdivision presumption	3.1.11 Reinstate the use of financial contributions. However, clarify that these are not to be used on notices of requirement lodged by the Minister of Education	3.2.1 Repeal the public notification preclusions relating to residential activities and subdivision of land and repeal the definition of 'residential activity'	3.2.1 Repeal the preclusions on the right to appeal decisions, conditions of consent, or objections relating to the subdivision of land and residential activities 3.2.2 Repeal the restriction on appeals which limit appeals on resource consents to those matters raised in a submission 3.2.3 Enable the Environment Court to hear challenges relating to resource consent notification decisions	3.3.1 Make explicit that deemed permitted activities do not contravene Part 3 of the RMA 3.3.2 Clarification for Alternative Environment Court Judges appointments

3.1 Reduce complexity and uncertainty with RMA tools and processes

3.1.1 Remove the Minister's ability under section 360D to make regulations that either prohibit or remove rules in councils' plans that duplicate or overlap with subject matter that is included in other legislation

Problem

30. Section 360D is a regulation-making power that was introduced by the RLAA. It enables the Minister to make regulations to prohibit or remove specified rules or types of rules that would duplicate, overlap with, or deal with the same subject matter that is included in other legislation (excluding rules that regulate the growing of crops that are genetically modified organisms).

31. At the time of the RIS for the RLAB, the Ministry undertook a limited scoping exercise to assess the extent of the problem of duplication and overlap between the RMA rules and other legislation. Details of this can be found in the RIS for the RLAB. It was considered that if the regulation-making powers were used, it would go some way in ensuring that planning rules and documents are implemented consistently. It was also considered that the regulation-making power would contribute to achieving the objective of better alignment and integration across the system.

32. The regulation-making power was considered necessary because the government's intention to reduce duplication or overlap between the RMA and other legislation could not easily be achieved using existing mechanisms in the RMA (for example, a National Environmental Standard (NES)). To date, no regulations have been made under section 360D.

33. However, since the enactment of the regulation-making power, Government priorities have changed, with more weight being placed on the importance of public participation and local decision-making. The Government considers section 360D is too broad and enables the Minister to inappropriately undermine local decision making.

34. In the absence of specific consultation and evidence on the removal of section 360D, we have used submissions on the RLAB process as an indication of stakeholder views on the subject. A majority of submitters through the RLAB Select Committee process expressed concerns that section 360D equips the Minister with excessive powers to intervene in local planning decisions. These were considered disproportionate to the scale of the existing problem with duplication/overlap, and would create additional costs and complexity for councils.

35. Because regulations made under section 360 would essentially remove the RMA's jurisdiction on certain matters it is a "Henry VIII" power. The RMA delegates the power to make rules to local government and section 360D regulations could, in practice, take those powers away in specific cases without changes to the enabling legislation. Section 360E does, however, set out procedures relevant to making rules under section 360D. This includes establishing a process that gives the public, the relevant councils, and the relevant iwi authorities adequate time and opportunity to comment on any proposed regulations.

36. However, the existence of these regulation-making powers creates uncertainty for councils that their local planning decisions could be overridden if the regulations are

made. Since the regulation-making power was enacted, stakeholders have requested that it be removed.

Proposed Option

Remove section 360D

37. The proposed option is to remove section 360D and section 360E (which contains the procedures relevant for making rules under section 360D).

38. Removing the sections would address the concern of stakeholders that section 360D equips the Minister with excessive powers to intervene in local decision-making, and would create additional costs and complexity for councils.

39. However, the risk of the proposal is there will not be a tool under the RMA that easily allows rules to be prohibited or removed, as section 360D provides for, and that any potential benefits from making these regulations would not be realised. Previous analysis demonstrated that the policy intent of the regulation-making power could not easily be achieved through other tools. Other tools, such as NESs, or the National Planning Standards would allow for certain activities to be prohibited, however, these tools would be slower and less certain to implement in comparison.

40. We consider that the risk of repealing the tool is low. Although examples of rules that could be seen to be unreasonable, or that place additional burdens on communities are known, it is not clear that the development of regulations would be a proportionate response to such rules. We noted in the Departmental Report for the RLAB that the costs and benefits of addressing an issue at a national level would have to be carefully considered in the development of any potential regulations through a section 32 evaluation, and this would include the cost of plan changes, which would be required if the regulations were developed. The government would also need to weigh its own costs in developing a regulation against the presumed benefits. We also recognised submitter concerns that regulations could contribute to an ad hoc approach to planning and for that reason we expected the regulations to be used sparingly.

41. The proposed option would address the issue of regulations being made in the future that undermine local decision-making. In doing so it would contribute to creating more certainty, through the removal of a Ministerial regulation-making power that is likely to only be used sparingly in the future. In order to achieve the objectives of this proposed bill, it is considered that the removal of the regulation-making power is appropriate given the associated risks are low.

42. We note that the Minister has also instructed officials to investigate opportunities for a narrower regulation-making power, and to report back in early 2019. This will be informed by the work being progressed concurrently as part of the Urban Growth Agenda which aims to address unduly restrictive rules in district plans.

Alternative Options

43. Alternative options to the regulation-making power were canvassed in the RIS for the RLAB. In addition to these options, an alternative could be to restrict the use of the regulation-making power even further in order to limit the circumstances in which it could be used. However, further policy work would be required, as noted above.

Conclusions

44. Removing section 360D is the preferred option because it would achieve the objective of providing greater certainty for councils and communities that local decision-making will not be undermined in this situation.

45. It is considered that the proposed option meets the criteria of the proposed bill as outlined in section 2 of this RIS.

3.1.2 Remove the Minister's ability under section 360G to make regulations that prescribe activities as fast-track and prescribe the information that a fast-track application must include

Problem

46. Section 360G is a regulation-making power that was introduced by the RLAA. It enables the Minister to make regulations that prescribe activities as fast-track (meaning non-notified resource consents must be processed in ten, instead of 20 working days). It also provides the ability to prescribe the information that an application for a fast-track resource consent must include.

47. The intent of the regulation-making power is to provide a flexible way to add activities to the fast-track category over time (set out in section 87AAC). This was considered appropriate in order to achieve the objective of the fast-track proposal, which is to provide more proportionality in the consenting system for more straightforward activities. It also contributed to achieving the broader objectives of the RLAA, which sought to create more consistency in the planning system.

48. However, since the enactment of the regulation-making power, Government priorities have changed, with more weight being placed on the importance of public participation and local decision-making.

49. In the absence of specific consultation and evidence on the removal of section 360G, we have used submissions on the RLAB process as an indication of stakeholder views on the subject. The majority of submitters through the RLAB Select Committee process opposed the introduction of this provision, with concerns the section equips the Minister with excessive powers to intervene in local planning decisions, creating uncertainty for councils.

50. The regulation-making power was part of a wider set of reforms to the consenting process, largely aimed at speeding up consents for housing. Section 360G could be used in this instance, in conjunction with other regulation making-powers (for example precluding notification through regulations made under section 360H), to speed up the delivery of housing-related consents.

Proposed Option

Remove section 360G

51. The proposal is to remove section 360G. In the absence of comprehensive consultation and evidence on the removal of the section, we have used submissions on the RLAB process as an indication of stakeholder views on the subject. One concern that stakeholders raised was that the section equips the Minister with excessive powers to intervene in local planning decisions. Removing the section would mean that this concern

that the power is excessive would be addressed. The risk of removing section 360G is that the potential benefits of speeding up housing-related (and other more straightforward consents) will not be realised. There is no other mechanism in the RMA to specify activities that are fast-track, or specify the information that can be contained in the application.

52. However, due to the constraints in the legislation on the Minister's ability to make the regulations, is it likely that the regulations could only be used for small-scale, more straightforward activities and therefore their impact in the system would be limited. Further to this, prior to RLAA, consent authorities (such as Auckland Council and Wellington City Council) were already offering fast-track services for types of consents voluntarily where they felt this was appropriate, and/or if the applicant had paid a premium application fee for faster service, therefore achieving efficiency benefits in the system, without needing to specify this in the legislation.

53. There is also a wider work programme being undertaken by the Government focusing on addressing urban issues from a more holistic, systems-perspective. This includes, for example, the proposal for the establishment of an Urban Development Authority, and the Urban Growth Agenda.

54. We therefore consider that removing this section is appropriate in order to achieve the desired outcome of providing certainty to local government that local decisions will not be overridden.

Alternative Options

55. Alternative options to the regulation-making power were canvassed in the RIS for the RLAB. In addition to these options, an alternative could be to restrict the use of the regulation-making power even further in order to limit the circumstances in which it could be used. However, this would not fully achieve the objectives of reducing uncertainty and complexity of tools in the RMA system.

Conclusions

56. Removing section 360G is the preferred option because it would achieve the desired outcome of providing greater certainty for councils and communities that local decision-making will not be undermined.

57. It will contribute to the wider objective of ensuring that complexity and uncertainty is decreased with tools under the RMA. It is also considered that the proposed option meets the criteria of the proposed bill as outlined in section 2 of this RIS.

3.1.3 Remove the Minister's ability under section 360H to make regulations that preclude public notification for certain activities, or prescribe who may be considered an affected person in relation to limited notification

Problem

58. Section 360H is a regulation-making power that was introduced by the RLAA. It enables the Minister to make regulations to (a) prescribe activities that require resource consent as being subject to a non-notified consent process, and (b) specify who may be considered an affected person, and subsequently has a right to submit, in respect of an application that is limited notified.

59. The power is intended to facilitate the national consistency of notification decisions for resource consents, thereby reducing risk-averse behaviour by councils and providing increased certainty for applicants and councils. It was expected to make resource management decisions more robust and durable and make participation in consenting processes more proportionate to the activity. This would be achieved through supporting decisions made up front in plan-making processes, which have themselves involved significant consultation and engagement.

60. The regulation-making power was also part of a wider set of reforms to the consenting process, largely aimed at speeding up consents for housing. The power could be used in conjunction with other regulation making-powers (for example specifying activities as fast-track under section 360G), in order to speed up the delivery of housing-related consents.

61. However, this regulation making power may be difficult to implement as the Minister has to be satisfied under section 360H(2) that the likely effects of the activity would not warrant public or limited notification, or warrant the preclusion of notification to parties that could be adversely affected. This would likely limit the application of the regulation to more straightforward, small-scale activities.

62. As with sections 360D and 360G above, the Government's priorities have changed, with more weight being placed on the importance of public participation.

63. In the absence of specific consultation and evidence on the removal of section 360H, we have used submissions on the RLAB process as an indication of stakeholder views on the subject. The majority of submitters through the RLAB Select Committee process opposed this provision, with concerns the section equips the Minister with excessive powers to intervene in local planning decisions. It is considered that this tool, combined with the number of other regulation-making powers, creates uncertainty for councils.

64. It is worth noting that in the 2015/2016 NMS year, before the most recent RMA amendments were made, 1.9 per cent of consents were limited notified and 1.5 per cent publicly notified.[3] Therefore the scale of the problem the regulations aimed to address was small.

Proposed Option

Remove section 360H

65. The proposed option is to remove the Minister's ability under section 360H to make regulations that preclude public notification for certain activities, or prescribe who may be considered an affected person in relation to limited notification.

66. As noted above, the majority of submitters on the RLAB opposed the initial inclusion of section 360H. Removing the section would address the concern raised by stakeholders that the section equips the Minister with excessive powers to intervene in local planning decisions. It will provide certainty that local decisions in relation to notification decisions will not be overridden by the Ministerial power.

[3] Ministry for the Environment.2017.*National Monitoring System for 2015/16*. Wellington: Ministry for the Environment

67. The risk of removing the regulation-making power is that any benefits of using the tool will not be realised. In previous analysis it was considered that the section would be the fastest means of implementing a restriction on notification, in comparison with other tools under the RMA such as an NES or the National Planning Standards. However, in practice it may be difficult to meet the criteria for using the regulation-making power. The following existing tools under the RMA provide avenues to achieve a similar outcome:

    - rules in a plan or a NES can specify activities for which notification is precluded
    - National Planning Standards can include rules that specify activities for which a consent authority must give public notification, or are precluded from giving public or limited notification (section 77D)
    - existing preclusions (in normal circumstances) on public or limited notification for controlled district land use consent applications.

