In Confidence

Office of the Minister for the Environment

Chair

Cabinet Economic Growth and Infrastructure Committee

Policy decisions for Resource Legislation Amendment Bill Departmental Report

Proposal

1. This paper seeks your agreement to policy changes to the Resource Legislation Amendment Bill (RLAB), which is currently being considered by the Local Government and Environment Select Committee (the Select Committee).

Executive summary

2. The RLAB is currently being considered by the Select Committee, who have now received written submissions and heard all oral submissions on the RLAB.
3. Following this input from submitters, I have refined a number of proposals to ensure that the objectives of the RLAB and the Government's wider goals for housing supply and affordability are being achieved and that the proposals are able to be implemented effectively.
4. The changes proposed in this paper will be presented to the Select Committee through a second Departmental Report, which is due to be considered on 15 and 22 September 2016. The Select Committee is due to report back to the House on 7 November 2016.

Comment

5. The Resource Legislation Amendment Bill (RLAB) represents the second of the governments two phase reform programme of the Resource Management Act (RMA).
6. The RLAB that was introduced to the house on 26 November 2015 and contained over 40 proposals which proposed change to national direction, planning processes, consenting processes, and amendments to other Acts. Many of these proposals were informed by initial public consultation through two documents: *Improving our resource management system* and *Freshwater reform 2013 and beyond*, released in February and March 2013.
7. The Select Committee process has allowed further feedback on the package of reforms. The Select Committee received submissions from 764 submitters and held hearings across the country from late April through to early June. Input received by submitters has allowed further refinement of the reform package to ensure that it will achieve the objectives of the reforms in the most efficient and effective way possible.

8. Of the original proposals, the majority have either remained unchanged or have required only minor technical amendments. These proposals were presented to the Select Committee through the first Departmental Report on 11 and 18 August 2016.

9. The Select Committee process has, however, identified the desirability of changes in several areas to improve the implementation and workability of the reform package. Several changes are also necessary to correct issues identified by officials through the drafting process.

10. Subject to your agreement, these changes will be included in the second Departmental Report, which is due to be considered by the Select Committee on 15 and 22 September 2016. The Select Committee is due to report back to the House on 7 November 2016.

11. The detailed changes I am proposing are set out in the body of this paper and the attached appendices. The broad objectives of the changes I am proposing for this comprehensive package of reforms are set out in the paragraphs below.

Stronger national direction

12. One of the objectives for this phase of reform is stronger national direction. I am proposing several changes to the proposals set out in the RLAB as introduced.

13. The RLAB provides for new regulation making powers to provide national direction. These proposals are intended to allow central government to prevent planning provisions that unreasonably impose compliance costs, duplicate other Acts or regulations, or excessively impinge on people's use of their properties. My intention is to address concerns around the potentially wide scope of the powers by removing some provisions and to signal more clearly the areas of duplication and redundancy the proposals aim to address.

14. The RLAB provides for the creation of a National Planning Template to improve the consistency of RMA plans and policy statements. The intent of this proposal is to increase the efficiency of consent preparation and approval as there will be less local rule variation to interpret and better consistency in the relevant provisions in each plan. I am proposing to change the name from National Planning Template to National Planning Standards, which better reflects the instrument’s role in prescribing standardised content for matters of national consistency. In response to submitters concerns I am also clarifying that National Planning Standards must be consistent with other national direction under the RMA, such as National Policy Statements and National Environmental Standards.

Supply and affordability of housing

15. The RLAB strengthens the requirements on councils to consider housing supply and affordability issues when making planning decisions. The RLAB introduces a new function for both regional councils and territorial authorities to ensure that there is sufficient residential and business development capacity to meet expected long-term demand. I am proposing a small but important change to the original proposal to better align the proposed council functions with the National Policy Statement on Urban Development Capacity that is currently in preparation.

Better plan making

16. The RLAB provides for more flexibility in plan making processes. The Act currently only provides one way to prepare a plan, which has taken an average of six years to complete. The RLAB proposes two new ways to prepare a plan – a collaborative planning process and a streamlined planning process. I am proposing some changes to the original proposals for these provisions as a result of submissions.

17. These mostly technical changes are aimed at improving the workability of these processes. Significantly I am proposing to allow private plan changes to enter a streamlined planning process. This expands the benefits of the streamlined planning process to private plan changes, but the request will still need to be made by the council. I am also proposing a change to clarify how designations and heritage orders are provided for through these new planning processes. This detail is necessary as currently under the RMA both designations and heritage orders have different decision makers to regular planning processes (requiring authorities and heritage protection authorities respectively).

Efficient and effective Māori engagement

18. One of the objectives of this reform program is to improve the efficiency and effectiveness of Māori engagement in resource management planning processes. The RLAB amends the RMA to improve Māori participation and ensure transparency around how Māori interests are considered. The RLAB requires councils to create Iwi Participation Arrangements and enhances consultation requirements.

19. The changes I am proposing to the original proposals are: firstly to use the name Mana Whakahono a Rohe for the proposal. Secondly, to enable iwi authorities to initiate relationship arrangements and not the local authority. This will insure that iwi authorities have the flexibility to engage in the development of relationship arrangements when they consider they have the capacity and capability to meaningfully participate. I am proposing to set a 60 working day time limit for a local authority to respond to any iwi authority invitation unless otherwise agreed, and to set an 18 month timeframe for concluding the relationship arrangement. I am also proposing to require review of the relationship arrangement by parties every six years or as otherwise agreed.

Improved consenting processes

20. The RLAB includes a set of proposals aimed at addressing frustrations over minor consents costing too much and taking too long. I am proposing several changes to the original proposals following the hearing of submissions on the RLAB to improve the workability of the provisions.

21. I am proposing some changes to the 10 day fast track process for controlled activity applications as proposed in the RLAB. I now intend to exclude controlled activity regional consents from the fast track process on the basis that data demonstrates these typically complex consents often require technical review, scientific assessment or assessment of cultural effects and can often take longer than 10 working days to process. I am also proposing a change to provide applicants with the explicit ability to opt out of the fast track process in recognition that there could be higher processing costs involved and less cost may be more important to an applicant than the speed of processing.

22. Decisions on which resource consent applications should be notified, limited notified, or publicly notified are made on the majority of applications under the RMA. In determining which notification pathway is appropriate, consent authorities are currently required to undertake a comprehensive effects-based notification assessment, even for proposals where there is a high level of certainty about how localised or widespread the environmental effects will be.

23. The RLAB amends the notification provisions by specifying a mandatory step-by-step process for notification that introduces new limitations on who may be potentially notified before undertaking any effects based assessment of the proposed activity. I propose to amend the notification provisions in the RLAB to:

    - clarify that residential development on residential zone land does not require public notification, except where activities fall into the non-complying activity class
    - expand the preclusions on public notification to regional consents associated with the housing development on residentially zoned land. This is to ensure that housing developments captured by these provisions at the district level are not unduly delayed by the notification of regional consents.

24. The RLAB introduced changes to facilitate timely and straightforward decisions on housing developments. The proposals were aimed at ensuring the relevant Housing Accords and Special Housing Areas Act 2003 (HASHA) provisions continue in effect under the RMA and that the process of obtaining permission to develop residential sites is rigorous but without undue risk. I am proposing a change to the original proposal to clarify that appeals to the Environment Court are not available in the event that a decision is made on an application for any scale of residential activity in a residential zone (where the activity is classified as controlled, restricted discretionary or discretionary).

National Direction: section 360D regulation making powers

25. The purpose of the section 360D regulation making powers is to ensure that the Minister has a broad range of options to provide national direction where it is appropriate. They are intended to complement existing tools for national direction (National Policy Statements (NPS) and National Environmental Standards (NES).

26. The RLAB currently proposes four new regulation-making powers, with the purpose being to "address duplication and overlapping subject matter, address land-use restrictions by making certain activities permitted, and address land-use restrictions by overriding councils planning provisions…" [CAB Min (15) 2/3, paragraphs 30-38 refer].

27. Under these proposals, the Minister for the Environment may make regulations to:

    a. permit a specified land use
    b. prohibit a local authority from making specified rules or specified types of rules
    c. specify rules or types of rules that are overridden by the regulations and must be withdrawn
    d. prohibit or override specified rules or types of rules that duplicate other legislation.

28. There was significant opposition to this proposal from submitters, with the main concerns being insufficient checks and balances on potentially far-reaching powers, and a high risk of unintended consequences.

29. In response to these concerns, I am proposing to remove (a), (b) and (c) above from the new regulation-making powers. However, I am proposing to retain (d) as this power could reduce overlap between the RMA and other legislation, which could not easily be done through other regulatory mechanisms.

30. The objectives of proposals (a), (b) and (c) would be able to be achieved through the proposed National Planning Standards (formerly the National Planning Template), although with potentially longer implementation timeframes.

31. The proposed National Planning Standards, as redefined in this paper, have their own rigorous development process. National Planning Standards could be developed to have similar end-results on the planning system as the proposed regulation-making powers, without the perceived lack of integration with the wider planning system.

32. I am also proposing to remove the subjectivity in the RLAB relating to when the regulation-making power (d) would apply, meaning a more neutral assessment of whether overlap or duplication between the RMA and other legislation will be required to be undertaken.

Consenting Processes: Notification of resource consent applications

33. The proposed changes to the consent notification regime in the RLAB are intended to ensure that consenting processes are proportional and adaptable, and that they result in robust and durable resource management decisions.

34. The initial consenting provisions in the RLAB, particularly around notification, were very complex.

35. I am proposing a number of substantive changes to the notification regime contained in the RLAB, following the consideration of submissions and further advice from officials. These changes are set out below. Through these changes I am seeking to create a more user-friendly process, while still meeting the high level objectives of the reforms. Further minor/technical changes are also proposed, which are detailed in Appendix 4.

Scale of residential development precluded from public notification

36. Clause 125 of the RLAB amends section 95A of the Act to list activities that are precluded from public notification, as well as defining what types of residential activity are precluded from public notification. The definition of 'residential activity' and its application in the RLAB has led to questions of interpretation and scope, particularly around what scale of residential development is precluded from public notification.

37. I propose to clarify in the RLAB what residential activities are captured by the public notification preclusion, so that it is clear that the full scale of residential development (meaning single dwellings through to multi-unit developments), other than those activities that fall into the non-complying activity classification, are precluded from public notification (noting that applications may still be notified if special circumstances exist).

Include regional consents related to the provision of housing on residentially zoned land in the group of activities precluded from public notification

38. Cabinet has previously agreed to limit involvement in applications for housing-related consents by precluding public notification for certain residential activities on residentially zoned land. This does not currently include regional consents required as part of a housing development.

39. To ensure that housing developments captured by these provisions at the district level are not unduly delayed by the notification of regional consents, I propose to expand the preclusions on public notification to regional consents associated with a housing development where such development is to occur on residentially zoned land.

Eligibility for Limited Notification

40. The RLAB includes new eligibility restrictions on the involvement of potentially 'affected persons' for applications that may be limited notified. Of all the notification-related changes, this proposal is at the core of submitter concerns about appropriate involvement in resource consent applications, added complexity and uncertainty, and the potential for unintended outcomes, in direct contrast to the stated aims of the reforms.

41. With the wide scope of activities precluded from public notification through other changes in the RLAB, I now consider it appropriate, in most cases, to allow those genuinely affected by proposed activities to be able to be involved in limited notified applications, as is currently the case under the RMA. This involvement requires that a person has to be affected to a minor or more than minor degree (but not less than minor), to be notified.

42. Should the combination of a wide preclusion on public notification and the existing effects test for involving affected parties for limited notification not result in achieving the desired outcomes for housing in particular, there is potential for the section 360G regulation-making powers regarding notification in the RLAB to be utilised.

43. I therefore propose to remove the majority of the proposed restrictions on involvement in applications that are limited notified from the RLAB.

44. As a consequence of these changes, I propose the following to give effect to the new policy intent:

    a. modifying the ability to limited notify a resource consent application on the basis of special circumstances, such that it will only apply where the activity is a boundary activity (of any activity status), a controlled activity that is otherwise precluded from limited notification (see Appendix 4 for further detail), or an activity where regulations either preclude limited notification or specify persons that are eligible to be considered affected

b. confirming that a regulation-making power will be retained to enable certain activities or persons to be precluded from notification by way of regulations.

Notification decisions made in reference to objectives and policies removed

45. The RLAB adds a new matter for consent authorities to consider when undertaking notification assessments. The proposal will give consent authorities the discretion to disregard adverse effects if those effects are taken into account by the objectives and policies of the relevant plan.

46. A number of significant implementation issues have been identified by a wide spectrum of submitters (including potential applicants and councils). This proposal is considered unlikely to achieve the policy intent of time and cost savings and increasing certainty for applicants. Instead, it is considered likely to add complexity, subjectivity, uncertainty and another avenue for judicial review to the notification process.

47. I therefore propose to remove from the RLAB the ability for councils to disregard adverse effects if those effects are taken into account by the objectives and policies of the relevant plan.

Specifying adverse effects in a notice removed

48. There is significant submitter concern about the proposal to specify adverse effects in notices (where such effects are the reason for notification). Issues raised by submitters include:

- increased time and cost for councils to ensure all effects are identified
- the risk that not all effects will be identified at the notification stage
- increased risk of judicial review for councils
- confusion whether all adverse effects need to be specified in the notice or only the adverse effects that pass the minor/more than minor threshold
- natural justice issues in the event that someone elects not to make a submission on the basis of the identified effects and is then shut out of the process even if additional adverse effects are subsequently identified that are of concern to them.

49. There is also a risk that councils could seek to avoid judicial review by producing notices with extensive lists of “relevant effects” which would conflict with the proposal under Clause 114 (section 2AB) to keep public notices clear and concise.

50. This proposal is directly connected to one of the mandatory strikeout criteria of Clause 120 (section 41D(2)) (discussed further below), which would require that a submission be struck out if it is unrelated to the adverse effects of an activity. Changes proposed to the strikeout provisions have largely removed the original rationale for this provision.

51. I propose that the requirement for relevant effects to be specified in a notification notice is removed.

Submission strikeout to be discretionary rather than mandatory

52. The RLAB proposal to make the strikeout of submissions on resource consents a mandatory requirement if certain criteria are met is widely opposed by submitters. Concerns include:

    - lack of direction over how the criteria should be interpreted
    - the scope of criteria themselves (including the requirement that submissions be confined to adverse effects identified by the consent authority)
    - the inability for submissions to make assertions about positive effects
    - the creation of an additional avenue for judicial review
    - the increased likelihood of adversarial hearing processes
    - increased time spent debating the merits of a submission when the current practice of hearing out of scope submissions but giving them little time or weight in the decision, is working well.

53. I propose to amend these provisions and revert to submission strikeouts being a discretionary power as is currently the case under the RMA.

54. I also propose to remove strike out criteria that apply only to resource consent applications and instead expand the criteria for strikeout that apply to resource management hearing processes more generally under section 39(1) of the Act, to include the following new criteria:

    - is supported only by evidence that purports to be independent expert evidence, but is not
    - the use of offensive language.

55. However, I wish to retain the previous Cabinet decision to preclude appeals to the Environment Court where consent submissions have been struck out in whole or in part.