68. Removing the regulation-making power would reinforce the devolution of resource consenting notification decisions to consent authorities through removing the ability for regulations to override notification provisions in plans and/or decisions on individual consent applications.

69. There is also a wider work programme being undertaken by the Government focusing on addressing urban issues from a more holistic, systems-perspective. This includes, for example, the proposed establishment of an Urban Development Authority, and the Urban Growth Agenda. These work programmes provide other opportunities to consider processes which could speed up the delivery of housing.

70. Therefore, in order to achieve the objectives of this proposed bill, it is considered that the removal of the regulation-making power is appropriate given the associated risks are low.

Alternative Options

71. Alternative options to the regulation-making power were canvassed in the RIS for the RLAB. In addition to these options, an alternative could be to restrict the use of the regulation-making power even further in order to limit the circumstances in which it could be used.

72. This would still not fully achieve the objectives of reducing uncertainty and complexity in the system associated with regulation-making powers.

Conclusions

73. Removing section 360H is the preferred option because it would achieve the desire outcome of providing greater certainty for councils and communities that planning provisions will not be overridden.

74. It will contribute to the wider objective of ensuring that complexity and uncertainty is decreased with tools under the RMA. It is also considered that the proposed option meets the criteria of the proposed bill as outlined in section 2 of this RIS.

3.1.4 Allow applicants to suspend processing of their non-notified resource consent applications

Problem

75. For publicly notified and limited notified resource consents, applicants are able to place their applications on hold at any time between notification and the close of a hearing. Processing of the application is resumed either at the applicant's request, or once the application has been on hold for a period of 130 working days (including all other periods when the application was on hold previously). At this point, the application must either be returned to the applicant or continue to be processed.

76. However, the RMA does not allow applicants to put non-notified resource consents on hold. This existing anomaly in the RMA has led to inconsistent practices by councils who would like to enable applicants to suspend applications in order to encourage better environmental outcomes, ensure the quality of their decision-making, or for customer service reasons. There is an opportunity to fix this anomaly and provide for more efficiency in the resource consenting process.

77. The ability for applicants to put notified resource consents on hold was established in 2013 as part of a suite of RMA amendments which focused on processing consents for medium-sized projects. A number of submitters on the 2013 Bill requested that this provision be extended to apply to non-notified resource consent applications. However this was considered out of scope of that Bill.

78. There are different circumstances in which an applicant may need to put the processing of their non-notified resource consent on hold, including:

    - to make minor amendments to their plans/applications to meet their changing needs
    - to reduce the potential effects of their proposal prior to the application becoming notified
    - to review and agree to any proposed consent conditions
    - to address unforeseen, associated, but not necessarily RMA related issues with their proposal (eg, to sort out civil matters that are related to the proposal but are not within the jurisdiction of the RMA)
    - to allow some form of flexibility to applicants when personal circumstances arise.

79. Currently, the only process available under the RMA for non-notified consent applicants in these circumstances is to withdraw their application and then re-lodge it when they are ready. This is inefficient and could cause an increase in time and costs for councils and applicants.

80. It is not known exactly how large this cost issue is, given councils have generally been finding ways around the issue. While it is considered this cost would not be high, it has resulted in inconsistent practices. Some consent authorities are incorrectly using their ability to extend the relevant statutory timeframes (under section 37 of the RMA), or finding alternate means to circumvent this problem, resulting in inconsistent reporting of data under the NMS. It is considered that a change to the legislation is required in order

to ensure consistent practice on this matter. Addressing the anomaly of applicants not having the ability to place a non-notified consent on hold in the RMA would contribute to a more efficient resource consent process.

Proposed Option

Allow applicants to suspend the processing of resource consent applications for 20 working days prior to the decision to notify an application (or issue a non-notified resource consent)

81. This option would give applicants the flexibility to be able to suspend the processing of their resource consent applications for up to 20 working days (in total) at any stage:

    - prior to the decision to notify (public or limited) the resource consent, or
    - in relation to non-notified consents:
        - until the hearing is completed (if a hearing is held); or
        - until the decision on the application is issued to the applicant.

82. There would be no limit on the number of times that an applicant can request an application to be on hold during this period, however the sum of these requests must not exceed 20 working days. At the culmination of 20 working days, the council will have the discretion to either return the application to the applicant, or continue to process the application in its current form. If the decision is made to notify the resource consent, then the applicant would still have the existing ability to suspend the application for 130 working days. However, this total must include any working days that the application was previously on hold (including any earlier cessation by the applicant).

83. A 20 working day suspension period is considered an appropriate timeframe as it is the statutory timeframe between lodgement and making a notification decision or issuing of a non-notified resource consent. This is consistent with notified consents, as applicants are able to place the consent on hold for 130 working days, which is the total processing time.

84. Potential risks of the proposal relate to applicants being able to stall the process, or potentially tie up resources, however these risks are considered low. For example, in regard to retrospective resource consents, an applicant could stall the resource consent process while they are undertaking a non-compliant activity, giving them an unfair advantage. There is also a risk in relation to the renewal of a resource consent that is due to expire for an allocable resource (such as water), as the RMA allows consent operators to continue to operate until a decision is made on the new consent. However, the proposed 20 working day time limit on the suspended timeframe prior to notification is considered to mitigate these risks. It is considered that these risks are low, as after 20 working days the council must either return or continue to process the application.

85. There will be cost implications for consent authorities who will need to alter their processes and IT systems to include an additional suspension period. The true cost of this is currently unknown, however the benefits of enabling councils to provide good customer service in a consistent way is considered to outweigh this potential cost, particularly given councils have requested this change and are currently having to find ways to work around the issue.

Alternative Options

Enable applicants to suspend the processing of their resource consent for up to 130 working days

86. This option would allow applicants to suspend the processing of their applications for up to 130 working days, which is the existing cap currently allowed for notified consents, between the date that the application was first lodged and the end of the hearing, or if no hearing, when a decision is issued.

87. This option would give applicants some flexibility throughout the resource consent process. However, this option would allow non-notified applications, which are generally less complex than notified applications, to be on hold at the applicants request for the same period of time as notified consents. This would allow applicants to place their application on hold for up to six times the statutory processing timeframe for non-notified consents and it is considered that this is an unnecessarily long timeframe which would lead to increased uncertainty of timeframes and delays in the process. The risks outlined above in relation to retrospective resource consents and consents for allocable resources would also be exacerbated in this option. For these reasons, this option is not considered to meet the objective of increasing certainty and reducing complexity.

Allow resource consents to be put on hold by applicants at any time within the resource consent process

88. This option would allow all resource consent applicants to request that the processing of their application is suspended, for as long as they need, at any time until hearing completion, or a decision is issued.

89. The lack of a limit on the timeframe that an applicant can suspend their application could lead to workload inefficiencies within councils. Also, as noted in the option above, allowing applicants to suspend the processing of their resource consent for an indefinite period of time could also lead to poor environmental outcomes in relation to allocable resources and retrospective resource consents. For these reasons, this option is not considered to meet the objective of increasing certainty and reducing complexity.

Allow applicants to request an extension of time

90. This option would allow an applicant for both notified and non-notified resource consents to request that the council extend the resource consent processing timeframes under section 37A of the RMA, which they cannot do currently. These timeframe extension provisions currently give consent authorities the flexibility to double the timeframe if there are special circumstances, or if the applicant agrees; or allows them to extend the timeframe for a longer period, but only if the applicant agrees. In making its decision about whether to extend a timeframe, the consent authority must take into account the interests of any person who may be directly affected by the extension, the interests of the community in achieving adequate assessment of the effects of a proposal, and its duty to avoid unreasonable delay.

91. The intent of the existing timeframe extension provisions is that they are council-led, rather than applicant-led. These provisions do not stop the processing clock (but rather extend the timeframe), and therefore still allow the consent authority to continue to process the application within this period (although it is noted that it is unlikely that a consent authority would do so).

92. This option would not give the applicant flexibility in the processing of their applications as they would still have to make a request to the consent authority for timeframes to be extended, and the consent authority would have to make a decision with respect to the criteria outlined in section 37 (noted above). This would have increased administration (time and cost) implications for consent authorities. It would also give the perception that resource consents take longer than the statutory time period allowed.

93. A potential benefit of this option is that the costs of updating any IT systems and procedures are likely to be minimal in that this option would effectively be codifying what is common practice in many councils in these situations. However, council practices in applying these provisions (and their respective IT systems) are very inconsistent.

Conclusions

94. The proposed option is preferred as it will give applicants some flexibility in the process, and it does not increase uncertainty or create significant delay in relation to resource consent timeframes and processes. This option codifies the existing practice of many councils, and will lead to more consistent and usable data for statutory timeframes in the National Monitoring System. It is considered that the proposed option broadly meets the criteria of the proposed bill as outlined in section 2 of this RIS.

3.1.5 Allow councils to stop the resource consent 'statutory clock' if a charge has not been paid

Problem

95. Section 36 of RMA allows councils to fix administrative charges to recover the actual and reasonable costs associated with some of their RMA functions. Councils usually recover costs by either setting specific amounts for particular types of consents or by fixing an initial lodgement fee/deposit and then invoicing applicants during or at the end of the process for the additional actual costs incurred.

96. If an administrative charge is not paid, section 36AAB(2) gives councils the power to not perform the action to which the charge applies. However, there is no formal ability in the RMA for the resource consent processing clock to stop for this purpose. This has resulted in an issue where councils are often required to continue processing the application in order to meet their statutory timeframes, despite having the ability under section 36 to not perform an action if an administrative charge relating to that action is not paid.

97. The introduction of the Resource Management (Discount on Administrative Charges) Regulations 2010 (the Discount Regulations) attempted to address this issue. Under these regulations, a discount must be paid to an applicant if the resource consent is processed beyond the statutory working days, at a rate of one per cent per additional day. For the purpose of working out any discount, the working days on which a council *does not perform an action* because they have not received the full administrative charge are excluded from the calculation. This has led to the development of a complex administrative process to work out what the applicant should be charged.

98. This legislative misalignment has resulted in different interpretations and practices by councils in order for them to meet their statutory timeframes whilst also trying to recover their actual and reasonable costs. Many of these varying practices have been highlighted in the data provided to the NMS.

Proposed Option

Allow councils to suspend the processing of a resource consent until fixed administrative charges are paid by the applicant

99. The proposed option would give consent authorities the ability to suspend the statutory clock in relation to the processing of a resource consent while waiting for any fixed administrative charge either (a) at lodgement or (b) when a decision has been made to notify an application.

100. Allowing the resource consent statutory timeframe to be suspended while awaiting administrative charges to be paid at these stages in the process would deliver a considerable benefit to most councils. These are the stages within the resource consent process where most councils fix administrative charges. Stopping the resource consent clock at these stages would give the incentive to the applicant to pay the required charge so that their application can proceed. In addition to this, it would reduce the need for councils to undertake cost recovery procedures at the end of the resource consent process.

101. The proposed option will align the provisions within the RMA, and the Discount Regulations.

102. There is a risk that the proposal could be seen by the public as further delaying resource consent processing. However, in effect, this proposal is codifying many existing council practices to 'work-around' the problem. The proposed option incentivises applicants to pay the charge associated with the processing of their resource consent, and therefore reduces the time and cost to councils (and therefore rate-payers) related to cost recovery.

103. There will be an implementation cost to councils relating to this option as they would need to amend their IT systems in relation to resource consent timeframes and also in relation to their financial systems and invoicing processes. At this stage this exact cost is unknown. However, the benefit of giving councils the ability to suspend statutory timeframes is considered to outweigh this cost. Again, the Ministry will assist with this implementation where possible, such as through guidance on new proposals.