Collaborative Planning Process

56. The new collaborative planning process encourages greater front-end public engagement. It will enable people with different views to work together to resolve resource management issues prior to drafting a plan, which will reduce litigation costs and delays later in the process. One example where collaboration has worked well is the Land and Water Forum, which brought together people from industry, NGOs, iwi, and central and local government. Working together, these groups developed a common understanding and provided consensus recommendations to the Government on how to manage fresh water.

57. I am proposing the following changes to the CPP.

Membership of the review panel

58. Under the collaborative process a 'review panel' must be established to: hear submissions, test the extent to which the consensus position has been given effect to in the draft plan and the extent to which it achieves the purpose of the Act. The RLAB prescribes minimum requirements for the collective skill set of the review panel members, including experience in relation to: the RMA, the resource matter at hand, and the local community. In addition all members must be accredited and collectively the panel must include one member with an understanding of tikanga Māori appointed by iwi authorities. Many submitters on the RLAB also requested that panel members should be Environment Court judges or that it be a hybrid panel consisting of Environment Court and appointed members from the local authority.

59. The intention is to provide flexibility by allowing the local authority to decide who is appropriate to be appointed to the review panel depending on the nature of the planning matter at hand and taking into account costs. Under the current provisions the review panel could comprise members from the Environment Court and appointed members from the local authority. However, because there is an existing ability for the review panel to undertake cross-examination, I consider there is value in signalling that the panel membership must collectively include at least one member with experience managing cross-examination in legal proceedings. I consider this will ensure a robust process and that the contribution from submitters is fully utilised.

Provide the review panel with the ability to make substantive changes and allow appeals on this in certain circumstances

60. The collaborative planning process is premised on a consensus position being reached from which a plan is drafted. Following submissions and a hearing on the proposed plan, a review panel makes recommendations to the council. Whether the council accepts those recommendations determines the final plan and the availability of appeals. Appeals are possible on merit if the council deviates from the recommendations of the review panel, otherwise on points of law.

61. As the RLAB is currently drafted, the review panel is constrained from making recommendations which differ materially from the collaborative group's consensus position. Where the review panel does make recommendations these must fall within the scope of: the notified plan, submissions, comment from iwi on the summary of submissions or material provided to the review panel during the course of the hearing (clause 53(5)).

62. I propose to allow the review panel to recommend changes which differ from the consensus position but which are still within the scope provided by clause 53. However, in such instances the collaborative group's response (and requiring authority where appropriate – see below) must be sought, indicating support or otherwise for the change. The collaborative group's response will be included in the review panel's report and this will be one of the factors that determines which appeals are available:

a. If the collaborative group *agrees* with the review panel's change(s), and the council accepts those recommendations then appeals remain restricted to points of law. However, if the council rejects those recommendations then appeals on merit by way of rehearing to the Environment Court will be available.

b. If the collaborative group *disagrees*, then the council could choose to accept either recommendation, however appeals on merit by way of rehearing to the Environment Court would be available in either case (on those parts of the plan).

63. In practice, I expect that the collaborative group and the review panel may choose to work together to moderate their views and reach a mutually agreed recommendation (as already provided for in the RLAB). I do not propose to make this exchange explicit in the legislation but instead intend to address it through guidance.

64. While this will reduce the certainty provided to the collaborative group that their recommendations will be given effect to in the final planning document, I consider this must be balanced against providing the review panel the opportunity to make recommendations which have been informed by the material heard by them that could substantially improve the plan.

65. Any reduction in certainty to the collaborative group will be offset by requiring the review panel to seek their comment and linking the availability of appeals to their view on the panel recommendations. The new ability for the review panel to make substantive changes would still be constrained by the current 'scope envelope' consisting of the plan as notified, submissions, comments from iwi on the summary of submissions and any other material provided to the review panel as relevant.

Enable appeals on merit where there was no consensus

66. The current proposal allows a council to still draft plan provisions on matters where the collaborative group was not able to reach consensus. This is largely supported by submitters.

67. However appeals on provisions which are not based on consensus are currently subject to the same test as those that are based on consensus. The test rests on whether or not the council accepts the recommendation of the review panel. That the same test applies to both the consensus and non-consensus based provisions of a plan is not supported by submitters.

68. I propose to amend the collaborative process to allow appeals by way of rehearing on those parts of the plan which are not based on consensus, regardless of whether the council accepts or rejects the review panel recommendations.

69. While this may compromise one of the key incentives on the collaborative group to reach consensus, I consider this must be balanced against the ability to test the decisions of lower jurisdictional bodies where consensus has not been reached and ensure decision making is sound.

Designations under the Collaborative and Streamlined Planning Processes

70. The new streamlined and collaborative planning processes, as outlined in the RLAB, have not made specific provisions for how designations and heritage orders will be considered. This detail is necessary, as currently under the RMA decisions on designations and heritage orders are made, not by councils but requiring authorities and heritage protection authorities respectively. I seek to align the processes so that the two new planning tracks can also address and incorporate designations and heritage orders.

Incorporate a process for the collaborative group to consider designations and heritage orders

71. I intend that the collaborative group should be able to consider all aspects of a plan together, including heritage orders and designations. Because of the nature of designations and heritage orders, councils will be required to give due consideration to these elements of their plan before deciding whether a collaborative process is an appropriate planning track.

Process for a notice of requirement

72. A notice of requirement (a new designation) can currently be progressed through several different processes under the RMA. I propose to also allow this to be done via a collaborative process but only where the requiring authority agrees to be part of the collaborative group. If they do not then the current notice of requirement processes under the RMA will still be available.

73. Where the requiring authority agrees to be part of the collaborative group then decision making and appeals on the notice of requirement would be on the grounds available under collaborative planning. That is, the local authority drafts a plan based on consensus recommendations of the collaborative group (of which the requiring authority is a member). There are submissions and a hearing by a review panel on the proposed plan.

74. The availability of appeals is linked to whether the council accepts or rejects the recommendations of a review panel. Appeals are available either by way of rehearing or point of law appeals to the Environment Court. If the collaborative group was unable to reach consensus on the notice of requirement, merit appeals would be available by way of rehearing to the Environment Court.

75. If the requiring authority declines to be involved in a collaborative process the current processes for designations – both for notices of requirement and roll overs of existing designations – and heritage orders will still be available.

Process for a roll-over of designations

76. If a territorial authority decides to undertake a 10-year plan review using a collaborative process, there will be multiple existing designations which must be rolled over (with or without modification). To provide flexibility, I propose to apply two decision-making pathways for rolled over designations within the collaborative process, which could occur in conjunction. Whichever decision-making pathway is used will hinge on whether the requiring authority agrees to be a member of the collaborative group.

77. I propose that where requiring authorities agree to be part of a collaborative group then the decision-making and appeals process of the collaborative process will prevail over the current decision-making pathways for rolled over designations in the RMA.

78. But where a requiring authority (or authorities) decline to be part of a collaborative group, the current decision making process in the RMA for designations will apply (on those parts of the plan). In this situation the collaborative group could still consider the designation. The review panel may recommend changes but these would go to the requiring authority for a final decision and this would go in the plan. Merit appeals on the designations would be available on a *de novo* basis under Schedule 1.

Incentives and assurance for requiring authorities

79. To encourage the use of the collaborative process I propose to require the council to invite the relevant requiring authorities to be part of the collaborative group, however participation would be optional. I also propose that councils be required to invite representatives of land owners and occupiers likely to be affected by decisions relating to a designation, or any other affected persons they identify to be involved but the council would have discretion on the final membership of the collaborative group. This will apply to both existing designations and a notice of requirement.

80. In order to provide assurance for requiring authorities, I also propose:

    a. To allow the requiring authority/heritage protection authority to withdraw from participating in a collaborative process addressing roll-overs and, if this occurs, transition decision-making on the roll over from the collaborative decision making processes in Part 4 to the decision-making process in Part 1 of Schedule 1 for those parts of the plan

    b. To retain the ability of the requiring authority to withdraw the application for a notice of requirement at any time and also to retain choice over the process used to consider the notice of requirement.

Provide a process for designations and heritage orders to be included in a Streamlined Planning Process

81. Where large amounts of urban growth are being provided for, new schools, roads, fire stations, electricity substations and other infrastructure may need to be designated. I consider that designations should be provided for in the Streamlined Planning Process to ensure that the planning for urgent growth can include designations. Allowing a notice of requirement (with the requiring authority's agreement) to be included in a plan developed under the Streamlined Planning Process will enable this to occur in an integrated and expeditious manner. If the requiring authority does not agree to its requirement being included in a proposed plan that is developed through the Streamlined Planning Process then the existing notice of requirement processes will still be available.

82. A designation currently ceases to exist if it not included (rolled over) in a replacement District or Unitary Plan. I propose that the rollover of existing designations and heritage orders are provided for in the Streamlined Planning Process with the same process applying to both new and existing designations and heritage orders.

83. I intend that the Streamlined Planning Process specifies that the council's recommendations on the designation components of a proposed planning instrument are sent to the relevant requiring authorities. The requiring authorities will have the right to comment on the council's recommendations on their designations before the proposed planning instrument is sent to the Minister for approval. Once the proposed planning instrument is approved by the Minister the designation recommendations are sent to the relevant requiring authority who make the final decisions. If the requiring authority agrees with the recommendations approved by the Minister then there will only be point of law appeals available on the designation aspects. If the requiring authority amends the recommendations approved by the Minister than merits appeals will be available on the amendments (and only the amendments) made by the requiring authority.

84. I also propose that in the case of any designation that is rolled over without modification, and where there are no submissions in opposition, that the designation will not be able to be changed through the rollover process. This is consistent with current practice.

Māori Participation

85. The RLAB proposes to enhance iwi participation, engagement and consistency over how Māori interests in the resource management system are considered by:

    a. requiring local authorities to invite iwi to form iwi participation arrangements (IPAs)

    b. enhancing consultation requirements.

86. An alternate proposal to IPAs – Mana Whakahono a Rohe (MWaR) – was discussed with the Iwi Leaders Group (ILG). A version of this proposal was consulted on via the *Next Steps for Freshwater* discussion document (NSFW) in March/April 2016.

87. Since the introduction of RLAB, officials have considered the MWaR proposal as an alternative relationship arrangement to IPAs, and worked with Iwi Advisors Group (IAG) to refine the proposal.

88. Officials have also considered submissions on IPAs. Almost half of all submissions were from individual submitters concerned with the introduction of 'iwi provisions' into the RMA. These submitters opposed in principle the idea of any distinction being made on the basis of race and sought the removal of the iwi participation arrangement provisions and other provisions relating to iwi as distinct from other members of the community. However, many of these submissions did not specifically refer to the proposals in the RLAB, and were often founded on fundamental misunderstandings of the proposals and the effect they would have on plan-making and consenting processes.

89. A large number of council and iwi submitters were generally supportive of increased iwi involvement in the plan making process and formalising the processes around this. A number of councils and iwi groups stated many of the proposed changes are already undertaken as best practice.

90. Officials have worked with IAG to combine and align the two proposals to recommend a relationship arrangement that will support enduring relationships

and is effective for all parties. This revised proposal refers to a 'relationship arrangement' based on analysis of both proposals.

91. The major changes from the IPA proposal contained in the RLAB are discussed below. However I am also seeking approval for a number of additional minor and technical changes. These decisions are necessary to ensure that the revised agreements can be implemented efficiently and effectively. The full details for all changes are contained in Appendix 5.

92. The recommendations I am proposing serve to support the RLAB reform objectives of enhancing Māori participation in the resource management system and facilitating improved working relationships between iwi and local authorities.

93. Insofar as these changes relate to freshwater management under the RMA, they will also directly address the workstream objective agreed by Cabinet in 2015 to enhance iwi/hapū participation at all levels of freshwater decision-making [CAB Min (15) 26/10 refers] and publicly consulted on through the NSFW discussion document.

Mana Whakahono a Rohe/Iwi Participation Arrangements

94. The proposals below include elements of both MWaR (as proposed by IAG) and IPAs (as set out in the RLAB). I propose the revised relationship arrangement be called Mana Whakahono a Rohe/Iwi Participation Arrangements (MWaR/IPA). Iwi and local authorities will be free to name their agreements as they see fit.

Purpose of MWaR/IPA

95. The RLAB specifies the purpose of a relationship arrangement is "to provide an opportunity for local authorities and iwi authorities to discuss, agree, and record ways in which tangata whenua may, through iwi authorities, participate in the preparation, change, or review of a policy statement or plan in accordance with the process set out in Schedule 1".

96. Following input from submitters and ILG, as well as the ongoing work between officials and IAG, I am now proposing that the broad purpose of the agreements be to:

- provide a mechanism for iwi authorities and local authorities to discuss, agree, and record ways in which tangata whenua may, through iwi authorities, participate in resource management and decision-making processes under the RMA; and
- assist local authorities to implement their statutory obligations in working with Māori under the RMA including through sections 6e, 7a and 8 of the RMA.

97. The inclusion of the reference to the principles of the RMA (sections 6e, 7a and 8) is intended to ensure greater consistency in their application across the country and was recommended by ILG.

98. The amended purpose statement also reflects the further policy changes outlined below.

Contents of MWaR/IPA

99. I propose that, in describing how iwi authorities will work together collectively under the arrangement to engage with the council(s), a relationship arrangement must:

    - identify the parties to the arrangement (including applicable Treaty settlement entities)
    - set out at what stages of the pre-notification planning process iwi will provide advice to council and how that advice will be given to councils
    - state how any applicable Treaty settlement mechanism will be supported or upheld
    - describe the opportunities for iwi to identify resource management issues of concern to them (consistent with the existing provision in clause 3(B) of Schedule 1 in the RMA)
    - identify the process for how iwi are to be consulted under new section 34A(1A) and new clause 4A of Schedule 1
    - specify how parties will work together on monitoring, if at all, as part of a relationship agreement.

100. I propose that, in describing how iwi authorities will work together collectively under the arrangement to engage with the council(s), a relationship arrangement may agree to include:

    - how a local authority consults an iwi authority, if at all, on resource consenting
    - other RMA duties functions or powers.

101. Where a Treaty Settlement specifies requirements greater than those outlined above, those requirements will prevail.

102. This revised scope of a relationship arrangement takes into account:

    - concerns from submitters that relationship arrangements and the enhanced consultation requirements will cause delays to the plan-making process and result in increased costs and resources for all parties.
    - submissions on the RLAB and recommendations from ILG to expand the possible content of the relationship arrangements to include consenting and monitoring issues.

Principles of MWaR/IPA

103. The IPA provisions as currently drafted do not contain principles to guide these arrangements. Any principles established for a relationship arrangement will have significant implications for the negotiation and contents of the arrangements, and for the resolution of disputes.

104. I propose that iwi and local authorities must act in a manner consistent with the following principles when developing and implementing an arrangement:

- using their best endeavours to ensure that the purpose of MWaR/IPA is achieved in an enduring manner
- working together in good faith and a spirit of co-operation
- being open, honest, and transparent in their communications
- recognising and acknowledging that the parties will benefit from working together by sharing their respective vision, knowledge and expertise
- committing to meeting statutory timeframes, and minimising delays and costs associated with those statutory processes
- recognising that the arrangement cannot limit any relevant provision of any iwi participation legislation or any agreement under that legislation.