Alternative Options

Amend Schedule 4

104. An alternative option is to amend Schedule 4 of the RMA (Information required in application for resource consent) to include the required fixed administrative charge. This would mean that if the appropriate charge is not paid at the time of lodgement, the application could be deemed to be incomplete, and the consent authority would have no choice but to return the application under section 88(3).

105. This option is considered overly onerous on both the council and the applicant. If the applicant did omit to provide payment with their application, then the consent authority would be compelled to determine the application 'incomplete' and return the whole application to the applicant, who would then need to re-submit it as a new application.

106. In addition, this option also only addresses the problem with the initial fixed deposit, but does not address the need to request a fixed charge if the council makes a decision to notify an application.

Conclusions

107. The proposed option is preferred. This option would improve the effectiveness of the resource consenting system by reducing its complexity. It would provide clarity around statutory timeframes and cost recovery. This will resolve the issue of inconsistent practices by councils to circumvent the issue. It is also considered that the proposed option meets the criteria of the proposed bill as outlined in section 2 of this RIS.

3.1.6 Increase maximum infringement fees and introduce different fees for 'natural persons' and 'persons other than natural persons'

Problem

108. Infringement fees are an efficient and cost-effective tool for punishing offences against the RMA of relatively low seriousness and deterring potential offenders. Infringement fees are accompanied by an infringement notice, which sets out what offence has been committed. There were 1231 infringement notices issued by councils nation-wide in 2015/16.[4] Infringement fees are the most commonly used enforcement tool for punishing breaches of the RMA.

109. Infringement fees may be issued by a council when they observe, or have reason to believe, that a person has committed an offence. While the RMA allows for a maximum infringement fees of $1000,[5] the level of fee is set according to the offence committed through regulations[6] and ranges from $300 - $1000. The maximum level of RMA infringement fee has not been increased since it was set in regulations in 1999. However, a specific higher maximum infringement fee was set in relation to stock exclusion in 2017.

110. The Ministry produced a report in 2016 on compliance, monitoring and enforcement by councils under the RMA.[7] This research found that a number of councils and stakeholders believe the maximum level of infringement fee is too low. Some also suggested that fees available through infringement notices should be higher for companies – this would be consistent with the penalties available through prosecutions and would provide a more effective deterrent for companies.

111. The Productivity Commission also noted in its 2013 report[8] that the "low level of fees that have not been reviewed for many years, are reducing the effectiveness of enforcement strategies". For example, in this report Auckland Council notes that the breach of a rule in a district plan is a $300 fee. They state the cost of applying for a resource consent is

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4 Ministry for the Environment.2017.*National Monitoring System for 2015/16*. Wellington: Ministry for the Environment

5 Other than for breach of stock exclusion regulations, where there is a statutory maximum of $2000

6 Resource Management (Infringement Offences) Regulations 1999

7 Compliance, monitoring and enforcement by local authorities under the Resource Management Act 1991 http://www.mfe.govt.nz/sites/default/files/media/RMA/compliance-monitoring-and-enforcement-report.pdf

8 New Zealand Productivity Commission. 2013. Towards Better Local Regulation. Wellington: Productivity Commission

usually in excess of ten times this amount. Therefore they consider the 'deterrent' effect is minimal and does not impact on some offenders.

112. The current level of infringement fees are not fit for purpose. In some cases they are insufficient to deter or punish offending, particularly where non-compliance may be in companies' pecuniary interests. A number of councils have reported that some individuals/companies see infringement fees as 'the cost of doing business', and the fee is an insufficient threat to compel compliance.

113. The current infringement fee amounts are considered insufficient as the types of offences which they relate to can cause irreversible damage to the environment. Higher infringement fees would better recognise significant ecological damage that can occur.

Proposed Option

Increase maximum infringement fees to $2000 for natural persons and $4000 for persons other than natural persons

114. The proposed option is to increase the maximum infringement fee able to be prescribed through regulations from $1000 to $2000 for 'natural persons' and $4000 for 'persons other than natural persons' (for example, companies, trusts and government organisations). Increasing the maximum infringement fee and introducing an individual/non-individual split would provide a more meaningful deterrent to breaching the RMA.

115. Introducing a split would also improve consistency with maximum penalties available for prosecutions under the RMA - $300,000 for 'natural persons', and $600,000 for 'persons other than natural persons'. Consistency would also be improved by matching the maximum infringement fee in the RMA in relation to stock exclusion of $2000 (introduced by the RLAA).

116. There is a risk that, due to the increase in fee, councils may opt to avoid the lengthy and costly process of taking a prosecution by issuing an infringement fee instead. We estimate that there will only be a small number of cases where this occurs because councils take prosecutions generally for more serious offending, due to the significant costs involved. It is not expected that a council would issue an infringement notice for serious offending, as that would be a misuse of the infringement notice scheme. In addition, for serious offending, a council can receive 90% of the fines paid by the offender after a successful prosecution, so there is an incentive for a council to prosecute rather than issue an infringement notice for serious offending.

117. The Legislation Design and Advisory Committee (LDAC)[9] recommends a maximum of $1000 for infringement fees, however it allows for "exceptions to the general principle". In cases where there are significant financial incentives to non-compliance a higher level of penalty may be justified to achieve the deterrent effect. There is good reason for an exception to this general rule in this case as a more meaningful penalty is needed to deter and punish offending and to better reflect the value the public places on a healthy environment. The Ministry of Justice (MoJ) have also been consulted on the fee increase, and are satisfied that it is appropriate to proceed with a split between natural and persons

[9] See http://www.ldac.org.nz/assets/documents/22.-Creating-infringement-offences.pdf

other than natural persons, if councils are easily able to distinguish between the two groups.

118. There would be no increased costs on regulated parties who are compliant as a result of the increase in the maximum fee amount. While costs would increase for parties who are non-compliant (when the relevant regulations are updated to reflect the new amounts), this is considered appropriate because the higher maximum amounts are expected to lead to an increase in compliance overall, and provide a greater deterrence to low-level offending under the RMA.

119. We do not propose to set the maximum fees at a higher level. We have consulted with the MoJ who have stated it would be inappropriate to have higher maximum infringement fee levels. The resource management infringement scheme was intended to apply to minor breaches of the law; a higher rate would represent a very high infringement fee for low-level offending.

120. Setting too high a maximum infringement fee can also have inequitable results as infringement notices restrict people's usual criminal rights. This is because a person issued an infringement notice is automatically liable to pay it, without being found guilty of an offence. This is the opposite of the usual criminal procedure. A person issued an infringement notice can ask for a court hearing to determine their liability or level of penalty if they would like to challenge the infringement. However, if a person challenges an infringement notice, they are potentially liable to pay a fine as they would if they were prosecuted for the relevant offence. For an individual, maximum fine levels range from $10,000 to $300,000 for offences covered by the infringement notice scheme.

121. Setting maximum infringement fee levels at the proposed levels will already represent a significant increase from the current levels. The proposed levels are higher than the maximum levels for most other infringement fee schemes in New Zealand. Most schemes that have a higher maximum infringement fee are either for offences that could have an immediate impact on the health and safety of New Zealanders, such as the Health and Safety at Work Act 2015 and the Land Transport Act 1998, or for offences relating to financial matters, such as under the Companies Act 1993.

Alternative Options

Introduce a higher infringement fee, which is the same for natural persons and persons other than natural persons

122. An alternative option would be to introduce a higher infringement fee which is the same amount for 'natural persons' and 'persons other than natural persons'. However, as outlined in the proposed option above, it is considered that a higher fee for persons other than natural persons is required in order to provide a more meaningful penalty to deter and punish offending.

Conclusions

123. The proposed option is preferred, as it will provide a more meaningful deterrent against offending. It is also considered that the proposed option meets the criteria for the proposed bill outlined in section 2 of this RIS.

3.1.7 Extend the statutory limitation period for filing charges

Problem

124. A prosecution is an action by an enforcement agency to refer the offender to the criminal court. When pursuing prosecutions for offences committed under the RMA, councils currently have a maximum of six months to gather evidence to support the case and file charges in the District Court.

125. This six month statutory limitation period is very short and may result in councils being unable to take a prosecution. Significant evidence (for example in the form of samples, photos, and witness statements) is required to support a RMA prosecution, and it can take councils many months to gather this evidence. For example councils often have to seek technical assistance from experts in other regions or other countries to analyse samples taken from sites.

126. Determining whether a prosecution should be taken can take several weeks, as cases are often complex and numerous factors need to be considered, including those set out in the Solicitor-General's prosecution guidelines. For decision-making to be robust and transparent, there are several checks that are required, including legal review to determine whether there is sufficient evidence to support the case.

Proposed Option

Extend the statutory limitation period to 12 months

127. The proposed option is to extend the statutory limitation period in section 338(4) for filing charges for prosecutions from six months to 12 months. This extension would apply to prosecutions with a maximum penalty of $300,000 or two years' imprisonment (for 'natural persons'), or $600,000 (for 'persons other than natural persons').

128. Extending the timeframe would give councils more time to gather evidence and consider whether a prosecution is appropriate in the circumstances, and reduce the number of cases where prosecutions cannot be taken because the limitation period has expired.

129. Increasing the limitation period would also provide greater consistency with other legislation (eg, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012, which has a 12 month statutory limitation period).

130. There is a risk that this option could result in councils taking more time than is required to determine whether to prosecute, increasing delays in councils communicating their enforcement decisions to resource users, which would reduce certainty for resource users as to how the non-compliance is dealt with. This risk could be mitigated by clear expectations being set (eg, in the Ministry's compliance, monitoring and enforcement guidelines) that 12 months is not a target and councils should file charges as soon as practicable.

Alternative Options

Increasing the statutory limitation period to two years to give councils even more time to file charges

131. This option may result in councils taking more time than is required to make a decision to prosecute, resulting in less certainty for their communities. We consider that this option would not meet the overarching objective of ensuring that RMA tools reduce complexity and increase certainty.

Conclusions

132. We recommend extending the statutory limitation period in section 338(4) for filing charges (for prosecutions) from six months to 12 months.

133. The preferred option of increasing the period to one year would provide a more suitable timeframe for councils to prepare to take prosecutions in all cases. This will result in prosecutions being pursued where appropriate for the level of offence committed, rather than being deterred by a lack of evidence. The option will contribute to the overarching objective of increasing certainty in the RMA system, and will ensure that this RMA tool is fit for purpose. We consider that the proposed option meets the criteria of the proposed bill, as outlined in section 2 of this RIS.

3.1.8 Extend timeframe for applying for a resource consent for emergency works

Problem

134. After a state of emergency is declared (or a transition period notified) under the Civil Defence Emergency Management Act 2002, the RMA provides applicants with seven days (from the date of undertaking the works) to notify a council of any emergency works undertaken that would normally require a resource consent. If the adverse effects of the activity are ongoing, an application for the activity must be made within 20 working days of advising the consent authority.

135. This 20 working day timeframe is unnecessarily short in the context of a major emergency and has the potential to exacerbate pressure on consent authorities and applicants without generating a proportionate resource management benefit. Legislation was used to override these RMA timeframes following the Canterbury earthquake in 2010 and the 7.8 magnitude Kaikōura earthquake in November 2016.

Proposed Option

Extend the timeframe to apply for a resource consent following an emergency under section 330B of the RMA

136. The proposed option is to increase the timeframes for a resource consent application to be lodged from 20 working days to 60 working days (after advising the consent authority of the works that have been undertaken during a state of emergency) if the adverse effects continue. The current seven day timeframe for advising the consent authority of the emergency works undertaken is not proposed to change.

137. An extension to these timeframes will ensure that a fair time period is provided for applicants to apply for any required resource consents following an emergency. It will also give consent authorities more time to focus on recovery and response.

138. The proposed timeframe for a resource consent application to be lodged is consistent with the Canterbury Earthquake (Resource Management Act) Order 2010 (the Canterbury Earthquake Order), which was made following the Canterbury Earthquake. The timeframe is therefore considered appropriate for many other situations where a state of emergency is declared or a transition period is notified under the Civil Defence Emergency Management Act 2002.

139. Emergencies vary considerably and it is difficult to know if this timeframe will be appropriate in all situations. However, extending the timeframes as outlined in this proposal is considered to reduce the need for legislation to override the RMA in the majority of cases.

Alternative Options

Extend the timeframe for both notifying the consent authority and applying for any resource consents in line with the Canterbury Earthquake (Resource Management Act) Order 2010

140. An alternative option is to extend both the notifying timeframe and timeframes for applying for any necessary resource consents to align with the Canterbury Earthquake Order. The Order allowed 20 working days to advise the consent authority of the works undertaken and then 60 working days for a resource consent to be lodged if the adverse effects of the activity continue.

141. This option allows more time for those undertaking the activity to notify the consent authority as well as extending the time for necessary resource consents to be lodged.

142. However, through initial consultation with council practitioners, it was noted that if the timeframe for notifying the consent authority is extended, the consent authorities have a longer time period in which they are not aware of emergency works being undertaken. Additionally, it is not considered a great imposition on those who authorised the emergency work activity to notify the consent authority of the works.

Extend timeframes to align with the Hurunui/Kaikōura Emergency Relief Act 2016

143. This option is to model the timeframe on the Hurunui/Kaikōura Emergency Relief Act. This allowed 60 working days to notify the consent authority and then 120 working days for a resource consent to be lodged if the adverse effects of the activity continue.

144. The timeframe was extended beyond the Canterbury Earthquake Order because the significant nature and scale of this event was greater than many other occasions when a state of emergency is declared. Additionally, the geographic isolation of the 7.8 event in 2016 required a further extension in timeframes. This will likely not be necessary in most emergency situations.

145. If the timeframe is too long, it can increase the risk of ongoing non-compliance with the RMA and activities not being consented for a longer period of time.

Conclusions

146. The proposed option is preferred as it is considered the best way to make the emergency works tool under the RMA fit for purpose.

147. Extending the timeframes for applying for resource consents following a major emergency will reduce the pressure and time constraints on applicants. It will also reduce the pressure for consent authorities receiving and processing the consents and allows the councils to concentrate on response and recovery actions rather than regulatory processes. We consider that the proposed option meets the criteria of the proposed bill, as outlined in section 2 of this RIS.

3.1.9 Enable the effects of multiple resource consents to be considered when reviewing consent conditions and address the timing for when a review can be undertaken

Problem

148. Under the Freshwater NPS, regional councils must set 'freshwater objectives' for water quality and quantity in their regional plans. They must also establish 'limits' on resource use (maximum or minimum flows/rates or standards for discharging contaminants) to achieve those objectives.

149. Councils must undertake an 'accounting' exercise prior to setting limits and rules in a plan to determine how much water is taken from the resource, or how much of the relevant contaminant is discharged into it. This determines whether a catchment is under or over-allocated. Where it is over-allocated, the Freshwater NPS directs the over-allocation to be phased out.

150. The resulting changes to plans can be more stringent, and place tighter controls on access to water and discharging contaminants. However, new regional rules cannot affect existing users with resource consents until the consent conditions are reviewed and adjusted in accordance with the new rules. Section 128 of the RMA sets out the circumstances when a council may serve notice on a consent holder to review the conditions of a resource consent. Councils have informed us they face uncertainty regarding their ability to review consents and give effect to the Freshwater NPS. Councils consider that section 128 means:

- they are unable to review the effects of multiple consents as a group (ie, consider the impact of the consent being reviewed as part a group in relation to the limit in the regional plan)
- they are constrained in the timing of these reviews by the requirement that the review needs to occur when the plan is operative rather than when the relevant rule is operative. As plans can spend many years under appeal, this can delay implementation of the limits set in plans under the Freshwater NPS with the result that water quality can continue to decline
- they are only able to review water and discharge permits, not regional land use permits, but many discharge allowances are bundled up with regional land use permits. This will result in uncertainty and may result in some discharges not being reviewed following a new rule in a plan becoming operative.

151. The result of the uncertainty around reviewing resource consent conditions is that the Freshwater NPS is not achieving improved water quality outcomes because councils do not have supporting measures to implement it in a timely way. For example, consents in catchments which are deemed 'over-allocated' following limit setting under the Freshwater NPS are not being reviewed until those consents expire. Consents may be issued for up to 35 years. Councils are more commonly issuing them for 10-15 years, but the majority of consents are set to expire in stages throughout the 2020s. Being able to review consent conditions and consider them as a group will speed up implementation of the Freshwater NPS.

152. There are some examples of councils that are currently undertaking group reviews of consent. For example, between 2006 and 2008 Marlborough District Council reviewed 1224 coastal permits as a group. The council set a cost recovery fee of $200, charged to the permit holder. Adjusted for inflation, the 2006 costing of $296,000 is equivalent to $372,500 in 2018 dollars.

153. Changes to the RMA to support efficient consent condition reviews following a plan change are well supported by local government. Petitions to the Minister for the Environment, including from Local Government New Zealand and Environment Canterbury have expressly supported regulatory change to address these issues. In addition, the constraints around consent reviews are identified as an issue to successful implementation of the Freshwater NPS in the 5th Land and Water Forum Report.

Proposed Option

154. To address these related issues, the following changes are proposed:

- clarifying that a consent authority can review water and discharge permits when a relevant rule, part of a plan or plan has become operative
- adding the ability for a consent authority to review a regional land use resource consent when a plan sets rules relating to minimum or maximum standards for water quality or quantity, and that rule, part of a plan or plan has become operative
- adding a requirement that notification of resource consent reviews must include reference to the intent of a consent authority to manage the effects of the consented activity alongside all of the same or similar consents in a catchment, or catchments, that are affected by a regional plan.

155. The changes would clarify when conditions of a consent can be reviewed. The RMA currently states this can occur when a regional plan has been made operative, ie once all appeals on the plan have been resolved (section 128(1)(b)). The change would allow the review to be undertaken as long as the relevant rule is not the subject of appeal. This change will enable new rules to affect existing users even while other unrelated parts of the plan are being appealed.

156. The RMA currently allows councils to review the conditions of a coastal, water or discharge permit following a rule on water flows or standards in a plan. Changes are needed to also allow regional councils to review land use consents. This is to enable council to address land use activities which also impact water quality and instances where land use permits have a discharge allowance contained within them.

157. The changes would also make clear that councils can consider resource consents as a group, eg catchment by catchment. The RMA is silent about considering consent conditions on a group basis which leads to uncertainty for councils and users alike. The amendment would clarify that councils could consider the effects of multiple consents together, including their cumulative effects in relation to the limits set in regional rules under the Freshwater NPS. Following the review, individual consents would be adjusted to meet new rules (eg limits) if needed. In this way councils will be able to better address cumulative effects of resource use and ensure the new plan rules are given effect to by existing users.

158. The costs associated with councils reviewing consent conditions on a group basis are noted above, however, these are largely existing costs. The action which generates the cost (consent review) is already required by national direction and the functions of regional councils imposed by the RMA. What might change for councils is how those costs are spread.

Alternative Options

159. Other options were not considered to fit the criteria for this proposed bill.

Conclusions

160. The proposed option is considered to meet the criteria of the proposed bill. They will contribute to the objective of increasing certainty and reducing complexity in the RMA system, by enabling better implementation of the Freshwater NPS, and reducing complexity and uncertainty relating to how reviews of consent conditions can be undertaken.

3.1.10 Subdivision presumption reversed

Problem

161. The RLAA reversed the presumption of subdivision from being a restricted activity (meaning that resource consent is always required, unless a plan rule states otherwise) to a permitted activity (meaning that resource consent is not always required, unless the activity contravenes a rule in a plan). This means that currently subdivision is allowed unless it is restricted by a rule in an NES, a plan or proposed plan.

162. The intent of this change was to align the presumption with that for land use activities, and streamline consenting processes by reducing the need for subdivision consent. It was also to send a signal that subdivision is a potentially acceptable activity in certain circumstances. The presumption change was part of a package of changes in the RLAA which were primarily aimed at improving processes for specific types of housing related consents. It was envisioned that the proposal would help by increasing the number of instances where subdivision is a permitted activity, thus reducing the number of resource consents required for simple types of subdivision. The proposal was considered to contribute, along with these other changes, towards the objective of making resource management decisions more robust and durable by increasing the quality of participation and engagement in the appropriate stage of resource management processes for those who are affected.

163. However, during the parliamentary process, it was considered the change would not have a large effect in practice and many submitters considered that it was unnecessary.

This was because city/district councils could already provide for subdivision as a permitted activity in their district plan by specifying certain standards/conditions that need to be met as a prerequisite for permitted activity status. The Departmental Report for RLAB indicated that all district plans have rules that capture and assign an activity status to subdivision[10]. In addition to this, a certificate of compliance is still required in the absence of a resource consent to obtain a legal title.[11] Therefore, there are limited efficiency gains for applicants from the RLAA change.

164. There is, however, some uncertainty in the RMA in regard to subdivision, with potential tension between different parts of the Act. For example, some councils raised concerns during the RLAA process about the tension between the presumption change and section 106, which allows a council to refuse subdivision in certain circumstances (such as where there is a significant risk from natural hazards).

165. There is also a risk that the current presumption in the RMA could lead to unfettered or inappropriate subdivision of land, although this risk is considered low given all district plans control subdivision through rules.

166. Councils may be considering changes to their plans to reflect this presumption introduced by RLAA. Plans were not drafted with this in mind, so although all plans currently control subdivision, changes might still be viewed as necessary – as other aspects of the plan (such as objectives and policies) may not be written in a way that reflects the change in presumption. However, to date, we are not aware of any plan changes to give effect to this amendment.

167. There is also currently a significant programme of work focused on urban development, for example the National Policy Statement on Urban Development Capacity (NPS UDC), the establishment of an Urban Development Authority, and the Urban Growth Agenda.

Proposed Option

Change the presumption of subdivision from a permitted activity to an activity requiring resource consent unless it is expressly allowed by a rule in a district plan, or in an NES

168. Reverting the presumption to the pre-RLAA status will help to increase certainty and reduce complexity in the system, by providing continuity in how rules in plans are currently drafted in relation to subdivision. There are no known plan changes to give effect to the RLAA amendment. Therefore, the reversal of the subdivision presumption will not have a large effect. Importantly, reversing the presumption to the pre-RLAA status at this stage will mean that councils avoid the costs (which can range, on average, between $92,000 and $263,500)[12] of having to review and potentially make plan changes as a result of the RLAA.

169. This proposal will also send the signal that subdivision in particular areas (such as those with versatile soils or high natural hazard risk) is not encouraged, and that any

[10] RLAB Departmental Report no. 1: https://www.parliament.nz/resource/en-NZ/51SCLGE_ADV_00DBHOH_BILL67856_1_A4526813/ad2f729af208a597806ed2379c56ee8bab32fc4b

[11] Section 223 of the RMA

[12] National Planning Standards Impact Summary: https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-impact-summary-national-planning-standards

subdivision in these areas should be considered carefully during the consenting process. If subdivision is not controlled adequately, future owners of allotments could be exposed to natural hazard risks, or a lack of proper services (including access) to their site. This will help to mitigate some risks associated with making subdivision permitted in plans, and clarify any potential misalignment with the presumption and section 106.

170. The risk of the proposal is that any benefits relating to streamlining housing that the reversal of the presumption was intended to achieve will not be realised. However, this risk is considered low, given the broader policy work currently being undertaken relating to urban issues, and the likely low impact of this particular provision achieving the housing-related objectives.