105. These principles include common principles from Treaty settlement arrangements. The list is not exhaustive and the parties will be free to agree on additional principles.

Iwi authority initiation of MWaR/IPA

106. Submitters on both RLAB and NSFW raised concerns that iwi may not have sufficient capacity and capability to engage in the development of relationship arrangements at the time local authorities extend an invitation to form an arrangement, especially where iwi enter into multiple arrangements with local authorities. ILG supports the initiation of the relationship arrangement by iwi authorities.

107. Enabling iwi to initiate relationship arrangements will ensure that iwi authorities have the flexibility to engage in the development of a relationship arrangement when they consider that they have the requisite capacity and capability to meaningfully participate. However, in enabling an iwi authority to initiate, the pressure on local authorities also needs to be managed, particularly around local body elections.

108. I propose that the relationship arrangements are initiated by iwi at any time except 90 days before a local body election.

EEZ Act: Decommissioning

109. The current RLAB proposes an amendment to the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2013 (EEZ Act). This enables the EPA to require owners of offshore installations to prepare a decommissioning plan in accordance with requirements set out in regulations. It also requires owners to consult the EPA on the plan and apply for marine consent for every discretionary activity that is proposed as part of the decommissioning plan.

110. Decommissioning has to occur at the end of production and it is important to ensure that it is undertaken in line with the purpose of the Act. However, I consider that the current proposal in the RLAB does not provide sufficient certainty that decommissioning will be managed in a way that meets the purpose of the EEZ Act and New Zealand's international obligations to protect the marine environment.

111. To strengthen the regulatory framework for decommissioning, I am proposing to amend the EEZ Act to:

- provide for the abandonment of pipelines in-situ to be subject to a marine consent from the EPA.
- create a clear link between a decommissioning plan accepted by the EPA and any subsequent marine consents for decommissioning activities (including providing the EPA with the ability to accept the decommissioning plan against specific criteria and requiring public consultation on the plan instead of on the later marine consents)
- provide that all future marine consent applications for the placement of structures and pipelines for the purpose of petroleum production must demonstrate a consideration of decommissioning as part of fully describing the proposal under section 38 of the EEZ Act.

112. I will develop regulations for preparing and approving decommissioning plans. I intend that these regulations will implement international practices and standards relating to the protection of the marine environment recommended by the International Maritime Organisation (IMO). Owners of offshore installations will not be required to prepare and submit a decommissioning plan until the relevant regulations are in force.

113. Officials have reviewed decommissioning practices in other jurisdictions and consider that the approach proposed is consistent with international best practice.

114. The Ministry of Business, Innovation and Employment (MBIE) supports the changes to the regulatory framework for decommissioning. The submission on the RLAB from Petroleum Exploration and Production New Zealand (PEPANZ) recognises that further changes are required to ensure there is an effective decommissioning framework in place. It is expected that the industry will be generally comfortable with the proposed approach to strengthen the regulatory regime for decommissioning.

115. Officials have also consulted with other agencies during development of the proposed approach, including the EPA, Maritime New Zealand and the Ministry of Foreign Affairs and Trade, who are broadly comfortable with the proposed approach.

Next Steps

116. The Select Committee considered the first Departmental Report relating to the RLAB on 11 and 18 August 2016. This contained all changes that did not require further Cabinet approval and analysis of clauses that are not recommended for change.

117. A second Departmental Report will be provided to the Select Committee following your agreement to the the policy changes in this paper. Their consideration of the report is scheduled to occur on 15 and 22 September 2016.

118. The Select Committee's report back date has recently been extended until 7 November 2016. I expect that it will still be possible for the RLAB to pass by the end of the year, provided the remainder of the process proceeds in a timely and straightforward manner (i.e. there are no substantial Supplementary Order Papers once the RLAB is reported back to the House).

Consultation

119. The following agencies have been consulted on a draft Cabinet paper: the Departments of Internal Affairs, Conservation, and Corrections; the Ministry of Business, Innovation and Employment; the Ministries of Transport, Justice, Primary Industries, Education, Health, Culture and Heritage; Land Information New Zealand; Te Puni Kokiri; the Environmental Protection Authority; the New Zealand Transport Agency; the Earthquake Commission; the New Zealand Defence Force; and the Treasury. The Department of Prime Minister and Cabinet has been informed.

120. Agencies were invited to comment on the proposals in the Cabinet Papers. These comments are provided below.

The Department of Internal Affairs (DIA)

121. DIA opposes the proposal to remove the requirement to consult on the draft wording of a national policy statement (Recommendation 42). NPSs are significant documents that set direction and parameters for local and regional planning. In general councils should be able to comment on the wording of such documents, and particularly as councils are required to give effect to NPSs through their RMA plans. DIA thinks councils should have the opportunity to comment on the actual document before it is approved.

Ministry of Education (MoE)

122. MoE opposes the removal of the current requirement to consult on the draft wording of a National Policy Statement. It is only through the detailed wording of a draft NPS that any party can really comprehend its potential impacts.

123. MoE opposes inclusion of designations in the Collaborative Planning Process (CPP). A consensus process is not an objective of Part 8 of the Act, rather the designations arrangement exists to elevate the provision of national infrastructure above local planning influences and decision-making. The inclusion of designations in the CPP would inappropriately raise the local community's expectation of their influence over the provision of national infrastructure.

124. MoE supports the inclusion of designations in the Streamlined Planning Process. However, it considers that the recommendations must make it clear that it is the requiring authority that must decide to include their designations in a SPP and that requiring authority may withdraw its designations from the SPP at any time.

The New Zealand Defence Force (NZDF)

125. NZDF shares the concerns of the Ministry of Education, and supports and endorses its comments.

Financial implications

126. There are no financial implications of these changes over and above those of the reform package as a whole, as previously agreed by Cabinet.

Human rights

127. There are no inconsistencies between the proposals in this paper and the Human Rights Act 1993.

Gender implications

128. There are no gender implications resulting from the proposals in this paper.

Disability perspective

129. There are no disability issues resulting from the proposals in this paper.

Legislative implications

130. These proposals require legislative change to the Resource Management Act, which will be progressed through the RLAB, currently before the Local Government and Environment Select Committee.

131. These changes also require legislative change to the EEZ Act and the Crown Minerals Act.

Regulatory impact analysis

132. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper and two Regulatory Impact Statements (RISs) have been prepared and are attached:

- Cabinet Paper for Policy Decisions for RLAB Departmental Report
- Decommissioning of Offshore Structures in the EEZ.

Cabinet Paper for Policy Decisions for RLAB Departmental Report

133. Treasury's Regulatory Quality Team has reviewed the RIS prepared by The Ministry for the Environment and associated supporting material, and considers that the information and analysis summarised in the RIS partially meets the quality assurance criteria.

134. The RIS clearly and succinctly summarises the original problem definition and intent of the RLAB, and changes are explained in light of responding to stakeholder submissions. Relevant context is provided for new proposals, and both regulatory and non-regulatory options have been considered in the supporting analysis.

135. Incentives on key actors are analysed to determine likely outcomes of some of the proposals, but the depth of impact analysis is variable. Evidence underlying the costs of problems and subsequent impact analysis is weakest for collaborative planning and some of the national direction proposals, particularly those relating to NESs.

136. There is no estimate of the magnitude of compliance savings or increase in economic activity generated. This suggests officials cannot be certain of the proposals' net impacts. Monitoring these will be important for future decisions, in light of other proposals and initiatives across government with similar public policy objectives relating to natural resource use and urban planning.

137. Significant emphasis is placed on the views of stakeholders from the select committee consultation to justify some proposals, such as changes to collaborative planning processes, without a strong indication of the representativeness of the views expressed or independent analysis of the net impacts.

Decommissioning of Offshore Structures in the EEZ

138. The Ministry for the Environment's Regulatory Impact Analysis Review Panel has reviewed the attached Regulatory Impact Statement (RIS) prepared by the Ministry for the Environment. They consider that the RIS meets the quality assessment criteria.

139. The RIS is written clearly and concisely and offers a level of analysis proportionate to the issue. The RIS does enough to make the case for the recommend option with the elements of the proposals being clear and the impacts having been identified. However, the RIS could be more convincing in explaining the possible impacts of the options in more detail. We view the RIS as adequate to support decisions makers.

Publicity

140. No publicity is planned as a result of this paper.

Recommendations

Note that the policy content for many of the recommendations below are contained in appendices 1 through 6 and have not been covered in the main body of this paper.

141. The Minister for the Environment recommends that the Committee:

National Planning Template

1. agree that the National Planning Template be renamed as National Planning Standards
2. agree to rescind all previous Cabinet decisions relating to the National Planning Template [Cab Min (13) 18/8 paragraphs 6-13, Cab Min (15) 5/11 paragraphs 14-24, and CBC Min (15) 2/3 paragraphs 139 and 140 refer]
3. note that of the below recommendations:
    - 3.1. the majority do not make substantive policy changes but instead reflect the new name of 'National Planning Standards' and align with or clarify previous Cabinet decisions
    - 3.2. recommendations 4, 6-9, and 24 reflect adjustments to the policy settings for the National Planning Standards
4. agree to enable the development and implementation of National Planning Standards that will impose requirements on councils in developing regional policy statements and regional and district plans to:
    - 4.1. address matters that require national consistency
    - 4.2. support the implementation of National Environmental Standards, National Policy Statements, and regulations made under the RMA
5. note that:
    - 5.1. each National Planning Standard will be issued to address a single planning topic or plan element (eg a National Planning Standard for zones)
    - 5.2. 'National Planning Standards' refers to the collective suite of National Planning Standards (like the suite of National Policy Statements)
6. agree that the purpose of National Planning Standards is to:
    - 6.1. assist in achieving the purpose of the Act
    - 6.2. standardise elements of regional policy statements and regional and district plans to address matters that require national consistency
    - 6.3. support implementation of National Environmental Standards, National Policy Statements, and regulations made under the RMA
    - 6.4. assist people to comply with the procedural principles set out in section 18A
7. agree that the scope of National Planning Standards includes:
    - 7.1. the structure and format of regional policy statements and regional and district plans

7.2. any of the matters specified in new section 45A(2) and (4), which sets out the contents of national policy statements

7.3. mandatory or optional objectives, policies, rules, standard definitions or methods

7.4. any other matters that councils must address or achieve in developing regional policy statements and regional and district plans

7.5. requirements relating to the electronic functionality and accessibility of regional policy statements, and regional and district plans

8. agree that National Planning Standards will be required to give effect to National Policy Statements, and be consistent with National Environmental Standards, regulations made under the RMA, and water conservation orders

9. agree to allow the Minister for the Environment to consider the following matters when determining whether it is desirable to develop or update a National Planning Standard:

9.1. whether greater national consistency would be desirable

9.2. whether the National Planning Standard supports the implementation of an NPS, NES, and/or regulation made under the RMA

9.3. whether the National Planning Standard should allow for local circumstances and if so to what extent

9.4. whether it is appropriate for the National Planning Standard to apply to specific regions or districts, rather than all of New Zealand

9.5. any other matters relevant to achieving the purpose of National Planning Standards

10. agree to require the Minister for the Environment to establish a process for developing and updating a National Planning Standard that:

10.1. requires public notification of the draft National Planning Standard

10.2. provides for adequate consultation with the public and iwi authorities

10.3. requires a report and recommendation to be made to the Minister on the submissions received through consultation and the proposed content of the National Planning Standard

11. direct the Minister for the Environment to consult with the Minister of Conservation on the process for developing or updating a National Planning Standard on matters that relate to the coastal marine area

12. agree to require that National Planning Standards be subject to the cost-benefit analysis process set out in section 32 of the RMA

13. note that Cabinet approval of a National Planning Standard will be sought except where the proposals are minor or of a technical nature

14. agree that the Minister may amend or replace a National Planning Standard using the same process as applies for making one, unless an amendment is of minor effect in which case the only process required is notification in the Gazette

15. agree that the Minister may revoke a National Planning Standard after seeking comment from public and iwi authorities

16. agree that the first set of National Planning Standards must cover at a minimum:

    16.1. standardised formatting and structure for regional policy statements and regional and district plans (including references to existing National Policy Statements, National Environmental Standards and regulations made under the RMA)

    16.2. some standardised definitions

    16.3. electronic delivery requirements

17. agree that the first set of National Planning Standards will be required to be Gazetted within two years of enactment of the RLAB

18. agree that a National Planning Standard can direct councils to include specific provisions in regional policy statements and regional and district plans

19. agree that if a National Planning Standard directs the inclusion of specific provisions in regional policy statements and regional and district plans, councils must:

    19.1. amend their regional policy statement, regional plan or district plan to include those provisions without going through any Schedule 1 plan change process

    19.2. make any consequential changes required to avoid duplication or conflict without going through any Schedule 1 plan change process

    19.3. notify the public of the changes

    19.4. make the changes within one year, or such other time as specified in the National Planning Standard

20. agree that a National Planning Standard can direct councils to choose from a suite of specific provisions (e.g. a suite of standard zones)

21. agree that if a National Planning Standard directs councils to choose from a suite of different provisions, then councils must:

    21.1. chose the relevant provision or provisions

    21.2. use one of the processes set out in Schedule 1 of the RMA to apply the chosen provision or provisions to the local context (but not to decide the wording of the provision or provisions)

    21.3. make any consequential changes required to avoid duplication or conflict without going through any Schedule 1 plan change process

22. agree that where a Schedule 1 process is required to give effect to a direction in a National Planning Standard, the National Planning Standard will specify the time period within which the change must be notified

23. note that Cabinet decided to amend the RMA to enable an NPS (and the New Zealand Coastal Policy Statement) to include more specific direction for council plans, including (among other things) constraints on content [CAB Min 15 5/11 paragraph 6.1.2 refers] and that this also applies to National Planning Standards (reccommendation 7.2 above)

24. agree that where a national policy statement or National Planning Standard directs there should be a constraint or limit on the content of plans or policy statements, then a local authority must amend its policy statement or plan to make it consistent with that constraint or limit without using Schedule 1 within one year, or such other period as directed by the national instrument

25. agree that in all other cases a local authority must initiate an amendment to its document (where required) to give effect to a National Planning Standard using one of the processes in schedule 1 within one year, or other such time as specified in the National Planning Standard

26. agree that for the first set of National Planning Standards, councils must notify any changes that require a Schedule 1 process within five years of the first National Planning Standards being Gazetted, unless a different time is specified

27. agree that where a council has already notified a plan change when the first set of National Planning Standards is Gazetted, the timeframe set out by the National Planning Standard will start once the relevant plan or policy statement becomes operative

28. note that councils will retain the ability to make their own provisions unless directed otherwise by a National Planning Standard

29. agree that a local authority be required to take any action that is directed by a National Planning Standard

30. agree to allow a National Planning Standard to apply to specific council areas, including setting different implementation timeframes for different councils

31. note that this allows implementation to be staged, to avoid the significant costs associated with immediate implementation of the first set of National Planning Standards

32. agree that any plan changes or variations notified after the first set of National Planning Standards come into effect can be required to be consistent with the National Planning Standards at the date of notification

33. agree that a National Planning Standard will be made by the Minister giving notice of its approval in the Gazette, including by the Minister of Conservation for matters relating to regional coastal plans

34. agree that all National Planning Standards must be published together in an integrated format to help councils implement them and publish their plans online

35. note that National Planning Standards will indicate where local provisions should be included in the document

36. agree to require territorial authorities and regional councils to make the regional policy statements, regional plans, regional coastal plans and district council plans that relate to a particular district on a single searchable internet site for each district or other area agreed by councils, no later than one year after the first set of National Planning Standards are Gazetted

37. note that National Planning Standards will be subject to review by the Regulations Review Committee

National Direction

Single step consultation process

38. note than on 23 February 2015, Cabinet agreed to allow the combined development of National Policy Statements (NPS) and National Environmental Standards (NES) [CAB Min (15) 2/3 paragraph 6.1.1 refers]

39. agree to rescind the above decision

40. agree to replace the existing public consultation process requirements for NPS and NES with a new single consultation process for the development of national direction

41. agree that the process will be broadly aligned with current requirements of a NES

42. agree to remove the current requirement to consult on the draft wording of an NPS

43. agree to allow the single step consultation process to include use of the Board of Inquiry as an option, as set out for NPS in sections 47-51 of the Act, but for a Proposal for National Direction instead of the proposed NPS wording

44. agree to allow the Minister for the Environment and the Minister for Conservation to consult on the wording of draft national direction as an optional step

45. agree that nothing in the consultation provisions will override the Crown's Treaty of Waitangi obligations, Treaty settlement legislation, and other legislative obligations to iwi/Māori

46. agree that consultation undertaken during this process can satisfy any policy consultation requirements for the development of a resulting National Planning Standard or regulation

47. note that if a National Planning Standard is undertaken following this process, the draft wording of the proposed standard must be publicly notified

NES and consent conditions

48. agree that NES can require regional councils to use the existing ability in the Act for reviewing consents to review land use consents granted in relation to a regional rule

49. agree to clarify that NES may specify the duration of a consent within the parameters set out in the Act

50. agree to enable a NES to contain requirements relating to the duration of consent for aquaculture activities, which may have the effect of authorising a duration of less than 20 years

Other Changes to NPS and NES

51. note recommendations 23 and 24 above, which also relate to changes to national policy statements.

52. authorise the Minister for the Environment to further clarify and develop the drafting in relation to 'development capacity' to align with the proposed National Policy Statement on Urban Development Capacity

53. note that on 23 February 2015, Cabinet agreed to enable NPS and NES to be applied to a specific council area and allow more targeted notification and public and iwi consultation [Cab MIN (15) 5/11, paragraph 6.1.3 refers]

54. agree to rescind the above decision

55. agree to enable NPS and NES to be applied to a specific area, district or region of New Zealand

56. agree that where NPS or NES apply to a specific district, region or area, national notification of the public and iwi is required

57. note that on 23 February 2015, Cabinet agreed to enable an NES to specify requirements for how councils undertake their function to achieve standards [CBC Min (15) 2/3 paragraph 29.3 refers]

58. agree to rescind the above decision

59. agree to enable an NES to specify requirements and methods other than technical methods for how councils exercise their functions and duties in relation to a NES

60. agree to require a section 32 evaluation to examine whether a council's introduction of a more lenient rule is justified in the circumstances of the relevant region or district when allowed for by an NES

61. agree that NES and NPS may incorporate electronic tools, electronic models and electronically accessible databases

62. agree that an activity that utilises a hazardous substance or new organism that has been approved under the HSNO Act can be classified as a permitted activity by an NES without needing to satisfy the significant adverse effects test (required by section 43A(3) of the RMA).

63. note that effects of the activity that do not result from use of the approved substance or organism will still be subject to the significant adverse effects test.

Section 360D Regulations

64. note that on 6 July 2015, Cabinet Business Committee agreed to a new regulation making power to address duplication that would allow the Minister for the Environment to override council planning provisions if, in the Minister's opinion:

    64.1. the provisions would duplicate, overlap or address the same subject matter as other legislation; and

    64.2. that duplication, overlap or addressing of the same subject matter is undesirable [CBC Min (15) 2/3, paragraph 30 refers]

65. agree to rescind the above decision

66. agree to a new regulation-making power to address duplication or overlap that would allow the Minister for the Environment to remove and prohibit council planning provisions if the provisions would duplicate, overlap or address the same subject matter as other legislation

67. note that on 6 July 2015 Cabinet Business Committee agreed:

    67.1. to a new regulation-making power that would allow the Minister for the Environment to make certain activities permitted to avoid restrictions on land use that are not reasonably required to achieve the purpose of the Act

    67.2. that the powers to make certain activities permitted will be subject to a mandatory sunset clause coinciding with when the national planning template is implemented by councils [CBC Min (15) 2/3, paragraphs 31-32 refer]

68. agree to rescind the above decisions

69. note that on 6 July 2015 Cabinet Business Committee agreed:

    69.1. to a new regulation-making power to address land-use restrictions that would allow the Minister for the Environment to override council planning provisions if, in the Minister's opinion, the provisions would impose land-use restrictions for the residential development that are not reasonably necessary to achieve the purpose of the Act

    69.2. that the power to address land-use restrictions (and regulations made using the power) will be subject to a mandatory sunset clause coinciding with when the national planning template is implemented by councils [CBC Min (15) 2/3, paragraphs 34-35 refer]

70. agree to rescind the above decisions

71. note that on 6 July 2015 Cabinet Business Committee agreed to a requirement that before exercising the power to address duplication, the power to make certain activities permitted, or the power to address land-use restrictions, the Minister for the Environment must carry out public consultation [CBC Min (15) 2/3, paragraph 37 refers]

72. agree to rescind the above decision

73. agree that the Minister for the Environment must carry out public consultation before exercising the power to address duplication or overlap

74. note that on 6 July 2015 Cabinet Business Committee agreed that when exercising the power to address duplication, the power to make certain activities permitted, or the power to address land-use restrictions, the Minister for the Environment will be required to undertake a cost-benefit evaluation under section 32 of the RMA [CBC Min (15) 2/3, paragraph 38 refers]

75. agree to rescind the above decision

76. agree that the Minister for the Environment will be required to undertake a cost-benefit evaluation under section 32 of the RMA when exercising the power to address duplication or overlap

Consenting processes

Consent exemption for marginal and temporary rule breaches

77. note that on 23 February 2015, Cabinet agreed to amend the RMA to introduce a consent exemption for certain marginal and temporary rule breaches [Cab Min (15) 5/11, paragraphs 76 -77 refer]

78. agree to modify the above decisions by specifying that a marginal and temporary consent exemption will lapse five years from the date the written notice is provided by the consent authority if it is not implemented

79. agree to modify the above decisions by specifying that an activity that has been provided with a marginal and temporary consent exemption is not eligible for consideration by a consent authority for a certificate of compliance

Consent exemption for boundary infringements with neighbour's approval

80. note that on 23 February 2015, Cabinet agreed:

    80.1. to introduce a consent exemption for inter-boundary rule breaches with neighbour's approval [Cab Min (15) 5/11, paragraphs 78 – 79 refer]

    80.2. to introduce a definition of "inter-boundary rule breach" [Cab Min (15) 5/11, paragraphs 82.1.1 & 82.2 refer]

    80.3. that for applications for inter-boundary rule breaches, the only person or persons who may be affected shall be those whose land has a boundary affected by the infringement [CAB Min (15) 5/11, paragraph 80 refers]

81. agree to reconfirm the above decisions

82. agree to augment the decision referred to in paragraph 80.3 above to make it clear that for applications for inter-boundary rule breaches, a boundary affected by an infringement is a boundary to which the infringed boundary rule applies

83. agree that a consent exemption for an inter-boundary rule breach will lapse five years from the date the written notice is provided by the consent authority if it is not implemented.

84. agree that an activity that has been provided with a consent exemption for an inter-boundary rule breach is not eligible for consideration for a certificate of compliance

85. agree to require that a consent authority's decision on a consent exemption for an inter-boundary rule breach be subject to a 10 working day time limit

86. note that the Resource Management (Discount on Administrative Charges) Regulations 2010 will require amending in order to implement the new 10 working day timeframe for making decisions on boundary activity exemptions

10 day fast-track for controlled activities

87. note that on 23 February 2015, Cabinet agreed to introduce a 10 working day time limit for decisions on applications for resource consent in respect of certain specified activities if they meet certain criteria [Cab Min (15) 5/11 paragraphs 86-90 refer]

88. agree to modify the above decisions by:

    88.1. specifying that applications for regional consents, be excluded from those activities previously agreed to be eligible for a 10 working day time limit; and

    88.2. providing that an applicant whose application for resource consent would otherwise be subject to the 10 working day decision-making process, may choose to 'opt-out' of that process (such that the application is subject to the standard processing timeframes that otherwise apply)

Off-setting environmental effects

89. note that on 23 February 2015, Cabinet agreed that consent authorities must have regard to the positive effects of any voluntary form of environmental compensation, off-setting or similar measure which is not encompassed by section 5(2)(c) when considering an application for a resource consent under section 104 [CAB Min (15) 5/11, paragraph 83 refers]

90. agree that that when considering the effects on the environment from a notice of requirement for a designation, a territorial authority must consider the positive effects of any voluntary form of environmental compensation, off-setting or similar measure which is not encompassed by section 5(2)(c)

91. agree that the above legislative changes will commence six months after the date of Royal assent

Clarify the legal scope of consent conditions

92. note that on 23 February 2015, Cabinet agreed to limit the scope of consent conditions by requiring that consent conditions imposed by consent authorities must be directly connected to either:

    92.1. the provision which is breached by the proposed activity; or

    92.2. the adverse effects of the proposed activity on the environment; or

    92.3. content that has been volunteered or agreed to by the applicant;

[CAB Min (15) 5/11, paragraph 100 refers]

93. agree to rescind the above decision

94. agree to limit the scope of consent conditions by requiring that consent conditions imposed by consent authorities must be directly connected to either:

    94.1. a district rule, regional rule or rule in a national environmental standard which is breached by the proposed activity; or

    94.2. the effects of the proposed activity on the environment; or

    94.3. content that has been volunteered or agreed to by the applicant; or

    94.4. administrative matters that are an essential part of the operational mechanics of the consent

95. agree that any requirements relating to consent conditions in the Act and in regulations will prevail over these limitations

96. agree that section 106, section 77A, and section 220 of the RMA are not restricted by the above criteria

97. agree that the above changes will commence six months after the date of Royal assent

Clarification of notification requirements for certain types of activities

98. note that Cabinet has made a number of decisions relating to the notification requirements for different types of activities:

    98.1. CAB Min (15) 5/11, paragraphs 82.1.2 and 82.1.3

    98.2. CBC Min (15) 2/3, paragraphs 52-53

    98.3. CBC Min (15) 2/3, paragraph 61

    98.4. CBC Min (15) 2/3, paragraphs 162-164

    98.5. CAB Min CAB-15-MIN-0199.01, paragraph 10

    98.6. CAB-15-Min-0245, paragraph 9

99. agree to rescind the above decisions, which will be replaced by the following changes to the notification regime

Preclusion on public and limited notification for controlled activities

100. agree to require that an application for resource consent for a controlled activity:

    100.1. shall not be publicly notified (unless a consent authority determines that special circumstances apply)

    100.2. shall not be limited notified (unless a consent authority determines that special circumstances apply) except for:

        100.2.1. subdivision consents

        100.2.2. regional consents

Preclusion on public notification and eligibility to be an affected party for an inter-boundary rule breach

101. note that a resource consent application for an inter-boundary rule breach with controlled activity status is precluded from public notification (unless a consent authority determines that special circumstances apply)

102. agree that a resource consent application for an inter-boundary rule breach that is a restricted discretionary, discretionary or non-complying activity shall not be publicly notified (unless a consent authority determines that special circumstances apply)

103. agree that, unless a consent authority determines that special circumstances apply, the only person or persons eligible to be limited notified of a resource consent application for an inter-boundary rule breach that is a restricted discretionary, discretionary or non-complying activity shall be the owner(s) of land with a boundary to which the infringed boundary rule applies [modifies CAB Min (15) 5/11, paragraph 80]

Preclusion on public notification for subdivision (on any land)

104. note that on 23 February 2015, Cabinet agreed that an application for subdivision consent must not be publicly notified (but may be limited notified) where the activity is a controlled, restricted discretionary or discretionary activity [CAB Min (15) 5/11, paragraph 84.1 refers]

105. agree to clarify that the preclusion on public notification applies to the subdivision of any land, not just residentially zoned land

106. note that an application for subdivision consent that is otherwise precluded from public notification can still be publicly notified if a consent authority determines that special circumstances apply

Residential consents precluded from public notification

107. note that on 9 November 2015, Cabinet agreed that that an application for resource consent must not be publicly notified (but may be limited notified) where:

    107.1. the activity is a residential activity; and

    107.2. the activity is in a residential zone; and

    107.3. the application is a controlled, restricted discretionary or a discretionary activity

    [CAB-15-MIN-0199.01 paragraph 10 refer]

108. note that CAB-15-MIN-0199.01 paragraph 10 has been rescinded under paragraph 99 above

109. note that as a result of paragraph 100 above, residential activities with controlled activity status are precluded from both public and limited notification (unless a consent authority determines that special circumstances apply)

110. agree that an application for a residential activity in a residential zone that is a restricted discretionary or discretionary activity must not be publicly notified (unless a consent authority determines that special circumstances apply)

111. note that it is currently unclear whether the scope of the preclusion on public notification of residential activities applies to the construction, alteration or use of one, or one or more, dwellinghouses

112. agree to clarify that the preclusion on public notification for residential activities relates to the construction, alteration or use of one, or one or more, dwellinghouses

Regional consents precluded from public notification

113. note that the preclusion on public notification for residential activities is intended to include all types of resource consents required on residentially zoned land that are controlled, restricted discretionary or discretionary activities in any relevant district or regional plan

114. note that it is currently unclear whether the scope of the proposed preclusion on public notificationfor 'residential activities' captures regional consents (in addition to district consents) associated with residential development

115. agree that public notification be precluded for all types of resource consents (both district and regional consents) required for residential activities on residentially zoned land that are classified as controlled, restricted discretionary or discretionary in any relevant plan

Eligibility for limited notification

116. note that Cabinet previously agreed to introduce a new approach to determining who is eligible to be considered an affected person for the purpose of limited notification for certain activities [CAB-15-Min-0245, paragraph 9, CBC Min (15) 2/3, paragraphs 52-53, 61, and 162-164, and CAB Min (15) 5/11, paragraph 80 refer]

117. note that CAB-15-Min-0245 paragraph 9, CBC Min (15) 2/3 paragraphs 52-53, 61, and 162-164 have been rescinded under paragraph 98 above

118. agree to require that the existing RMA provisions for limited notification be retained with the following exceptions:

    118.1. application for resource consent for controlled activities must not be limited notified, except subdivision consents and regional consents

    118.2. only persons whose land has a boundary to which an infringed boundary rule applies, are eligible to be considered affected persons in relation to an inter-boundary rule breach that is a restricted discretionary, discretionary or non-complying activity (refer paragraph 103 above)

    118.3. regulations may preclude limited notification or limit who is eligible to be considered an affected person in respect of an application for resource consent for an activity