Alternative Options

Provide guidance on appropriate subdivision

171. Guidance could be created to assist councils on appropriate subdivision and on the use of the new subdivision presumption as put in place by RLAA. However, this is not considered a viable option as it will not achieve the objective of increasing certainty and reducing complexity in the system by providing continuity in how rules in plans were originally drafted.

Conclusions

172. The proposed option contributes towards the objective of increasing certainty in local plan making and consenting, and meets the criteria of the proposed bill.

3.1.11 Reinstate the use of financial contributions other than for notices of requirement lodged by the Minister of Education

Background

173. Financial contributions are contributions of money and/or land that councils can require from developers as a resource consent condition or permitted activity standard under the RMA. Financial contributions can only be taken when the purpose of the contribution is specified in a council plan and the level of the contribution is determined in accordance with the plan. All councils are currently able to use financial contributions.

174. Development contributions enable city and district councils (and unitary councils) to recover from developers a fair, equitable and proportionate amount of the total cost of capital expenditure necessary to service growth over the long-term under the Local Government Act 2002 (LGA). Regional councils are not able to charge development contributions.

175. The policy intent of financial and development contributions are distinct but both relate to the effects arising from development. Financial contributions are intended to address the effects of activities on the environment, which may include making a contribution to a council that provides infrastructure to address the effects of a new development. Development contributions are intended to address the fiscal effect of development on councils in terms of requiring new infrastructure to service growth.

176. The LGA states that a council cannot impose a development contribution if a financial contribution has already been imposed on a development for the same purpose.[13] Despite this provision, confusion and concerns were raised about the potential for double-charging under both regimes for the same development.

177. To address this confusion and concern, the RLAA removed financial contributions from the RMA. That amendment included a transitional period of five years, meaning that from April 2022 councils will no longer be able to require a financial contribution as a resource consent condition or as a permitted activity standard. The intent of this transitional period was to provide councils with the opportunity to identify alternative sources of funding in lieu of financial contributions. The five year period was applied to allow city/district councils time to consider their need to review and amend, or create development contribution policies in accordance with the Long Term Plan three year review cycle.

178. The Ministry of Education (MoE), under delegation from the Minister of Education, uses notices of requirement (NoRs) for designations for the development of state schools. An Environment Court decision in March 2019[14] determined that the Environment Court can impose financial contribution conditions on NoRs on appeal, under section 174 of the RMA.

Problem

179. There are three distinct aspects to the problem:

a) some city/district councils are finding it difficult and costly to move to a development contributions scheme based on their current funding regimes

b) regional councils that currently use financial contributions to assist with funding infrastructure will have to find other funding methods from April 2022, as these councils are not able to use development contributions

c) the recent Environment Court decision referred to above has created uncertainty around the funding and timing required for MoE to introduce new state schools to meet New Zealand's future education needs.

Shifting to development contributions schemes

180. City/district councils may find it difficult moving over to a development contributions regime if their current financial contributions policy does not easily transfer over. Financial contributions can provide councils with the ability to respond to unexpected development proposals. This ability is important because councils are not always aware of a development proposal until the application is lodged. If a council has not planned for growth in an area, it may not have time available to prepare a development contributions policy once it becomes aware of the potential development.

181. Further, development contribution policies can be costly for councils to implement and maintain. Particularly for councils that are not experiencing high growth, the financial cost of preparing a development contribution policy can be greater than the actual development contributions the council receives from that policy. For these councils, a

[13] Section 200 of the Local Government Act 2002

[14] *Tauranga City Council v Minister of Education* [2019] NZEnvC 032

financial contribution policy may be more economically viable as it can be incorporated into existing RMA planning and consenting processes.

Moving beyond financial contributions

182. Regional councils often prefer to use consent conditions that require a consent holder to avoid or mitigate environmental effects, rather than using financial contributions. However they are still sometimes used, for example, a financial contribution may be imposed to provide for alternative public access in the vicinity of the activity the consent is for, or at a similar location.

183. The majority of submitters on the amendment in the RLAA were against or partially against the removal of financial contributions, largely on the basis that the scope to use financial contributions is broader than development contributions. For example, submitters noted that a financial contribution can also be charged for a permitted activity (as well as a resource consent condition), whereas a development contribution has specific charging points. The specific charging points include resource consent, building consent and granting of an authorisation of a service connection. Submitters also opposed the removal on the basis that regional councils cannot charge a development contribution.

184. This problem creates uncertainty for councils as they do not have a fit-for-purpose contribution regime.

The imposition of financial contributions on notices of requirement from the Minister of Education

185. The MoE has a history of negotiating conditions with councils that directly relate to the development of schools. Financial contribution conditions were previously only included in NoRs by agreement between the MoE and the council, and only if another arrangement could not be negotiated.

186. MoE has identified that, following the recent Environment Court decision (*Tauranga City Council v Minister of Education* [2019] NZEnvC 032), there is now a risk that unreasonable and inappropriate monetary financial contributions may be recommended by councils, and imposed by the Environment Court on appeal, on NoRs. It has also been illustrated by MoE that this process can add significant delays to projects. For example, the Tauranga case resulted in a large increase in MoE's development budget and a two year delay to starting works on the new school in Papamoa – and this was without the Court decision on appropriateness and quantum. It is anticipated that in the future, regular delays may be experienced as appeals processes challenge the basis and value of financial contributions.

187. In New Zealand, education is compulsory between ages 6 and 16 years, and is therefore provided by the state. While higher costs and time delays can impact any requiring authority, the risk is particularly high for MoE as it has a heavy workload to deliver the number of schools required by population growth within the current education budget and timeline projections. There are approximately 10-15 school sites that will need to be designated each year to keep pace with predicted student numbers. The imposition of financial contribution conditions could adversely affect MoE's future work programme.

188. MoE has discussed the implications of the Environment Court decision with other Crown requiring authorities. Other Crown requiring authorities have a lower volume of NoRs and more flexibility in their projects, therefore they have signaled less direct implications than MoE.

Proposed Option

Reinstate the use of financial contributions. However, clarify that these are not to be used on NoRs lodged by the Minister of Education

189. The proposal is to reinstate the option for councils to use financial contributions through resource consents or permitted activity standards under the RMA. This will provide certainty to councils that they can continue to use financial contributions after 2022.

190. This will mean that councils can continue to use either financial contributions (under the RMA) or development contributions (under the LGA) to assist with infrastructure funding. Section 200 of the LGA will continue to prevent double-charging by city/district councils.

191. Importantly, it will mean there is still a regime for regional councils to recover some of their infrastructure development costs under the RMA.

192. Reintroducing financial contributions into the RMA may result in confusion by councils or developers about charging under the two regimes (financial and development contributions). However, confusion can be addressed by the production of guidance to users of the RMA to clarify that double charging is not allowed under the LGA.

193. In respect of NoRs lodged by the Minister of Education, the proposal is to provide some certainty for school developments by removing the ability for:

- councils to recommend or suggest financial contribution conditions, and
- the Environment Court or boards of inquiry to impose financial contribution conditions.

194. This proposal removes the risk that unreasonable financial contributions conditions may be recommended or imposed and reduce the associated risk of delay of state school developments.[15] The proposal retains the ability to negotiate and agree reasonable financial contributions, and MoE intends to continue a “negotiation-based” approach with councils.

195. There is a broader government work programme on local government infrastructure funding that will look at these issues more systematically. We consider that reinstating financial contributions generally will give more certainty to councils in the medium term, and that removing the ability to recommend or impose financial contribution conditions will remove recent uncertainty around schools. However, it is important to note that system changes arising from wider policy work may result in different economic instruments being introduced in the longer-term.

[15] The proposal only addresses financial contributions, and does not remove the scope for appeals on other aspects of NoRs.

Alternative Options

Introduce criteria for the use of financial contributions

196. In addition to reinstating financial contributions generally, the RMA could be amended to introduce criteria to assist in ensuring financial contributions are used for a justifiable purpose. Additional criteria would make clear what limitations apply to the use of financial contributions.

197. This option could address both aspects of the problem. However, while it may address the issue of reasonableness of conditions for the Minister of Education on NoRs, it will not remove the risk of delay resulting from the overall process, including appeals on this matter. Alternatively, policy options could be developed further as part of the wider local government infrastructure and development funding policy underway through the Government's Urban Growth Agenda work programme to ensure the Government's policy on this subject is cohesive.

198. This option is not considered to meet the criteria of the proposed bill as future work is required in regard to charging regimes, especially in relation to the urban work programme. This further work is a more appropriate avenue to review charging regimes available to councils more comprehensively in the future.

Broaden the scope of development contributions under the Local Government Act

199. The LGA could be amended in either, or both, of the following ways to:

- include matters that city/district councils can currently only address under the RMA using financial contributions
- allow regional councils to use development contributions.

200. This option addresses the first two aspects of the problem, and could be developed further as part of the wider local government infrastructure funding work programme, as discussed above. However, this option is not applicable to Crown NoRs, as the Crown is statutorily exempt from development contributions.

This option is not considered to meet the criteria of the proposed bill as future work is required, especially in relation to the urban work programme, and interactions between the LGA and RMA will be reviewed more comprehensively in the future.

Allow use of financial contributions for councils that can demonstrate their need

201. If a council can demonstrate its needs cannot be met through the use of development contributions, the RMA could be amended to allow for financial contributions to be reinstated by way of Order in Council in relation to a particular council.

202. However, this option is considered to present unnecessary complexity, as an Order in Council would need to be made for each council individually.

Enable financial contribution conditions to only be recommended on NoRs lodged by the Minister of Education on agreement. If no agreement is reached, enable a binding alternate resolution process.

203. In this option, if agreement is reached by the council and the Minister of Education on financial contribution conditions, those conditions can be recommended by the council for inclusion in the decision; (b) if no agreement is reached, resolution can be reached through a binding alternate dispute resolution (ADR) process, which may be faster and

less expensive than a full Environment Court appeal. On that basis, no appeal to the Environment Court would be available for those conditions, as either they are agreed, or a binding ADR has set the condition.

204. While this option is fair and would meet the needs of MoE, it would also be complex to implement and require significant amendment to the RMA. On balance, it is considered to be too significant a change for an interim solution that may be replaced as a result of the wider government work programme, including the comprehensive review of the resource management system.

Address imposition of financial contributions on NoRs lodged by the Minister of Education in the comprehensive review

205. The Government's long term position on facilitating growth, funding growth, funding of local government, economic instruments, and environmental mitigation is currently being progressed in the wider government work programme.

206. While this work might address MoE's concerns, it will take time. In the medium term, the Minister of Education will need to lodge 10-15 NoRs per year, with each potentially facing increased cost and potential delays.

207. Leaving the financial contributions issue unresolved will present risks and delays to establishing new schools. This will have direct effects on educating children in high growth areas and therefore is considered too significant to leave until future reform.

Conclusions

208. As noted, there is a broader work programme concerning local government infrastructure funding that will look at these issues more systematically. However, the proposed option to reinstate the use of financial contributions generally, while removing the ability for these to be imposed on NoRs lodged by the Minister of Education, is considered to meet the criteria of the proposed bill.

3.2 Increase opportunities for public participation

3.2.1 Repeal preclusions to public notification and appeal rights for subdivision and residential activities

Problem

209. The RMA currently precludes public notification for the following types of resource consents:

- controlled activities
- residential activities and subdivision of land up to and including those with a discretionary activity status
- boundary activities
- any activities prescribed by regulations (under section 360H).

210. In addition to this, Environment Court appeals in relation to decisions on resource consents for subdivisions, residential activities and boundary activities are precluded unless the activity has non-complying status in the relevant district plan. So too are appeals on objections under section 358(1A).

211. These preclusions (on notification and appeal rights on resource consents and objections) were introduced under the RLAA with the intent of streamlining housing-related developments. A core rationale for the changes was to continue the approach taken in the Housing Accords and Special Housing Areas Act 2013 (HASHAA), to identify land for housing and then streamline consenting processes to speed up the delivery of that housing.