    118.4. notwithstanding the above restrictions on limited notification that may otherwise apply, iwi/hapu with a relevant statutory acknowledgement

who may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting on the statutory area, are eligible to be considered affected by a resource consent application, (including where a rule in a plan or National Environmental Standard precludes limited notification)

118.5. a consent authority may at their discretion determine that special circumstances apply, and limited notify an application for resource consent in respect of:

118.5.1. controlled activities that are otherwise precluded from limited notification,

118.5.2. an inter-boundary rule breach, to persons otherwise precluded from being eligible to be considered affected

118.5.3. those activities where regulations otherwise preclude preclude limited notification

118.5.4. those activities where regulations specify persons that are eligible to be considered affected, to persons other than those specified in the regulations as being eligible

Regulation-making power for notification

119. note that on 23 February 2015, Cabinet agreed:

119.1. to change the RMA to require that an application shall not be publicly notified or limited notified where the activity is an activity type identified as non-notified in regulations including the national template [CAB Min (15) 5/11, paragraph 82.1.2.2]

119.2. that any matters provided for in regulations made under this provision should prevail over any contrary provision in an operative or proposed plan or variation, including where a plan specifies that an application must be publicly or limited notified or must not be notified and/or specifies a class of persons who must be considered affected by an application [Cab Min (15) 5/11, paragraph 95]

120. note that on 6 July 2015, CBC agreed:

120.1. to introduce a new regulation making power to allow certain activities to be deemed non-notified and to specify classes of persons who may be deemed to be affected

120.2. that any matters provided for by regulations made under this provision should prevail over any contrary provision in an operative or proposed plan or variation, including where a plan specifies that an application must be publicly or limited notified or must not be notified, and/or specifies a class of persons who must be considered affected by an application

[CBC Min (15) 2/3, paragraphs 159-161 refer]

121. note that there is a slight ambiguity in the wording of these decisions and the inclusion of one minor error in relation to the scope of what can be specified in a plan for notification

122. note that paragraph 82.1.2.2 of CAB Min (15) 5/11 has been rescinded under paragraph 99 above)

123. agree to rescind Cab Min (15) 5/11 paragraph 95 and CBC Min (15) 2/3 paragraph 161

124. agree that a regulation-making power will be introduced into the RMA to enable regulations to be made to:

    124.1. preclude public notification of a relevant application or review for an activity

    124.2. preclude limited notification of a relevant application or review for an activity

    124.3. limit who may be considered eligible to be an affected person in respect of a relevant application or review for an activity

125. note that 'relevant application or review' in relation to an activity, means an application for resource consent, review of a resource consent, or an application to change or cancel a condition of a resource consent

126. agree that the scope of the regulation-making power is limited to specifying activities and quantifiable criteria that may be applied to simple applications where the nature and likely effects of an activity warrant the particular restrictions that will apply to notifying a relevant application or review

127. agree that any matters provided for by regulations made under this provision should prevail over any contrary provision in an operative or proposed plan or variation, including where a plan specifies that an application must be publicly notified, must not be publicly notified, or must not be limited notified

128. agree that the right for affected protected customary rights groups and affected customary marine title groups to be notified is preserved if regulations preclude public notification or limited notification or specify persons that are eligible to be considered affected in respect of an application for a resource consent

129. agree that where regulations preclude public or limited notification of an activity or specify persons that are eligible to be considered affected, public or limited notification (as applicable) of the activity or notification to persons other than those specified in the regulation as being eligible to be considered affected, can still occur if a consent authority determines that special circumstances apply

Bundling of resource consents for notification and appeal

130. note there is an existing RMA practice of bundling multiple consents required for the same activity or development together for the purposes of determining notification, conducting hearings and for any subsequent appeals to the Environment Court. This includes situations in which consents are required from both regional and territorial authorities for the same activity

131. agree to allow for the continuation of the current RMA practice of 'bundling' multiple resource consents, including where a type of consent precluded from notification or appeal is considered at the same time as a consent that

is eligible for notification or appeal, such that the 'bundled' consents are eligible for notification and appeal (i.e. the preclusions won't apply)

Notification decision in regard to objectives and policies

132. note that on 23 February 2015, Cabinet agreed to require the effects of an activity to be assessed subject to the objectives and policies of the relevant plan when determining whether an application for resource consent should be notified [CAB Min (15) 5/11 paragraph 103 refers]

133. agree to rescind the above decision

Specifying adverse effects in a notice

134. note that on 23 February 2015, Cabinet agreed that, if a resource consent application is publicly notified or limited notified on the basis of adverse effects, the consent authority must record those effects in the public notice [CAB Min (15) 5/11 paragraph 110 refers]

135. agree to rescind the above decision

136. note that on 23 February 2015, Cabinet agreed to require councils to state the reason that a consent was required for the activity and why it was notified [CAB Min (15) 5/11 paragraph 108 refers]

137. agree to rescind the above decision

138. note that on 23 February 2015, Cabinet agreed to introduce a new form through regulations that specifies what information must be contained in the notice that is served to individuals for limited and fully notified applications [CAB Min (15) 5/11 paragraph 109 refers]

139. agree to reconfirm the above decision

Submission strikeout

140. note that on 23 February 2015, Cabinet agreed to require councils to strike out a consent submission (or part thereof) in certain circumstances [CAB Min (15) 5/11 paragraph 113 refers]

141. agree to rescind the above decision

142. agree that all or part of a submission relating to any hearing may be struck out if the authority conducting the hearing considers one or more of the following criteria apply:

    142.1. it is frivolous or vexatious

    142.2. it discloses no reasonable or relevant case

    142.3. it would be an abuse of the hearing process to allow the submission or the part to be taken further

    142.4. it contains offensive language

    142.5. it is supported only by evidence that purports to be independent expert evidence on a matter but that is prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter

143. note that on 23 February 2015, Cabinet agreed that Environment Court appeal rights are not available against decisions to strike a consent submission (or part thereof) [CAB Min (15) 5/11, paragraph 113.1.4]

144. note that the above decision [CAB Min (15) 5/11, paragraph 113.1.4] only relates to resource consent submissions and has been rescinded under paragraph 142 above)

145. note that existing rights of objection against the decision to strike out a resource consent submission (or part thereof) still apply

146. agree that Environment Court appeal rights are not available against a decision to strike out the whole or part of a consent submission, beyond existing objection rights

Appeal rights

147. note that on 6 July 2015, Cabinet agreed to remove the right of appeal to the Environment Court on decisions arising from controlled, restricted discretionary, or discretionary resource consent applications for residential activities on a single residential site in a residential zone [CBC Min (15) 2/3 paragraph 57 refers]

148. agree to remove the limitation in relation to single residential sites so as to remove the right of appeal to the Environment Court on decisions arising from controlled, restricted discretionary, or discretionary resource consent applications for residential activities that occur on single or multiple residential sites in a residential zone

149. note that on 23 February 2015, Cabinet agreed to amend the RMA to allow access to independent decision-making on consent objections, which included ensuring that the existing rights of the applicant to appeal the objection decision to the Environment Court are preserved [CAB Min (15) 5/11, paragraphs 116.1 – 116.2 refer]

150. note that on 23 February 2015, Cabinet agreed to remove the right of appeal to the Environment Court on decisions arising from controlled, restricted discretionary, or discretionary resource consent applications for the subdivision of land and for boundary infringements [CAB Min (15) 5/11, paragraph 92 refers]

151. note that the ability to appeal an objection decision to the Environment Court, where that objection decision is made either by the first instance decision-maker or an independent decision-maker, is inconsistent with the removal of appeal rights previously agreed to by Cabinet as referred to in recommendations 147 and 150 above

152. agree to modify the decision referred to in recommendation 149 above and to amend the RMA so that the ability to appeal against an objection decision, does not apply in respect of decisions on resource consent applications where the ability to appeal to the Environment Court in the first instance, has been removed

153. agree that the ability to appeal against an objection decision is available in respect of decisions on resource consent applications where the bundling of resource consents means that a preclusion against a first instance appeal to the Environment Court no longer applies

Collaborative Planning Process

154. note that note that on 23 February 2015 Cabinet agreed to amend the RMA to include a new collaborative planning process that would be available as an alternative plan-making track for use by any council or councils in relation to any matter [CAB Min (15) 5/11 paragraphs 57-67 refer]

155. agree to reconfirm the above decision subject to the amendments underlined in recommendations 156-175 below

Membership of the review panel

156. agree that the review panel should collectively include experience managing cross-examination in legal proceedings

Designations

157. agree to provide a process for consideration of designations and heritage orders through a collaborative planning process

158. agree to include designations and heritage orders as a matter a territorial authority must consider when deciding whether or not a collaborative planning process is appropriate for a particular planning matter

159. agree to allow a territorial authority to include a notice of requirement in a collaborative planning process with agreement of the requiring authority and/or the heritage protection authority

160. agree to allow the requiring authority or heritage protection authority to withdraw the notice of requirement at any time

Timing of introduction of a notice of requirement

161. agree to provide the timeframes within which a notice of requirement may be introduced to the collaborative planning process

    161.1. if, within 40 working days of receiving a notice of requirement a territorial authority notifies the planning process to be adopted; and

    161.2. allow it outside this timeframe but prior to the delivery of the collaborative group report and only on agreement from the territorial authority, collaborative group and requiring authority

162. agree that the territorial authority must invite requiring authorities, by written request, which have a designation in the district to give written notice within 40 working days of notification of the planning process to be adopted stating whether the designation is to be included in the proposed plan, with or without modification

Invitation to collaborate

163. agree to require the territorial authority to invite the relevant requiring authorities and heritage protection authorities to be part of the collaborative group

164. agree to require the territorial authority to invite owners and occupiers likely to be affected by decisions relating to a designation or heritage order, or any other affected persons they identify to be part of the collaborative group, but allow the territorial authority discretion as to the final membership of the group

Decision-making dependant on participation in collaborative group

165. agree that where a requiring authority or heritage protection authority declines to be part of a collaborative group for the purposes of considering a notice of requirement, the notice of requirement must be considered through another avenue available under the RMA

166. agree that where a requiring authority or heritage protection authority accepts the invitation to be part of a collaborative group for the purposes of considering a notice of requirement, the collaborative decision making process in Part 4 of Schedule 1 will apply

167. agree that where a requiring authority or heritage protection authority declines the invitation to be part of a collaborative group for the purposes of considering an existing designation, the designation may still be considered through a collaborative process, but the decision making and appeals processes in Part 1 of Schedule 1 will apply

168. agree that where a requiring authority accepts the invitation to be part of a collaborative group for the purposes of considering an existing designation, the collaborative decision making process in Part 4 of Schedule 1 will apply

169. agree that for the purposes of considering an existing designation the requiring authority or heritage protection authority may withdraw from the collaborative group at any time, but prior to delivery of the collaborative group report, and the decision making process for the designation will revert to the process in Part 1 of Schedule 1

170. note that for the purposes of considering an existing designation both Part 1 and Part 4 decision making and appeals processes could occur in conjunction within the same planning process

Changes to the ability of the review panel to make recommendations

171. agree that the review panel may recommend changes to the notified plan which deviate from the consensus position but which are within the scope described in clause 53(5) Part 4 Schedule 1

172. agree that where the review panel does recommend changes to the notified plan which deviate from the consensus position, comment from the collaborative group, and the requiring authority where relevant, must be sought

173. agree that the review panel must amend its report following receipt of the collaborative group and requiring authority comment to show whether the changes were accepted, accepted with modification or rejected

Appeals

174. agree that in addition to the appeal rights Cabinet has already agreed to appeals on merit by way of rehearing to the Environment Court will also be available:

    174.1. where the review panel has recommended substantive changes to the draft plan with which the collaborative group, or requiring authority does not agree, irrespective of whether the council accepts or rejects the review panel's recommendations

    174.2. on those parts of a plan developed through a collaborative process which are not based on consensus

175. agree that where a review panel has made substantive changes to the notified plan and their report reflects the collaborative group and the requiring authority agreement to those changes appeals will be available on points of law to the Environment Court

Streamlined Planning Process

Balance between central and local decision making

176. note that on 23 February, Cabinet agreed that the responsible Minister will have the power to approve or reject the draft decision or refer it back to the council for further consideration or recommend changes be made to the draft decision [CAB Min (15) 5/11 paragraph 52 refers]

177. note that the provisions in the RLAB requiring that councils adopt any changes recommended by the Minister to the proposed planning instrument goes further than the above Cabinet decision

178. note that officials will recommend that the RLAB is amended to only require councils to consider any changes recommended by the Minister through the Departmental Report

179. note that the RLAB also requires the council to comply with the statement of expectations that is included in the direction and that officials will recommend that this is amended so that the statement of expectations is a matter that the councils must consider, rather than comply with

Section 32

180. note that on 23 February, Cabinet agreed that any streamlined planning process must require as a minimum a report showing how submissions have been considered and any modifications to the planning proposal, including an assessment of costs and benefits or a section 32 report [CAB Min (15) 5/11 paragraph 48.3 refers]

181. agree to modify the above decision to require a section 32 report as part of the minimum streamlined planning process and remove any reference to an assessment of costs and benefits

Minister initiated amendments to Direction

182. note that on 23 February 2016, Cabinet agreed that the responsible Minister has the power to make changes to the Direction following a request from the council

183. agree to modify that decision to ensure that the responsible Minister can amend the Direction without a request from the council in which case the existing consultation requirements on the direction will apply

184. agree that, the Minister may require councils to undertake additional processes, such as further consultation and that these changes may occur after the council has submitted the proposed planning instrument to the Minister for approval

Designations and heritage orders

185. agree that the Streamlined Planning Process will allow for the inclusion of the rollover of designations in the sectional review or development of a replacement district plan that is subject to a Streamlined Planning Process

    185.1. note that the existing requirement in the RMA (i.e. that a new Notice of Requirement can only be included in a plan change process with the agreement of the requiring authority) will apply to both the Collaborative and Streamlined Planning Processes

    185.2. note that a Requiring Authority will be able to withdraw a Notice of Requirement from the Streamlined Planning Process and proceed under the existing Part 8 processes at any time

186. agree that if a designation is rolled over without modification and there are no submissions in opposition to it then the designation cannot be changed through the rollover process

187. agree that if new or existing designations are included in plans developed through the Streamlined Planning Process that the relevant requiring authority has the right to comment on the Council's recommendation on their designation before it is provided to the Minister for approval as part of the whole planning instrument

188. agree that if the Minister is recommending changes on a designation the recommendation must go back to the relevant requiring authority for consideration and comment

189. agree that the Minister's approval of the recommendations on designations are sent to the relevant requiring authority who make the final decision

    189.1. note that the final decision making on both new designations and the rollover of existing designations is made by the requiring authority (similar to the existing Schedule 1 process) unless appealed

190. agree that merit appeals to the Environment Court will be available on any amendments that the requiring authority makes on the recommendations approved by the Minister

191. agree that if the requiring authority does not amend the designation recommendations approved by the Minister, only point of law appeals to the High Court will be available on the designation decisions

192. agree that the process for heritage orders under an Streamlined Planning Process will match the designation processes

Māori Participation

Mana Whakahono a Rohe/Iwi Participation Arrangements (MWaR/IPA)

193. agree that the name of the relationship arrangement mechanism will be Mana Whakahono a Rohe/Iwi Participation Arrangement (MWaR/IPA)

Purpose of MWaR/IPA

194. agree that the purpose of a MWaR/IPA be:

    194.1. to provide a mechanism for iwi authorities and local authorities to discuss, agree, and record ways in which tangata whenua may, through iwi authorities, participate in resource management and decision-making processes under the RMA; and

    194.2. to assist local authorities to implement their statutory obligations in working with Māori under the RMA including through sections 6e, 7a and 8 of the RMA

Contents of MWaR/IPA

195. agree that a MWaR/IPA must record in writing the parties arrangements about:

    195.1. the parties to the arrangement

    195.2. how an iwi authority may participate in the preparation or change of a policy statement or plan, including and pre-notification planning process and any streamlined or collaborative process

    195.3. how any applicable iwi participation legislation will be supported or upheld

    195.4. how parties may work together on monitoring under the RMA

196. agree that a MWaR/IPA may record in writing the parties arrangements about:

196.1. if there are two or more iwi authorities or other parties to the MWaR/IPA, how those parties will work together collectively under the arrangement to engage with the local authority

196.2. whether iwi authorities delegate participation in particular processes, making specific reference to the involvement of hapū

196.3. how a local authority consults or notifies an iwi authority on resource consenting including the process for notification of resource consent applications where the RMA provides for that consultation or notification

196.4. arrangements relating to other RMA duties, functions and/or powers

197. agree that to the extent that it relates to RMA matters as provided for by MWaR/IPA and to the extent that the parties agree, an existing arrangement may be deemed a MWaR/IPA

Principles of MWaR/IPA

198. agree that iwi authorities and local authorities in working together to develop a MWaR/IPA, and in working together under an arrangement, be required to act in a manner consistent with the following guiding principles:

198.1. using their best endeavours to ensure that the purpose of the MWaR/IPA is achieved in an enduring manner

198.2. working together in good faith and a spirit of co-operation

198.3. being open, honest, and transparent in their communications

198.4. recognise and acknowledge that the parties will benefit from working together by sharing their respective vision, knowledge and expertise

198.5. commit to meeting statutory timeframes, and minimising delays and costs associated with those statutory processes

198.6. recognise that the arrangement cannot limit any relevant provision of any iwi participation legislation or any agreement under that legislation

Process matters – Iwi initiation of a MWaR/IPA

199. agree that when an MWaR/IPA process is initiated by notice from one or more iwi authorities, those local authority or authorities may advise any other relevant iwi authorities and local authorities that the process has been initiated

200. agree that within 60 working days of receiving the initiation notice, the local authority or authorities must then convene a meeting (hui) with the iwi authority or authorities who initiated the process, and any other iwi authorities and local authorities that have responded to the invitation to discuss and agree:

200.1. the process for negotiating one or more MWaR/IPA

200.2. the parties that wish to be involved in the negotiation process; and

200.3. the timing of such negotiations

201. agree that in considering whether there will be one or more MWaR/IPA, the relevant iwi authorities and local authorities should, where reasonably practicable, seek to collaborate and co-operate to improve effectiveness and efficiency and promote integrated processes and the co-ordination of resources in relation to relevant responsibilities and obligations under this Act

202. agree that if an iwi authority does not wish to participate in the negotiation process in recommendation 200.2 above, that iwi authority may initiate the MWaR/IPA process at a later date

203. agree that iwi may initiate a MWaR/IPA at any time except 90 calendar days before a local body election

204. agree that local authorities may seek to form MWaR/IPA with hapū (or iwi)

205. agree that nothing in the MWaR/IPA section prevents a local authority from commencing, continuing or completing any RMA process while the local authority is waiting for a response from, or is negotiating a MWaR/IPA with one or more iwi authorities

Process matters – Other

206. note on the 23 February 2015, Cabinet agreed to amend the RMA regarding enhanced consultation requirements and planning processes [Cab Min (15) 5/11 paragraph 34 refers]

207. agree to reconfirm the above decision

208. agree that the timeframe for concluding a relationship agreement is 18 months from the date the notice of invitation is received, unless otherwise agreed

209. agree that local authorities must review their internal policies and processes to ensure they are consistent with any relevant MWaR/IPA within six months of the agreement being concluded or as otherwise agreed between the parties

210. agree that the parties to a MWaR/IPA are required to formally review the arrangement every six years, or as otherwise agreed by the parties

211. agree to require local authorities to provide updates on their MWaR/IPA through the National Monitoring System as required by section 35 of the RMA, with additional reporting, if any, to be agreed by the parties

212. agree that the parties to a MWaR/IPA must agree and record in their MWaR/IPA a process for identifying and managing any conflicts of interest

213. agree that a MWaR/IPA will not be amendable or terminable except by mutual agreement of the parties

New pre-notification consultation requirement

214. note that on 23 February 2015 Cabinet agreed 'all Councils must seek and have particular regard to advice from iwi before notifying a proposed policy statement or plan' [Cab Min (15) 5/11 paragraph 34.1.1 refers]

215. agree to reconfirm the above decision

Matters to be rescinded

216. note that Cabinet has previously agreed to include provisions for Iwi Participation Arrangements [Cab Min (15) 5/11 paragraphs 28-33, CBC Min (15) 2/3 paragraphs 126-128, and Cab-15-Min-0199.01 paragraphs 59-60 refer]

217. agree to rescind the above decisions

Dispute resolution

218. agree that for disputes arising during the negotiation of a MWaR/IPA that the iwi and local authority may agree to a binding form of alternative dispute resolution (ADR) where the costs are met by the parties and both parties are in mutual agreement on the process

219. agree that for disputes arising during the negotiation of a MWaR/IPA, if no binding dispute resolution is agreed upon the iwi and local authority must agree to a non-binding form of ADR where the process and the mediator/arbitrator is jointly selected and the costs are met by the parties

220. agree that if the parties are still in dispute after using the ADR they may seek Ministerial intervention and the Minister for the Environment has the authority to appoint a Crown facilitator or direct the parties to particular alternative dispute resolution processes

221. agree that for disputes arising during the operation of the concluded MWaR/IPA, the parties, in their arrangement, must specify a process for resolving disputes about the implementation of the arrangement (with costs to be met by the parties)

222. agree that no dispute resolution provision in a mana whakahono a-rohe arrangement may require the local authority to suspend any RMA process

Relationship with Treaty Settlement Legislation

223. note that on the 23 of February 2015, Cabinet noted that any potential conflicts between the proposed reforms and existing arrangements in treaty settlement legislation will be addressed through appropriate drafting instructions to ensure the existing arrangements will prevail [Cab Min (15) 5/11 paragraph 35 refers]

224. agree to reconfirm the above decision in the manner it is currently expressed in the RLAB which provides that a MWaR/IPA does not limit any relevant provision of any iwi participation legislation or any agreement under that legislation

Resourcing

225. note that guidance and support may be required for local authorities to ensure the effective implementation of the Māori participation mechanisms of the RLAB and freshwater reforms

EEZ Act: Decommissioning

226. agree that decommissioning relates to those activities that are undertaken to an offshore installation when it reaches the end of its productive or economic life and may include activities undertaken in relation to any structures and pipelines associated with the exploration, exploitation and processing of minerals at that time

227. note that Cabinet has previously agreed to a two stage approach to address decommissioning:

    227.1. amend the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2013 (EEZ Act) to include a new section specifying that the EPA has the authority to require operators to apply for consent to undertake decommissioning activities [CBC Min (15) 2/3 paragraph 105.1 refers]

    227.2. develop regulations under the EEZ Act to specify the details of a decommissioning regime [CBC Min (15) 2/3 paragraph 105.2 refers]

228. note that consideration of financial security requirements will not be included in regulations developed under the EEZ Act as was provided for in noting recommendations [CBC Min (15) 2/3 paragraph 106 refers]

229. agree to rescind the decisions contained in CBC Min (15) 2/3 paragraphs 105.1 and 105.2 and replace with the following:

Decommissioning plans

230. agree that the EEZ Act be amended to require that, prior to submitting a marine consent application for decommissioning-related activities, owners of offshore installations associated with petroleum production in New Zealand's Exclusive Economic Zone and Continental Shelf prepare a decommissioning plan, in accordance with the relevant regulations developed under the EEZ Act, and require that they submit it to the Environmental Protection Authority (EPA) for acceptance

231. agree that decommissioning plans be made subject to a public consultation process prescribed by regulations developed under the EEZ Act and will include the EPA notifying the public and parties listed in section 45(1)(a)-(e) of the EEZ Act and calling for written submissions on the proposed decommissioning plan

232. agree that the plan may be accepted by the EPA within the period (if any) prescribed by regulations subject to being assessed against specific criteria set out in regulations (refer recommendation 244.3 below)

233. agree that the EPA be given discretion to accept amendments to the decommissioning plan without undertaking a further public consultation process if the amendments are in general accordance with the plan (i.e. those that are within the same environmental envelope of effects)

234. agree that the EPA be given discretion to undertake a further public consultation process on all or parts of the plan if a material amendment to the plan is proposed before accepting or refusing the proposed amendment subject to being assessed against specific criteria set out in regulations (refer recommendation 244.3 below)

235. agree that owners of offshore installations are not required to prepare and submit a decommissioning plan until the relevant regulations are in force

236. agree that where the EPA has received a decommissioning-related marine consent application from the owner of an offshore installation prior to the RLAB entering into force, the owner is not required to prepare a decommissioning plan for the activities included in the marine consent application

Requirement for decommissioning-related marine consents

237. agree to amend the EEZ Act to require that activities in decommissioning-related marine consent applications be in general accordance with the approach set out in the accepted decommissioning plan

238. agree to amend the EEZ Act to require that the accepted decommissioning plan be included as part of decommissioning-related marine consent applications

239. agree that all applications for marine consent for decommissioning activities are not publicly notified and must be processed within nine months of an application being accepted by the EPA as meeting the requirements of section 38 of the EEZ Act

240. agree that the EPA (and not a Board of Inquiry) will be the decision-maker on all marine consents for decommissioning activities

Leaving behind of pipelines

241. agree to amend the EEZ Act to make the abandonment in-situ of pipelines a restricted activity under the EEZ Act subject to the same decision-making criteria as dumping activities

New activities to address decommissioning

242. note that under the EEZ Act an application for marine consent must fully describe the proposal (section 38(2)(b))

243. agree that applications for notified discretionary marine consent applications that involve the placement of structures and pipelines on or under the seabed be required to demonstrate consideration of decommissioning as part of fully describing the proposal

Regulation-making power

244. agree to amend the EEZ Act to include the following new regulation-making powers for decommissioning, specifically:

    244.1. that regulation making powers are developed enable regulations to be made that specify the contents of a decommissioning plan

    244.2. that regulation making powers are developed to enable regulations to be made that set out the process (including but not limited to prescribing the timeframes) that the EPA will follow to assess and approve the decommissioning plan

244.3. that regulation making powers are developed to enable regulations to be made that specify criteria against which the EPA must assess whether it approves a decommissioning plan

244.4. that regulation making powers are developed that enable regulations to be made that specify the IMO standards and guidelines that must be taken into account by the EPA when considering marine consent applications for decommissioning related activities

245. agree that the process for making such regulations be made subject to the process for developing regulations under section 32 of the EEZ Act

246. note that if Cabinet agrees to these recommendations, I will provide Cabinet with policy proposals to make the regulations at a later date

Other matters

Amend legal weighting (and enforceability) of section 18A procedural principles

247. agree to amend proposed section 18A by qualifying the mandatory nature of the requirements so that those exercising powers and performing functions must take all reasonable or practicable steps in relation to the new procedural principles

Environment Court processes

248. note that on 23 February 2015, Cabinet agreed to require the Environment Court to have regard to the outcome of any pre-hearing meeting and any hearing reports prepared by councils in determining an appeal [CAB Min (15) 5/11, paragraphs 112.2 and 120 refer].

249. agree to rescind the above decisions

Council hearing processes

250. note that on 23 February 2015, Cabinet agreed to require councils to have regard to, at a council hearing, the outcome of any prehearing meeting [CAB Min (15) 5/11, paragraph 112.1 refers]

251. agree to rescind the above decision

Enable heritage orders and designations to be part of a sectional review

252. agree that the existing heritage order and designation rollover processes are applied to any relevant plan change that is part of a council's ten year review of its district plan

Legal effect of rules and limited notified plan changes

253. agree that rules introduced through a limited notified plan change do not have any legal effect and are not able to be treated as operative before the decisions on submissions are notified

Board of Inquiry technical change: Sub-delegation

254. agree to amend the RMA to expressly enable the EPA to sub-delegate the Minister of Conservation's powers and duties to recover the actual and reasonable costs incurred in relation to a Board of Inquiry appointed under part 6AA, including the powers and duties to deal with any objection that arises from the exercise of that power with the Minister of Conservation's consent

Board of Inquiry technical change: RMA stop work provisions

255. note that on 23 February 2015, Cabinet agreed to provide the EPA discretion to suspend processing of a proposal under the RMA where there are outstanding debts, provided the EPA has made written demand for payment of the amount outstanding and provided the applicant 20 working days' notice of their intention to suspend processing if payment is not made [Cab Min (15) 5/11 paragraph 129.1.7 and 129.2 refer]

256. agree to rescind the above decision

257. agree to provide the EPA discretion to suspend processing of a proposal under the RMA where there are outstanding debts, provided the EPA has made written demand for payment of the amount outstanding and of their intention to suspend processing if payment is not made

Board of Inquiry technical change: EEZ Act stop work provisions

258. note that Cabinet previously agreed to provide the EPA discretion to suspend processing of a proposal under the EEZ Act, where there are outstanding debts, provided the EPA has made written demand for payment of the amount outstanding and provided the applicant 20 working days' notice of their intention to suspend processing if payment is not made [CBC Min (15) 2/3 paragraph 94.6 refers]

259. note that section 147 of the EEZ Act already provides for the EPA to suspend processing of a proposal where there are outstanding debts

260. agree to rescind paragraph 94.6 in CBC Min (15) 2/3

Board of Inquiry technical change: EEZ Act liability of Board of Inquiry members

261. agree that Board of Inquiry members considering a marine consent application under the EEZ Act will not be liable for anything the member does, or omits to do, in good faith in performing or exercising the functions, duties and powers of the board

Changes to infringement fees for stock exclusion regulation

262. agree to amend the regulations which set out infringement offences for breaches of stock exclusion regulations to provide an infringement fee of $100 per stock unit up to a maximum of $2,000

Validation clauses

263. agree to include validation clauses for consultation on stock exclusion section 360 regulations and, to the extent necessary, for any consultation on national direction proposals relating to aquaculture, dam safety or changes that may be proposed to the National Policy Statement for Freshwater Management 2014 that rely on changes to this Bill

264. agree to include (if required) validation clauses for any statutory consultation on elements of a national environmental standard or national policy statement in relation to aquaculture that relies on the proposals in the Bill

265. agree to include (if required) validation clauses for any statutory consultation on elements of a national environmental standard for dam safety that rely on the proposals in the Bill

Crown Minerals Act 1991: Reduce minimum notification timeframes of certain mining access arrangements on conservation land from 40 working days to 20 working days

266. agree to reduce the minimum notification timeframe for publicly notified access arrangements for mining activities, as specified in section 61C of the Crown Minerals Act 1991, from 40 working days to 20 working days

Alignment between the Resource Management Act 1991 and the Conservation Act 1987: Common definition of 'working day'

267. agree to amend definition of 'working day' in the Conservation Act 1987 so that the Christmas and New Year exclusion period falls on the same dates as provided for in the RMA

Public Works Act 1981: Solatium adjustment criteria

268. agree the following criteria and conditions for future solatium adjustments:

    268.1. adjustment does not occur more often than once every five years

    268.2. the Minister for Land Information must publicly consult on the proposed solatiums and/or solatiums options, including consulting with acquiring authorities and local authorities

    268.3. when adjusting solatiums amounts and percentages, the Minister for Land Information should take into account (in addition to good-practice policy criteria and the consultation comments):

        268.3.1. the purposes of the solatiums (including the differences between a land acquisition and a home acquisition)

        268.3.2. the national average house sales price and the national average land sales price

        268.3.3. equivalent international compensation

        268.3.4. the Consumer Price Index (CPI)

    268.4. solatium amounts can only be increased, however percentages (for example of acquired land value) can be increased or decreased

269. authorise the Minister for the Environment to further clarify the policy and technical detail relating to the proposals in this paper if required in a way not inconsistent with Cabinet decisions.