212. In the absence of specific consultation and evidence on the removal of the notification and appeal preclusions, we have used submissions on the RLAB process as an indication of stakeholder views on the subject. A number of submitters on the RLAB noted that the preclusions could result in a reduced quality of decision-making due to a lack of public input. For example:

- some infrastructure and business submitters were concerned that they would not be able to submit on a proposed residential development which would directly affect their operations
- other submitters were concerned with the inability to publicly notify subdivision applications proposed within any areas where the existing plan has categorised subdivision in rural areas or within sensitive landscapes as a discretionary activity. Often many discretionary activities are not in the category of activities ‘anticipated by the plan’ and could have broader and more complicated effects requiring the benefit of third party input
- a number of submitters, particularly councils, considered that the definition of ’residential activities’ was ambiguous and could easily be misinterpreted.

213. Submitters also noted the preclusions on appeals would not only reduce access to justice for those affected by proposed housing related developments, but also reduce

access to justice for applicants and consent holders in circumstances where they are not satisfied with the council's decision, including on conditions.

214. Furthermore, the new preclusions have created a misalignment between what is in the RMA in regard to notification and what is currently in plans, which have not been drafted with the preclusions in mind. The misalignment has potentially created an incentive for councils to change their plans. For example, councils could consider increasing the use of non-complying activity status for subdivision activities so that they can be publicly notified. There is no evidence to date of any plan changes which councils have undertaken specifically to review their plans in light of the notification sections currently in the RMA. There is therefore an opportunity to reconsider these preclusions before councils make any plan changes, which can be a lengthy and costly process.

215. The preclusion, and related definition, of 'residential activities' have also resulted in a complex and time consuming process for both city/district and regional consent authorities to identify what is considered to be a 'residential activity' in relation to their existing plan provisions. Although there is currently no case law in relation to this definition at present, there is potential for the consent authorities' interpretation to be subject to legal challenge.

216. There is, therefore, the problem that the legislation currently restricts people from participating in certain resource consent processes and appeals, including applicants in relation to appeals. This could result in lower quality decisions, due to a lack of meaningful public input. There is also complexity and uncertainty as planning documents are not currently aligned with the preclusions, particularly in relation to the definition of 'residential activity'.

Proposed Option

Repeal preclusions on public notification and appeal rights in relation to residential and subdivision activities

217. Two components are proposed to increase meaningful participation in the resource consent process:

- repealing the public notification preclusions relating to 'residential activities' and subdivision of land and consequentially, repealing the definition of 'residential activity'
- repealing the preclusions on the right to appeal decisions or conditions of consent, relating to the subdivision of land and residential activities
- repealing the preclusion on appeals against objections under section 358(1A).

218. The proposals would ensure that the resource consent process allows for adequate public participation in relation to residential activities and subdivision of land. Together, these proposals better align with the participatory nature of the RMA by enabling the public to be involved in the process.

219. Restoring the effects-based test for determining notification of these activities would better align with the basis on which the particular activity status was determined in the plan-making process. This would allow councils to focus resources on better plan-making to manage local issues, rather than spending time and money on circumventing the

issue, or reinterpreting their own rules and requirements to fit the preclusions on notification. As we are not aware of any plan changes to date to address these issues, making these changes now will avoid councils incurring costs.

220. The proposed option would also reduce the uncertainty in relation to what constitutes a 'residential activity'. This would avoid any potential litigation (and costs associated with this) and related plan changes.

221. We acknowledge there is a risk that this proposed option may cause an increase in cost and uncertainty to applicants around notification decisions and appeals, particularly in relation to housing-related consents. However, we consider that the benefits of providing for public participation in the process, and allowing applicants to appeal any decision on their subdivision or residential activity consents outweigh this risk.

222. In the Departmental Report for the RLAB we noted that it was difficult to obtain an exact picture on the number of consents involved, but in regard to residential activities, it was determined that approximately 11,000 consents processed in the 2014/15 year would fall within the definition of residential activity. However, the NMS also shows that in the 2015/2016 year,[16] only 1.5 per cent (563) of a total of 37,673 resource consents were publicly notified. Of these, 84 (14.9 per cent) were appealed. Taking into consideration the subdivision and residential activity preclusions, it is estimated from this data that the number of resource consents that would have been publicly notified would be reduced by only 0.1 per cent.[17] Therefore, the current preclusions will likely only impact a small proportion of consents, and the increased costs from the change would likely be low.

223. There are also other RMA tools and special legislation intended to achieve the Government's objectives and facilitate residential development. This includes the NPS UDC, the establishment of an Urban Development Authority, and the Urban Growth Agenda. HASHAA, legislation which is focused on housing and land supply, has also been extended to September 2019 for new special housing areas, and to 2021 for the decision-making framework.

224. Another potential risk of the proposal is that it may cause additional costs for councils in the short term to change their IT systems, processes and templates. Councils will have invested in amending systems, processes and templates in accordance with the RLAA. It is not known what the true cost of implementation will be for councils. However, based on an assessment of the data requirements in the NMS it is considered that the updates required to council's IT systems would be low. In addition, the Ministry will work with councils on implementation through providing guidance and being available through relationship managers for implementation queries.

225. Given that the risks of removal are considered low, and that the new Government priorities place more weight on public participation in the system, the removal of the preclusions is considered appropriate as it will contribute to the objective of more meaningful participation in the RMA.

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[16] Ministry for the Environment.2017.*National Monitoring System for 2015/16*. Wellington: Ministry for the Environment

[17] Note that the analysis does not take into account the size and scale of the resource consent

Alternative Options

Reduce the activity status threshold for preclusions to notification and appeal rights for residential activities and subdivision of land to controlled and restricted discretionary applications only (not discretionary)

226. This option would mean that resource consents for the subdivision of land or residential activities could be publicly notified (and subsequently appealed) if their activity status is unrestricted discretionary or non-complying. Those with controlled, or restricted discretionary activity status would continue to be precluded from public notification.

227. It is unclear whether reducing the activity status threshold for the preclusions would make much difference to the existing situation.

228. The 2015/16 NMS data[18] shows that approximately 36 per cent of all subdivision consent applications processed by councils had discretionary activity status. Of these, only 0.6 per cent were publicly notified. This would suggest that the removal of discretionary activity subdivision and residential activity consents from the preclusions to public notification may open up additional resource consents to public participation, however the extent would likely be minimal. We consider that this option does not fully meet the objective of ensuring there is meaningful participation in the resource consent process.

Restricting the public notification preclusions, and relevant appeals, to residential subdivision on land primarily intended to be used for housing

229. This option would allow public notification of applications for non-residential subdivisions or subdivisions on land not primarily intended to be used for housing. This option would potentially reduce barriers to housing related developments on residentially zoned land.

230. This option does not address the issues around consent authorities having to define what is considered to be a 'residential activity' (as defined by section 95A(6) of the RMA) in relation to their existing plan provisions. To implement this option we would need to define 'residential subdivision' through further analysis and stakeholder engagement.

231. The risk of this option is that it would introduce additional uncertainties in the system. Councils would need to familiarise themselves with the new definition of 'residential subdivision'. This would result in additional costs for councils in relation to reviewing plans and for appeals, and for applicants in relation to appeals.

Conclusions

232. The proposed option contributes towards the objective of increasing meaningful public participation in the resource consent process. This option will address the concerns expressed by submitters in the RLAB process, and subsequent issues reported by stakeholders. Changing the preclusions would also mean that councils avoid any costs associated with making plan changes to ensure their plans align with these. While the exact cost of implementation of the changes is unknown, we expect it to be low based on analysis of the National Monitoring System data requirements. Feedback from

[18] Ministry for the Environment.2017.*National Monitoring System for 2015/16*. Wellington: Ministry for the Environment

councils on the proposed option has not indicated any issues with implementation of these changes.

3.2.2 Repeal the requirement that appeals on resource consent decisions only relate to matters raised in a submission

Problem

233. The RLAA limits appeals for resource consents from submitters to matters raised in their submission. The intent of the limitation, in conjunction with the other appeal preclusion, was to streamline housing related consents, incentivise submitters to put their best case to council, and provide increased certainty to applicants that the council's decision is final (not withstanding judicial review). It also aligned with the scope of appeals for plan-making.

234. In the absence of specific consultation and evidence on the removal of the requirement that appeals on resource consent decisions only relate to matters raised in a submission, we have used submissions on the RLAB process as an indication of stakeholder views on the subject. The majority of submitters on this provision in RLAB opposed. Their concerns included:

- new information may arise through the course of a consent process after submissions (ie, during the hearing), and limitation on the scope of the appeal to matters raised in the original submission undermines the participatory nature of the RMA
- appeals are a fundamental check and balance on decision-making and should not be limited
- some submitters to the RLAB suggested that the restriction may provide an incentive for submissions to either be weighed down with minutiae or drafted very broadly in order to preserve a wide scope for raising issues in appeal.

235. Various submitters noted that there is a lack of evidence to suggest that the limitation on appeal rights (in conjunction with the other appeal preclusions) is necessary to promote the delivery of decisions on housing developments in a more straightforward and timely manner for which it was intended. There has been a declining trend in Environment Court appeal numbers against decisions on resource consents, from a high of 893 appeals in 2001/02 to 114 appeals in 2015/16.[19] Additionally, prior to this limitation on appeal rights introduced under the RLAA, only a very small proportion of resource consent applications were publicly or limited notified (3.3 per cent in 2015/16) and only 8.8 per cent of these were appealed in 2015/16. Government priorities have also changed since the RLAA, with more weight being placed on public participation in the system.

[19] Ministry for the Environment.2017.*National Monitoring System for 2015/16*. Wellington: Ministry for the Environment

Proposed Option

Repeal the limitation on the scope of appeals by submitters on resource consents

236. We propose repealing the limitation on the scope of appeals by submitters on a notified resource consent application. This will reinstate the previous broader appeal rights, which allow submitters to appeal against any part of a notified decision on a resource consent, change of consent conditions, or review of consent conditions.

237. This would restore access to justice for those affected by proposed developments, particularly when decisions are made based on new information or evidence that was not apparent when submissions were first lodged (eg, at a hearing stage). This will also help to improve the quality of decision-making.

238. A risk of repealing the limitation on the scope of appeals is that it could increase the risk of submitters not presenting their best case at a first instance hearing. Another risk is the increased uncertainty to applicants, and the potential increased cost and time of the consenting process due to the increased ability to appeal.

239. However, few resource consents are appealed to the Environment Court. Moreover, the Environment Court has well-developed jurisprudence and procedures. They are therefore well-placed to decide the relevant scope for an appeal. Limitation on the scope of appeal is considered to be unnecessary in this context.

240. There is a RMA provision which allows an authority to strike out a submission under section 41D of the RMA. There is some ambiguity associated with the interactions between this provision and section 41D of the RMA, especially if a submission or part of a submission was struck out by the consent authority. Removing the limitation on the scope of appeals would reduce this ambiguity.

Alternative Options

241. No other options were considered to fit the criteria for this proposed bill.

Conclusions

242. The proposed option is considered suitable as it will contribute to the objective of increasing meaningful participation in the resource consent process. It is also considered that this proposed option meets the criteria of the bill, as outlined in section 2 of this RIS.

3.2.3 Enable the Environment Court to hear challenges to resource consent notification decisions

Problem

243. Notification decisions are a critical part of the resource consent process as they determine who can make a submission on an activity, and/or appeal the decisions to the Environment Court. These decisions are directly related to the principle of public participation that underpins the RMA.

244. Since 1999, more than 95 per cent of resource consents were non-notified, and nearly all of these notification decisions were made by councils (with some exceptions).[20] Over time, the proportion of publicly notified and limited notified applications has been declining, from 5 per cent in 1999 to 3.3 per cent in 2015/2016.