_____

Hon Dr Nick Smith
Minister for the Environment
_____ /_____ /_____

Appendix 1: Policy detail for Minor and Technical Amendments – National Planning Template

142. The RLAB enables development of a National Planning Template (NPT). The NPT is intended to make plan making processes simpler and the resulting plans and policy statements more consistent across the country. It is intended that the NPT will set out, at a minimum, a standard structure and format, references to existing national direction, and standard definitions (where possible), and requirements for electronic delivery of plans.

143. I am proposing to amend the NPT to:

- rename the NPT "National Planning Standards"
- remove the power to address matters of national significance through the National Planning Standards (as these matters are more appropriately dealt with through National Policy Statements (NPS))
- clarify that National Planning Standards must give effect to National Policy Statements, and be consistent with National Environmental Standards, and regulations made under the RMA
- better define the purpose of National Planning Standards by including additional criteria e.g. supporting the implementation of national direction
- clarify that councils can incorporate National Planning Standards directly into plans without repeating consultation that has already been undertaken as part of the development of the National Planning Standards.

144. Overall, the effect of these changes is to clarify the role and scope of the template proposal, to better integrate it with other national direction tools, and streamline its implementation.

145. There have been three sets of Cabinet decisions on the National Planning Template proposal [Cab Min (13) 18/8 paragraphs 6-13, Cab Min (15) 5/11 paragraphs 14-24 and CBC Min (15) 2/3 paragraphs 139 and 140 refer]. For clarity, I propose to rescind all previous decisions, and seek your agreement to a full set of new recommendations in this paper. Six of these recommendations reflect the proposed policy changes above, and the remainder reconfirm or clarify previous Cabinet decisions.

Appendix 2: Policy detail for Minor and Technical Amendments – National Direction

146. To make sure that existing tools are fit for purpose and can provide strong national direction, the RLAB currently proposes a number of amendments to sharpen processes for developing NPSs and NESs, and broaden what they can provide for. The RLAB also includes a number of new powers and direction, including:

- new regulation making powers to permit land uses, prohibit councils from making specified rules, override rules, and prohibit rules that duplicate other legislation
- a new matter of national importance (in section 6 of the RMA) that will require councils to recognise and provide for the management of significant risks from natural hazards
- new procedural principles into Part 3 of the RMA requiring the use of timely, efficient, consistent, and cost-effective processes
- a new function for both regional councils and territorial authorities to ensure that there is 'sufficient residential and business development capacity' to meet expected long-term demand.

Proposed Changes to NPS and NES

<u>Single-step consultation process for the development of all national direction</u>

147. The Bill currently proposes to introduce an option for combined development of NES and NPS. While there are no significant barriers at present to developing a cohesive set of national direction using multiple instruments, there is an opportunity to improve the development of national direction in this process.

148. I am now proposing to create a single-step consultation process for NPS and NES. This will refocus national direction toward problem solving and enable greater flexibility to adopt the most appropriate instrument for the issue.

149. The proposed changes will not substantially change the consultation process for NES or section 360 regulations, but will align the NPS process with those processes by only requiring policy proposals, rather than draft documents, to be consulted on. A recommendation for the development of National Planning Standards or section 360 regulations may also result from this consultation process. However, in the case of National Planning Standards, they will retain the requirement for public notification on draft wording of the proposed standard. The single-step consultation would fulfil the expectations of consultation for section 360 regulations.

NES and consent conditions

150. In order for NES to be effective in achieving desired outcomes, regional councils need to be able to review existing regional consent conditions where required by an NES. Currently regional councils can review the consent conditions for water, coastal or discharge permits, and an NES can direct councils to do this. However, this power does not extend to land-use consents. There are circumstances where discharge permits are bundled with land-use permits with one combined set of conditions, creating ambiguity as to whether a regional council could review these consents, either under their regional council functions or as directed by a NES. For example, this is the case with some dam consents.

151. A regional council is able to specify in a resource consent that the consent is subject to review for certain purposes and a process for that review is set out in the Act. However this only applies if provision for review is included in the consent and only for the purposes listed in the Act. Expanding the current power in the Act for an NES specifying review of coastal, water or discharge permits to also apply to regional land-use consents has the potential to affect the conditions of land use consents that were issued on the basis that an NES generated review could not occur. However, where this power is used it would be subject to the existing processes for regional councils reviewing consent conditions including notification, hearings and appeal.

152. I am therefore proposing to allow NES to require review of regional council land-use consent conditions. This enabling power would support the wider objective of the reforms: sustainable management of natural and physical resources in an efficient and equitable way.

153. I am also proposing to enable an NES to specify consent duration. This is a new proposal. Councils are responsible for setting the duration of resource consents. A NES can specify that an activity is prohibited, but cannot specify consent duration, which is a more flexible approach. Having the ability to specify consent duration would enable NES to provide greater consistency and certainty of consent duration. In particular, the provision may be useful in relation to the NES for aquaculture currently being developed, which foresees a need for short-term consents as an interim measure for some existing marine farms while council planning is being undertaken (note there is no intention to extend the upper maximum consent duration of 35 years for aquaculture).

Other changes to NPS and NES

154. To improve the overall workability of NPS and NES, I am proposing the following changes.

- Aligning the drafting in relation to ‘development capacity’ with the National Policy Statement for Urban Development Capacity (NPS-UDC). The NPS-UDC has recently been consulted on and I expect to shortly receive a report on that consultation and recommendations on the final wording from officials (as required under section 51(2) of the RMA). In the meantime, and given the timeframes associated with the Bill Select Committee process, I am proposing to amend the drafting of these new functions in the Bill so that they align closely with the drafting in the final NPS-UDC.

- Clarifying that where NPS or NES apply at a sub-national level, national notification is still required. As area-specific NPS and NES will deal with matters of national importance, it is sensible for notification to remain national so that opportunities are understood and unintended consequences are minimised.
- Clarifying that an NES can specify methods other than technical methods (for example, implementation plans) that councils must use to better guide their role as the authority responsible for observing and enforcing the observance of an NES. This clarification will remove confusion around the current wording in the Bill which refers to 'achieving' the standard.
- Requiring a section 32 evaluation to be undertaken to justify the use of the leniency provision (where an NES specifies that council rules or consents may be more lenient than the NES). A number of submitters were concerned that this provision was inconsistent with the purpose of NES in setting a bottom line for an activity. A NES is already able to allow a council to set more stringent rules, but this requires the council to justify such rules through a section 32 evaluation. Providing this same requirement where more lenient rules are enabled will reduce the risk of inappropriate use of these provisions and creates a more transparent process.
- Clarifying that electronic tools, models and databases can be incorporated in NES and NPS. This is a new proposal. The use of electronic tools to inform and assist decision-making is increasing, but at present it is necessary to ensure such tools are available in printed versions. This can entail the storing of cumbersome amounts of paper. This proposal would allow the use of such models and with any requirement to provide a copy to be satisfied electronically.
- Enable a NES to permit an activity without satisfying the significant adverse effects test where a relevant HSNO approval has been granted. This is a new proposal. Section 43A(3) specifies that a NES cannot permit an activity which has significant adverse effects. There are instances where NES will seek to cover a substance which is regulated under the HSNO Act. For example, council rules on vertebrate toxic agents often duplicate the controls set under the HSNO Act, and council rules prohibiting the use of genetically modified organisms overlap with decision-making under the HSNO Act. In such cases the assessment of the effects of that substance is most appropriately carried out under the HSNO Act, and these should not be duplicated under the RMA when considering whether an activity will have significant adverse effects. Where RMA matters are not covered by a HSNO approval these will continue to be subject to the significant adverse effects test. This change will allow for greater flexibility in the use of NES.

Appendix 3: Policy detail for Minor and Technical Amendments – Streamlined Planning Process

155. The RMA requires councils to develop regional policy statements, and district and regional plans that explain how the council will manage the environment in its area. The RMA currently has one main process[1] for preparing or changing a regional policy statement or plan (the Schedule 1 process), which Councils must use, regardless of the circumstances.

156. This 'one size fits all' approach in some cases is too slow and gives little flexibility to adapt these processes to suit the local circumstances or the scale of the issues. The length of time taken to develop a new plan and resolve any appeals (approximately six years on average) means that plans are not sufficiently adaptable and responsive to changing needs and issues.

157. The RLAB provides two new plan-making options – the streamlined planning process and the collaborative planning process. These new processes will enable a more efficient, flexible and proportionate plan change process for the issues and circumstances they are dealing with.

158. The proposed new streamlined planning process will mean councils can formally ask the Minister for the Environment for a plan-making process that suits their local circumstances. At present, in order to gain this level of flexibility, the Government has recently had to pass special legislation where the existing planning process would have been too slow (in Auckland and Christchurch). The new streamlined process will reduce the need for this kind of ad hoc law-making and instead provide a more flexible and responsive mechanism within the RMA.

Balance between central and local decision making

159. Submissions on the Bill have expressed concern about the balance between central and local government decision making in the streamlined planning process and the perception that the responsible Minster will be able to interfere in the content of councils' plans. Two key areas are the requirement in the Bill for councils to comply with the statement of expectations that is included in the direction for a streamlined planning process and to make any recommended changes to the proposed planning instrument that the Minister requires. I am proposing that amendments are made to both of these aspects to soften the requirements so that the statement of expectations and the recommended changes are matters that council must consider rather than comply with. These changes are within the scope of the original policy decisions.

Section 32

160. Cabinet agreed on 23 February 2015 that the minimum streamlined process include an assessment of costs and benefits or a section 32 report [Cab Min (15) 5/11 paragraph 48.3 refers]. In order to improve the rigour of analysis and consistency with other plan making processes, I recommend that section 32 be a mandatory requirement and that the reference to an alternative assessment of costs and benefits be deleted. This will enable consistency with notification requirements under the Schedule 1 and also ensure new requirements proposed

[1] The Part 6AA process is available for proposals of national significance. This mirrors the requirements in Schedule 1 but has some restrictions on appeals.

in Bill (that the section 32 report summarise advice received from iwi authorities and the response to the advice) are applied.

Minister initiated amendments to Direction

161. The current drafting of the Streamlined Planning Process allows amendments to the terms of the Direction to occur only at the council's request. This aligns with Cab Min (15) 5/11 which provides as follows:

> *"agreed that the responsible Minister has the power to make changes to the direction following a request from the council".*

162. I am proposing to amend these provisions to ensure that the Minister for the Environment has the ability to amend the Direction and require councils to undertake additional processes, such as further consultation, including after the council has submitted the proposed planning instrument to the Minister. I propose that if amendments to the Direction are made by the Minister, the Minister should be required to consult with the relevant parties.

Appendix 4: Policy detail for Minor and Technical Amendments – Consenting processes

163. Getting resource consent can add excessive time, cost, and uncertainty to projects relative to their potential to cause adverse environmental effects. For some activities of a predictable or potentially minor nature – like extending a house – the process can be more complicated and time consuming than it needs to be.

164. The RLAB introduces greater proportionality into the process of obtaining resource consent by introducing a 10-working-day time limit for determining controlled activity applications and allowing councils to treat certain activities as permitted.

165. The RLAB also seeks to make the costs of resource consents more transparent. The RLAB will introduce a regulation-making power to require consent authorities to fix the fees for processing certain consent applications, and a fixed remuneration fee for hearings panels and independent commissioners. This will give greater certainty to applicants.

166. In addition to the changes to consenting processes discussed in the main body of this paper (see paragraphs 36-58), I propose to make the below minor and technical changes to the consenting proposals in RLAB.

Consent Exemptions

Providing a lapse period for marginal and temporary exemptions and boundary activity exemptions

167. The RLAB provides consent exemptions for marginal and temporary rule breaches, and boundary activities with neighbours' approval. However, a lapse period has not been provided for an exemption under section 87BA (boundary activities approved by neighbours on affected boundaries are permitted activities) or under section 87BB (activities meeting certain requirements are permitted activities).

168. If a lapse date is not provided, an exemption will remain 'live' indefinitely and could be implemented at any time in the future, regardless of the time that had passed or the relevant rules at the time.

169. I propose that, if not implemented, exemptions for marginal and temporary rule breaches and exemptions for boundary activities with neighbours' approval will lapse five years from the date the written notice is provided by the consent authority.

Eligibility for a certificate of compliance for activities granted an exemption

170. A technical issue has been identified in the drafting of the exemptions clauses created under clause 122 of the RLAB, which inserts new sections sections 87BA and 87BB into the RMA. Clarification is required as to whether a certificate of compliance (under section 139) can be obtained for an activity that is deemed to be a permitted activity via an exemption (under both section 87BA and section 87BB).

171. I propose to explicitly state in the Bill that an activity that has been provided with an exemption does not require a Certificate of Compliance, as the exemption notice itself will provide a formal record. Clarifying this matter will ensure consistency of practice between different consent authorities.

Providing a statutory processing timeframe for boundary activity exemptions

172. A statutory timeframe has not been provided for issuing an exemption under new section 87BA (boundary activities approved by neighbours on affected boundaries are permitted activities).

173. To ensure that these applications are dealt with expeditiously and to provide certainty for all parties, I propose to introduce a timeframe of 10 working days. This timeframe would align with the timeframe that is being introduced for fast-track applications, meaning that the following statutory timeframes would exist for resource consents:

- 10 working days – Boundary activity exemption and fast-track
- 20 working days – Non-notified resource consent
- 60 working days – Notified resource consent with no hearing
- 100-130 working days – Notified resource consent with a hearing.

174. This 10 day timeframe would provide councils adequate time to carry out any required assessment of the application (including a site visit if necessary) as well as any associated administrative tasks.

Clarifying the definition of affected boundary for boundary activity exemptions and consent applications

175. The RLAB introduces a definition of 'affected boundary' which is used to determine those parties that may be considered affected for the purposes of boundary activity consent exemptions and limited notification of consent applications. The definition could potentially be interpreted to apply to boundaries beyond that which directly relate to the boundary rule that is being infringed, such that those boundaries beyond that are 'affected' by the breach are also captured by the Bill provisions. This is a wider interpretation than I intended and would introduce an unwarranted element of subjectivity into applications involving such boundary rule breaches.