245. Since the enactment of the RMA, there has been no statutory right to appeal or otherwise legally challenge councils' notification decisions, other than by taking a judicial review in the High Court. The High Court does not have the Environment Court's specialist knowledge of the RMA.

246. Empowering provisions to enable the Environment Court to hear challenges to notification decisions have been introduced twice to the RMA, but never enacted. In 1999, these provisions were not enacted as there were concerns about the Environment Court's high caseload. Similarly, provisions introduced through the Resource Management Amendment Act 2005 were never brought into force as they were deferred until the Environment Court had adequate operational capacity.[21] These provisions were repealed in 2017 as the policy did not meet the government's intent to improve efficiency in the resource consent system.

247. The majority of submitters on the 2005 amendment were supportive of the Environment Court hearing notification challenges, as they considered the judicial review process to be procedurally daunting, time consuming and costly. The submissions from environmental and community groups suggested that the change would improve the performance of local councils. Those who opposed believed that the change would lead to more delays in Environment Court processing of appeals, and would detract resources from local councils.[22]

Proposed Option

Enable the Environment Court to hear challenges to resource consent notification decision by way of declaration

248. An option to address this problem is to enable the Environment Court to hear challenges to resource consent notification decisions, modelled on the 2005 provisions. It was considered, at that time, that it was appropriate for the Environment Court to review the procedural fairness, but not the merits of the notification decision. This option recognises that councils are best placed to make the substantive notification decision because of their local knowledge.

249. However, some modifications would be beneficial to the 2005 provisions including explicitly excluding challenge on the basis of trade competition.

250. We note that the Minister has instructed officials to undertake further policy analysis regarding how the policy will work in relation to the existing legal avenue to challenge

[20] It has been indicated that some of these notifications were made by independent commissioners, but we have no official record on this matter

[21] In 2005, even though there was a significant improvement in the Environment Court's backlog of cases, the Court still did not have the capacity to absorb the applications for declarations

[22] For example, longer reports to justify notification decisions, and time and cost spent on dealing with increased number of challenges to notification decisions at the Environment Court

notification decisions. A subsequent RIS will be provided for this part of the proposal to support policy decisions at a later date.

251. Regardless of how the policy will work in relation to the existing legal avenue to challenge notification decisions, there is a risk that there could be increased costs and delays. For example, councils could become more risk averse when determining notification decisions, leading to a higher number of notified resource consents and level of reporting, resulting in higher costs and delays to resource consent processing. There is also a risk of diverting council resources away from focusing on local issues, resulting in additional consenting costs for consent holders and applicants. Furthermore, there could be added delays to Environment Court processing of appeals due to an increased workload.

252. While we have not been able to accurately quantify the impact on council practice and potential delays and costs for consent applicants, we do not consider the risks of added delays for the Environment Court to be significant given the current Court workload and case management. During the previous consultation on the 2005 Resource Management Bill, MoJ considered that enabling the declaration powers would generate at least 60 to 100 additional sitting days for the Environment Court.[23] While the exact implications and costs of this current proposal are unknown, MoJ has provided feedback on the operational implications of this proposal for the Environment Court. MoJ advises that it cannot make firm predictions about the level of additional work that will be generated from the new avenue to challenge notification decisions to the Environment Court. However, based on the number of similar matters filed in previous years, MoJ considers that the Environment Court is likely to have the operational capacity for the new responsibility. The assumption will require ongoing monitoring in the event that the number of challenges rises as a consequence of the new process. The Principal Environment Court Judge has signalled that the Environment Court has the capacity to take on this role.

253. However, MoJ expects there could be an increase in challenges to notification decisions to the Environment Court in the initial stage, after the commencement of this proposal. They have suggested there is a need to monitor closely following any change.

254. The Ministry, in consultation with MoJ, would need to monitor how many declarations on this matter are received by the Court, the time taken to reach a determination, and the ongoing impact on the Court resources.

255. It is considered that this option would contribute towards the primary objective of increasing public participation. However, it is considered that it may not meet the criteria of the proposed bill.

Alternative Options

Merits appeals on notification decisions for resource consents

256. An alternative option is merits appeals on resource consent notification decisions. However, this option could have potentially wide-ranging and unintended consequences, including undermining councils' notification decisions, and delays in the resource consent process. This is because of a higher number of sitting days and cost in the Environment

[23] This figure was provided through an internal memo from the Ministry of Justice in 2005

Court, given the need to review new facts and evidence, compared to an application for a declaration to review process.

257. Further detailed policy work and consultation with MoJ would be necessary in order to progress this option and analyse the potential impacts. As such, it is not considered that this option meets the criteria of the proposed bill as the solution is not simple.

3.3 Minor/Technical Fixes

3.3.1 Make explicit that deemed permitted activities do not contravene Part 3 of the RMA

Problem

258. ‘Deemed permitted’ activities are a new type of approval under the RMA introduced through the RLAA. There are two types of deemed permitted activities:

- deemed permitted marginal or temporary activities (section 87BB)
- deemed permitted boundary activities (section 87BA)

259. If an activity is deemed permitted under either of these sections, then a resource consent is not required. Instead of consent a written notice is provided to the applicant stating that their activity is permitted. The intent of these processes was to provide time and cost savings to applicants and councils in the resource consent process for straightforward activities.

260. Part 3 of the RMA currently requires activities which contravene a rule in a plan to be authorised by a resource consent. Due to an oversight during the RLAA drafting process these sections do not refer to deemed permitted activities (see sections 87BA and 87BB).

Proposed Option

261. Amend the RMA to make it explicit that these activities do not contravene Part 3 of the RMA to provide more certainty.

262. Clarification will need to be provided in the proposed bill that ensures that those lawfully established deemed permitted marginal or temporary activities and deemed permitted boundary activities already provided are not viewed as contraventions of Part 3 of the RMA in light of the proposed amendment.

Alternative Options

263. No other options were considered to fit the criteria for this proposed bill.

Conclusions

264. Making this amendment will deliver on current policy intent of deemed permitted activities.

3.3.2 Provide clarification for Alternative Environment Court Judges

Problem

265. Alternative Environment Court Judges can be appointed under the RMA to provide additional resources for the Environment Court if necessary.

266. It is currently not made explicit in the RMA whether an Acting District Court Judge or Acting Māori Land Court Judge could be appointed as an Alternate Environment Judge, under Sections 249 and 250. Currently, these sections refer only to District Court Judges and Māori Land Court Judges and not Acting Judges.

267. Former District Court or Māori Land Court Judges (retired or resigned) under the age of 75 can be appointed as Acting Judges.[24] They are valuable resources to the Court, given their knowledge and experience in the justice system. It is considered that they should be able to be appointed as Alternative Environment Court Judges, which is current practice.

Proposed option

268. An amendment to the RMA is proposed to make it explicit that it is the case that Acting District Court and Māori Land Court Judges can be appointed as Alternative Environment Court Judges. This will remove any ambiguity regarding the appointment of future Alternate Environment Judges to carry out the work of the Environment Court, and reflect current practice of appointing these Judges as Alternative Environment Court Judges.

269. There is no known risk associated with the proposed amendment. MoJ considers that the clarification would be useful to put the matter beyond all doubt.

270. We therefore recommend a minor amendment to sections 249(2) and 250(2) of the RMA to include the words 'Acting District Court Judge' and 'Acting Māori Land Court Judge' to be included as part of this proposed bill.

[24] Section 28(1) of the District Court Act 2016 provides that a judge must retire from the age of 70 years but this does not apply to an Acting Judge. Former District Court Judges (one who has retired or resigned from the office as a District Court Judge) under the age of 75 can be appointed as an Acting District Court Judge. Similar provisions apply to Māori Land Court Judges

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

271. Notes on costs and benefits:

- The costs and benefits below set out what is expected based on currently available information. The policies will be further tested, and the costs and benefits better understood, through public involvement during the Select Committee process.

Affected parties	**Comment**: nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks	**Impact** $m present value, for monetised impacts; high, medium or low for non-monetised impacts
Additional costs of proposed approach, compared to taking no action		
Councils	Councils' staff time and cost in understanding and implementing the proposed amendments, including updating IT systems.	Low - initial analysis of the NMS fields indicates the impact would be low and systems will not need major changes. The proposed financial contribution amendment will not require consequential amendment to plans.
	Potential costs from applicants appealing applications that were previously precluded.	Low - it is estimated that roughly 0.4%[25] of all resource consent decisions are appealed to the Environment Court. There is no evidence that proposed changes would significantly raise appeal numbers.
	Greater potential of costs for council if more decisions are taken to the Environment Court through declarations.	Unknown (but potentially medium) – we do not know the number of consents that would be challenged through this means as this is a new function for the Environment Court.
	Risk of greater costs on local residents if no financial contributions are taken on Minister of Education notices of requirement.	Low – contributions for bulk infrastructure or long term infrastructure upgrades would be taken through development contributions establishing

25 Ministry for the Environment.2017.*National Monitoring System for 2015/16*. Wellington: Ministry for the Environment

		the residential areas that trigger the need for a new school. The quantum should already be factored into the council's growth projections. Any reasonable contributions required to fund or undertake works on existing infrastructure as a direct response to the schools (eg, road or stormwater upgrade) can still be negotiated and agreed between the Ministry of Education and the council.
The Ministry for the Environment	Central government staff time costs in policy development and subsequent implementation (eg, guidance, regulations, assistance to councils).	Low - implementation costs will be low because there is an existing implementation programme from 2017 changes which could also implement additional proposed amendments.
	Central government budget in implementation costs.	
Resource management system users (including resource management professionals, developers and general public)	Time spent for RMA practitioners in understanding proposed amendments.	Low - guidance will be used to assist practitioners in their understanding of the changes.
	Potential increased cost to applicants for activities that were previously precluded from notification and appeal.	Low.
	Increased cost if there is non-compliance with the RMA, with increased infringement fees.	Low/medium – the intended effect of the policy is the cost acts as a deterrent to non-compliance.
	Potential increase in time for resource consent applications due to: • notification/appeals on residential and subdivision consents • challenges on notification decision to the Environment Court.	Regarding resource consents the cost is considered low - it is estimated that the number of resource consents that would have been publicly notified would be reduced by 0.1%. Regarding challenges on notification decisions, this is unknown but potentially medium.
The Courts	Increased cost relating to appeals to the Environment Court with the increase in	Low.

	ability for appeals on resource consent applications.	
	Greater potential of costs for the Environment Court if more decisions are challenged through declarations. Currently, the High Court only hear 4-6 judicial reviews per year (since 2013). MoJ anticipate there could be an increase of challenges on resource consent notification decisions in the early stage (should this pass into law), given this is a less costly and faster process than judicial review with the High Court. This will need to be monitored closely.	Unknown (but potentially medium) – we do not know the number of consents that would be challenged as this is a new function for the Environment Court.
Total Monetised Cost		Potential range of costs is wide, we have not yet looked at them in detail for this RIS.
Non-monetised costs		Low.

Expected benefits of proposed approach, compared to taking no action		
Councils	Time and costs savings with efficiencies in the resource consent process. For example, administrative burden (time and cost) for councils reduced when recouping costs at the end of the resource consent process.	Medium – we have not yet undertaken extensive consultation with councils to understand the level of benefits but if they were going to make plan changes. The cost of plan changes can range from $92,000 to $263,500.[26]
	Cost savings through not having to review plans and make plan changes as a result of the 2017 amendments (for example, the subdivision presumption and notification changes).	
	Increase customer facing services with technical amendments to consenting process.	
	Reduced risk around residential activity definition litigation.	
	City/district councils who do not have a development contributions regime will be able to continue using financial contributions if they want. Therefore cost savings by not developing a development contribution regime.	Medium.
The Ministry for the Environment	The timeframes will be better on average and more fit-for-purpose. For example, in some cases there will be increased time with reduction in need for bespoke legislation following a major emergency,	If there was an emergency where only the consent timeframes would need to be extended, the savings impact could be high.

[26] National Planning Standards Impact Summary: https://treasury.govt.nz/publications/risa/regulatory-impact-assessment-impact-summary-national-planning-standards

	with consent application timeframes extended.	However, it would depend on the nature of the emergency.
The Minister of Education	The risks of unreasonable financial contribution conditions, of appeal on those conditions, and delay to school developments, are reduced from the Minister of Education's future notices of requirement	High – Avoiding a potential increase in budget to cover the cost, or appeal, of financial contributions recommended or imposed on new schools, and avoiding potential delays in delivery of schools will remove a significant risk to the delivery of schools.
Public	Increased participation in the resource management system.	While 3.3% of consents were notified in 2015/2016, because of the value of this public engagement the benefit is considered medium.
	More compliance with the RMA with increased fees for enforcement and ability to bulk review consent conditions.	Public benefit for enforcing rules and national direction.
	Increased efficiency from being able to place non-notified resource consents on hold.	Better customer service experience for general users.
	Reduced risk around residential activity definition litigation.	Unknown.
	Improved decision-making through allowing avenue for challenges to notification decisions by way of declaration.	Unknown.
	Risk of unreasonable financial contributions, and resultant risks of higher costs and delay to school developments, are reduced.	Medium – Removes budget and timeframe risks associated with developing schools to provide for public demand
The Courts	Reduced risk relating to potential litigation of the residential activity definition or financial contribution conditions for Minister of Education NoRs. Therefore, there will be more time for other cases.	Unknown.
Total Monetised Benefit		Potential range of costs is wide, we have not yet looked at them in detail for this RIS.
Non-monetised benefits		Not known, but likely to be medium given councils will not have to review their plans following RLAA changes for specified proposals.

4.2 What other impacts is this approach likely to have?

272. The RMA has been amended numerous times since enactment and further amendment may perpetuate issues with effective implementation.

Section 5: Stakeholder views

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

273. In order for a comprehensive RMA review to take place in 2019 as signalled by the Minister, there are time limitations for this reform. This has led to constraints in time for the initial development of the proposals, and influenced what is suitable for inclusion in the proposed bill through the criteria above.

274. Time pressure has also constrained stakeholder engagement. Due to the technical nature of many of the proposals and the consultation that occurred through RLAA, we have not consulted wider on the proposals. There will be an opportunity for submissions through the Select Committee process, which will provide good insight into stakeholder views.

275. Seven of the proposals are reversing changes made in recent RMA amendments, all of which were opposed the majority of submitters through the RLAB process. Therefore, we assume that stakeholders will be largely in support of these proposals.

276. We have had discussions on technical aspects of the proposals with selected council planning practitioners. This has helped ensure we are proposing options that will work in practice for councils. From these conversations, individuals working at councils are largely supportive of the proposals and proposed approaches. In some cases our proposed approach has been modified following feedback from individuals.

277. We have consulted numerous agencies on the proposed amendments. Comments received by agencies were generally supportive of the proposed amendments. Where comments relate to specific amendments they have been addressed in the individual proposals.

278. The Ministry of Education, which uses designations in district plans, considers the section 360D regulation-making power may be a useful check on councils' plan-making practice, and is concerned about reintroducing the ability for submitters to appeal on matters outside the scope of their original submission. We consider that other tools in the RMA, such as national direction, provide an appropriate check on plan-making, and that the Environment Court is well placed to address any concerns associated with the change to the scope of appeals.

279. The Ministry of Education proposed an amendment to remove councils' ability to recommend, and the Environment Court's ability to impose, resource consent-level financial contributions on NoRs. The Ministry of the Environment and Ministry of Education have worked together in developing this particular proposal.

Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

280. The proposals will largely be given effect through legislation to amend the RMA.

281. The Ministry will communicate the changes through various pieces of guidance. This will include:

- updating fact sheets from 2017 amendments and writing new fact sheets for proposals where required
- updating relevant regulations
- updating relevant technical guidance products and creating new technical guidance where required
- engagement with councils.

282. For the majority of the proposals, councils will be responsible for the ongoing operation and enforcement of the changes. One of the criteria for inclusion of the proposal was for it to be cost effective and generally easy for councils to implement, without requiring major changes to existing systems and processes. These criteria mean the proposals were chosen based on low level of risk for the ability of councils to change their processes to implement proposals. We have also had discussions with some practicing planning professionals from councils regarding many of the proposals and they have not expressed concerns in their ability to implement the changes. Limiting the ability to impose financial contribution conditions on Minister of Education NoRs will not necessitate any consequent amendment to financial contribution policies in district plans. Through negotiation between councils and the Ministry of Education, reasonable financial contributions conditions will still be able to be included in NoR decisions.

283. The Ministry will strive to update guidance in a timely manner to mitigate implementation risks. The Ministry will also work with councils during the policy implementation and provide support where practicable. Each council has a relationship manager from the Ministry who can assist with implementation support either directly, or by putting them in contact with the appropriate person. There is also an opportunity for councils and the Ministry to come together to discuss practice at meetings such as the territorial councils meeting which is held once a year.

Transitional arrangements

284. Transitioning from the current RMA to the amended RMA will create some costs and uncertainty, particularly for councils. These transitional costs would be greater if all of the amendments were to commence immediately (the day after Royal Assent).

285. Transitional arrangements are proposed to help mitigate these transitional costs and facilitate the smooth and efficient commencement of the reforms. The commencement provisions have been designed to:

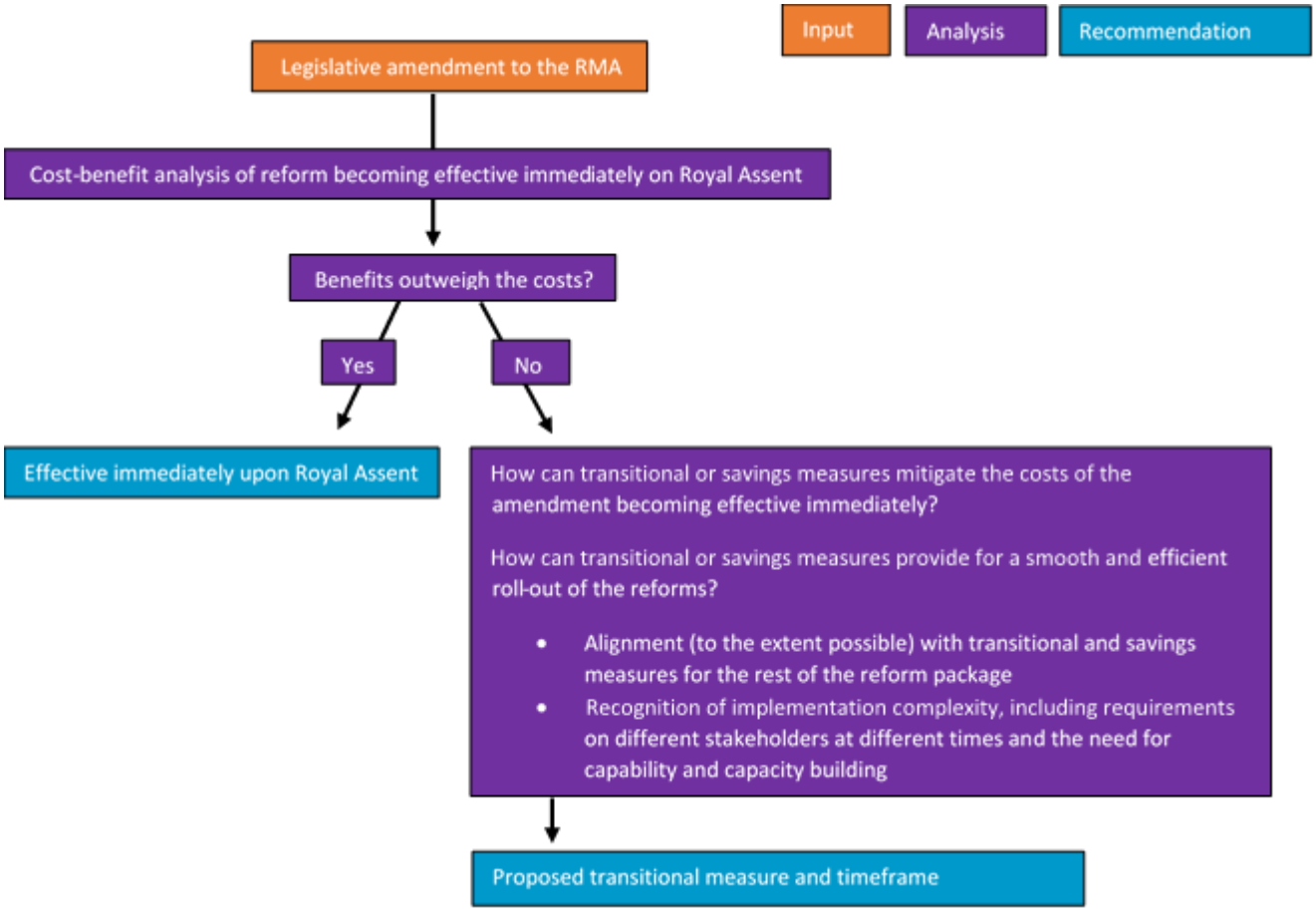
- be mindful of who will be impacted and when

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

286. Figure 1 below shows the framework that will be used to determine commencement of the proposals. This approach was used for RLAB. Immediate commencement has been used as a starting point and followed through where the costs outweigh the benefits.

Figure 1: Analysis framework

Transitional measures and timeframes: analysis framework



287. Decisions on transitional provisions and commencement timing has been delegated to the Minister. We recommend that most proposed amendments take effect immediately (the day after Royal Assent) and a lead in time be provided for the proposed amendments relating to consenting and the Environment Court. A lead in time will give councils and the Environment Court time to amend their processes in accordance with the changes.

Section 7: Monitoring, evaluation and review

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

288. The Ministry is the steward of New Zealand's environment. This means ensuring New Zealand's continued prosperity does not compromise the needs of future generations. As a regulatory steward, the Ministry ensures that environmental regulation is achieving this aim as effectively as possible.

289. In the RMA regulatory system, the Ministry is currently focused on:

- implementing the Resource Legislation Amendment Act 2017 (RLAA) reforms
- implementing the national direction priorities for 2017/18
- developing best practice guidelines for councils on their compliance, monitoring and enforcement functions; and examining the causal links between the RMA system outputs and outcomes.

290. The Ministry collects data through the NMS. The NMS requires councils, the Environmental Protection Authority and the Ministry to provide detailed data each year on the functions, tools, and processes that they are responsible for under the RMA. It is intended to provide a comprehensive and coordinated national framework to monitor the RMA.

291. The monitoring and evaluation programme for RLAA can be adapted following the new proposals to monitor the effectiveness of the changes against the objectives for the proposed bill. This is yet to be finalised but as an example it could include continuing to assist with implementation through the use of LG connect, a forum that councils can join to ask each other and the Ministry questions on the amendments.

7.2 When and how will the new arrangements be reviewed?

292. The new proposals will be reviewed alongside the previous 2017 amendments. This will primarily be done through use of the NMS which is collected annually and data can then be extracted.

293. The provisions will also be reviewed through other methods to assist in informing a longer term review of the RMA. An example of review would be utilising organisations such as the New Zealand Planning Institute or the Resource Management Law Association to connect with users of the resource management system on the amendments. We will also work with MoJ on the implementation of the infringement fee increase and the changes relating to the Environment Court.

294. Stakeholders will have opportunities to comment on the changes through LG connect. Councils will also be able to raise their own concerns, and pass concerns of the public and other professional to the Ministry through their resource management relationship manager.

295. Members of the public and planning professionals can call the Ministry to discuss the changes or write directly to the Minister for the Environment.

296. As the new arrangements are reviewed, progress on a more comprehensive reform to the resource management and planning system will be made to address wider issues, beginning in 2019, as noted by the Minister.