176. In order to clarify how this proposal is to be implemented, I propose that the RLAB definition of affected boundary is modified to mean a boundary to which the infringed boundary rule applies

Fast-track resource consent applications

Appropriateness of process for regional council consent

177. Submitters have raised concerns that it may not be appropriate for regional council controlled activities to be subject to the truncated 10 working day statutory timeframe proposed under the fast-track provisions in the RLAB.

178. Concerns include that the nature of "regional consents" (i.e. water permits, discharge permits, coastal permits and regional land use consents) is such that they can be complex and often require technical review, scientific assessment or assessment of cultural effects. This complexity is largely reflected in data which demonstrates that applications for such regional consents often take longer than 10 working days to process.

179. In addition, as noted in the main body of this paper, submitters have raised concerns at the RLAB notification provisions which, among other things, preclude resource consent applications for controlled activity regional consents from being limited notified. Such a preclusion assists with the functioning of the fast-track process through removing the need to undertake a detailed notification assessment, but has led to concerns about the inability for potentially affected persons to have input into consent applications affecting natural resources.

180. The combination of these concerns means that I am now proposing that the fast-track provisions no longer apply to applications for controlled activity regional consents and that, as noted in paragraph 204 below, such applications will now also be eligible for limited notification.

Ability for applicants to 'opt-out' of the fast track process

181. Submitters have raised concerns that the new fast track process could increase processing costs. In particular, this could occur if the 10 day timeframe is unachievable using current staff resources and consultants are consequently required. This may lead to councils fixing higher fees for the processing of these consents in comparison with the existing 20 day non-notified resource consenting process.

182. Some applicants may consider lesser cost more important than speed of processing their consent. To access a lesser cost option, currently an applicant would need to utilise an indirect mechanism to 'opt-out' of the process through not providing an electronic address for service (such that the application does not meet the definition of a fast-track activity).

183. I consider it important to allow applicants choice of which consenting route they utilise, but that only providing the current indirect mechanism for applicants to make that choice is likely to undermine other aspects of the Bill that are encouraging increased process efficiency, in part through increased use of electronic servicing of documents.

184. I therefore propose to amend the fast-track provisions to explicitly provide applicants the ability to 'opt-out' of the process if they wish to do so.

Offsetting adverse effects and clarifying the scope of conditions of consent

Change to commencement of provisions until six months after Royal Assent

185. The proposal to consider offsetting of environmental effects and the proposal to clarify the legal scope of consent conditions both currently come into force the day after Royal Assent.

186. To support implementation, I propose a transitional provision specifying commencement six months after Royal Assent. This would align with the other resource consent related changes, allow councils to implement the bulk of the resource consenting changes at the same time, and allow for the provision of guidance.

Consideration of offsetting and environmental compensation to apply to notices of requirement for designations

187. The RLAB introduces an explicit requirement for offsetting and environmental compensation to be among the matters to be considered when making a decision on a resource consent application under section 104.

188. I am of the view that the same considerations are appropriate matters for a territorial authority to consider when making a recommendation on a notice of requirement for a designation. Although such matters could currently be considered as 'any other matter', I consider it preferable to be explicit in order to ensure consistency within the RMA.

189. I therefore propose that offsetting and environmental compensation be added as matters which a territorial authority can consider in respect of notices of requirement for designations and that this proposal commence six months after Royal Assent.

Conditions directly connected to a rule in a National Environmental Standard or regulation

190. The RLAB currently allows a condition to be imposed on a resource consent if it is agreed to by the applicant, or if it is directly connected to an adverse effect on the environment or an applicable district or regional rule.

191. I propose the following two changes to the existing proposal to further clarify the intent of this proposal:

- clarifying the condition may also be directly connected to a rule in a National Environmental Standard
- ensuring that any requirements for consent conditions contained in the Act and in regulations would prevail. Specifically, this change will ensure that any conditions that are prescribed under the proposed new regulation making power relating to water permits (which will enable the form and content of water and discharge permits to be prescribed) will prevail.

Conditions under section 106, section 77A, and section 220 will not be restricted by new section 108AA

192. The current drafting of the RLAB would see section 106 (Consent authority may refuse subdivision consent in certain circumstances), section 77A (Power to make rules to apply to classes of activities and specify conditions) and section 220 (Condition of subdivision consents) of the RMA restricted by new section 108AA, which requires that conditions may only be imposed if they are agreed to by the applicant, are directly connected to an adverse effect on the environment, or are directly connected to an applicable district or regional rule.

193. It is important that these sections are not restricted because:

- Conditions need to be able to be imposed under section 106 to avoid, remedy or mitigate the effects of natural hazards, rather than the adverse effects of the activity on the environment. Additionally neither a natural hazard, nor the requirement to provide legal access, may be specifically addressed by an applicable rule in a plan.
- Section 220 enables conditions relating to a number of technical and administrative matters to be imposed on consents. These matters are not necessarily connected to a rule that is breached or an adverse effect on the environment. For example section 220(1)(f) creates a power to impose a condition requiring that easements be granted or reserved.
- Section 77A enables local authorities to specify rule conditions in a plan if they relate to a matter described in sections 108 or 220. Such conditions in a plan do not align with the new section 108AA because they cannot be volunteered by an applicant, and it's circular to say they have to be directly connected with an applicable rule.

194. I therefore propose that section 106 (Consent authority may refuse subdivision consent in certain circumstances), section 77A, and section 220 (Condition of subdivision consents) should not be restricted by new section 108AA.

Allow conditions to be imposed that are directly connected to positive effects

195. Concerns have been raised by submitters that it is not clear whether the requirement that a condition be directly connected to an adverse effect would preclude conditions relating to a positive effect on the environment being available unless the applicant agrees or it is provided for in a rule in a plan.

196. Such a consideration of positive effects would not extend as far as off-setting measures (which are covered elsewhere in the RLAB) but would capture matters such as enhancement landscaping.

197. Not allowing the imposition of conditions to secure positive effects could have the perverse outcome of consent authorities being more likely to recommend that applications are declined.

198. I therefore propose to amend these provisions to ensure conditions on resource consents are able to be imposed if they are directly connected to a positive effect of the activity on the environment.

Clarification of notification requirements for certain types of activities

199. In addition to the more substantial changes to the notification regime outlined in the main body of this paper, I am also proposing the below minor/technical changes to clarify the intent of some proposals, resolve areas of ambiguity that have been identified, and to give effect to policy changes in other areas of the Bill.

200. These further changes to the notification regime are set out below. In each case, unless otherwise stated, the resultant preclusions on notification I am proposing will still be subject to the exceptions that have previously been agreed by Cabinet which preserve the ability to notify consent applications in certain situations, as well as in circumstances where 'bundling' of consents may occur (see paragraphs 211-213). For example, public notification of all consent applications will still be

possible if an applicant requests it, and, notwithstanding any preclusions on limited notification that may otherwise apply, an application may be limited notified to an affected protected customary rights group or affected customary marine title group.

Preclusion on public and limited notification for controlled activities

201. The intent of this proposal was initially for all controlled activities to be precluded from public and limited notification to enable 'simple consents' to be non-notified and also to allow the fast-track consent process (dealing with controlled activity applications) to proceed without the need to undertake a detailed notification assessment. This intent was subsequently affected by a further decision which had the effect of ensuring controlled activity subdivisions could be limited notified if necessary.

202. As detailed in the main body of the paper, I am proposing changes to the limited notification regime in the RLAB. However, in order to still facilitate the efficient functioning of the fast-track consenting process, it is necessary to maintain a general preclusion in the Bill against notification of controlled activities that fall within the scope of this process.

203. I therefore wish to clarify that:

- controlled activities shall not be publicly notified (unless a consent authority determines that special circumstances apply)
- unless a consent authority determines that special circumstances apply, only controlled activity subdivisions, and controlled activity "regional consents" (i.e. discharge permits, coastal permits, water permits and regional land use consents) may be limited notified (these activities are excluded from the fast-track process). I also propose that the ability to limited notify applications on the basis of special circumstances will not apply to those controlled activities that are otherwise eligible for limited notification.

Preclusion on public notification and eligibility to be an affected party for an inter-boundary rule breach

204. There are a number of previous Cabinet decisions that relate to the notification of inter-boundary rule breaches. I wish to clarify that the original policy intent in regard to the notification of inter-boundary rule breaches was to preclude all boundary activities, regardless of activity status, from public notification (unless special circumstances apply).

205. Further, as a result of other changes I am proposing to the limited notification provisions as dealt with in the main body of this paper, boundary activities are now the only activities that will be specified in the Act (regulations may also specify further activities) where there are 'eligibility restrictions' on who may be considered an affected party.

206. Previously the 'eligibility restrictions' applied to applications for resource consent for boundary activities and all other district land use activities and the subdivision of land, other than those with a non-complying activity status, as well as activities that may be prescribed through regulations. These wide-ranging restrictions necessitated an explicit requirement to consider whether iwi or governance entities granted certain Treaty Settlement redress mechanisms (nohoanga,

overlay classification, vest and vest back), or iwi for whom a site is recognised as a wahi tapu, were affected persons in respect of a proposed activity.

207. However, given the nature of boundary activities; the ablity to preserve eligibility to be considered affected if restrictions were prescribed through regulations; and the ability to otherwise limited notify parties in the event of 'special circumstances', I no longer consider it necessary to explicitly provide for iwi or governance entities to be considered eligible to be affected in the context of limited notification of consent applications.

208. For inter-boundary rule breaches, this change means that, where written approvals have not been obtained from the relevant neighbour or neighbours under the new boundary exemption provisions in the Bill (which apply to all boundary activities regardless of activity status), the only persons eligible to be notified (unless special circumstances apply) in respect of an application for resource consent for a boundary activity that has restricted discretionary, discretionary or non-complying status, are those whose written approval would have been required under the boundary exemption provisions.

Preclusion on public notification for subdivision on any land

209. Previous Cabinet decisions precluded the public notification of applications for subdivision consent that have controlled, restricted discretionary or discretionary activity status. It was, however, unclear whether that provision related to residentially zoned land, or any land. I propose to clarify the intent that this applies to subdivision of any land.

Bundling of assessment of multiple consents

210. The Bill, taking into account the other recommendations made here, amends sections 95A and 95B of the Act to restrict involvement in certain consent applications and amends section 120 to preclude appeals to the Environment Court against certain decisions (or conditions). The effect of the Bill's provisions as drafted may be to restrict the ability of a consent authority (or the Environment Court on appeal) to undertake a comprehensive assessment of a proposed development. This could have unintended consequences for the streamlined delivery of housing.

211. Where a type of consent which is precluded from notification is bundled with one or more other consents where public or limited notification is not restricted, I propose to ensure that the status quo approach under the RMA is retained such that all consents are eligible for notification (subject to the usual effects based test under sections 95D or 95E as appropriate).

212. Likewise, where a type of consent which is precluded from appeals to the Environment Court is decided at the same time as other consents where appeals are unrestricted, I propose that all the component consents are eligible for appeal. Again, this will allow for the continuation of established practice under the RMA.

Scale of residential activities that are precluded from appeal

213. The Bill precludes decisions on certain consents from being appealed to the Environment Court. This preclusion on appeals includes residential activities where they occur on a "single allotment" and where they are classed as a

controlled, restricted discretionary or discretionary activity. I wish to remove this reference to “single allotment” to ensure there is no limit on the scale of residential activities to which the preclusion applies.

214. I propose to clarify that appeals to the Environment Court under section 120 are not available in the event a decision is made on an application for any scale of residential activity in a residential zone with the activity classification of controlled, restricted discretionary or discretionary activity (i.e. for non-complying applications appeals are still permitted).

No appeal against a decision on an objection

215. An anomaly has been identified whereby the preclusion on appeals to the Environment Court for decisions on certain consents could be circumvented in the event that an applicant first objects to the consent authority (or an independent commissioner) against the decision (or conditions) and then appeals to the Environment Court against the decision on their objection.

216. I propose to amend the Bill to ensure that this anomaly is remedied, by specifying that if an appeal to the Environment Court is precluded in the first instance, that preclusion also applies in respect of a decision against an objection. However, I also propose that if, through the bundling of multiple consents (as dealt with in paragraphs 211-213), a preclusion against an appeal to the Environment Court no longer applies, then an appeal to the Environment Court against a decision on an objection should similarly still be available.

Appendix 5: Policy Detail for Minor and Technical Amendments – Māori Participation

Process matters

217. Nothing in this proposal prevents multiple parties from entering into one MWaR/IPA.

218. Submitters on RLAB were concerned that the proposed timeframe for concluding an IPA is too short, especially for iwi and local authorities with multiple arrangements. As some parties will need to build a relationship before entering into their MWaR/IPA, providing more time is likely to result in more enduring relationships and minimise the potential for disputes to arise which would result in a greater financial burden for the parties.

219. ILG have proposed extending the timeframe for concluding an arrangement to 18 months. I propose that Cabinet agree that the timeframe for concluding a MWaR/IPA is 18 months from the date the notice of invitation is received, unless otherwise agreed.

220. ILG have proposed a requirement for local authorities to review their internal policies and processes to ensure they are consistent with the effective implementation of a MWaR/IPA. I propose that local authorities must review their internal policies and processes to ensure they are consistent with any relevant MWaR/IPA within six months of the arrangement being concluded or as otherwise agreed between the parties.

221. ILG have proposed that the parties to a MWaR/IPA must review their arrangement every five years. This would ensure that the arrangement was aligned with the existing and desired level of engagement between the parties. The Local Government Representation Review Process occurs every six years. I propose that the parties to a MWaR/IPA are required to formally review the arrangement every six years or as otherwise agreed by the parties

222. ILG have proposed annual reporting to the Minister by the parties on the effectiveness of MWaR/IPA, having regard to the purpose and principles of the agreement. Local authorities are currently required to provide monitoring and reporting data through the National Monitoring System under section 35 of the RMA. Additional data could be collected in relation to MWaR/IPA as part of this existing process. I propose to require local authorities provide updates on MWaR/IPA as required by section 35 of the RMA, with additional reporting, if any, to be agreed by the parties.

223. Submitters on RLAB and NSFW were concerned that, because iwi have various commercial/business/economic interests, enhanced Māori participation provisions could create issues over conflicts of interest. Addressing conflicts of interest upfront in MWaR/IPA would likely reduce the potential for additional costs and delays associated with disputes and litigation and may also encourage iwi to participate where uncertainty around a perceived conflict of interest may have been an inhibiting factor. I propose that the parties to a MWaR/IPA must agree and record in their arrangement a process for identifying and managing any conflicts of interest.

224. The current IPA provisions are silent on whether arrangements can be terminated. The ILG has proposed that arrangements be amendable by mutual agreement, but not terminable. Enabling unilateral termination would be contrary the purpose of MWaR/IPA. Amending existing arrangements is likely to be the most efficient way of responding to changing circumstances. I propose that a MWaR/IPA will not be amendable or terminable except by mutual agreement of the parties.

Invitation to hapū to establish an arrangement

225. Several iwi and local authority submitters on both the RLAB and NSFW have identified that it is often appropriate to engage with hapū, rather than iwi, on the management of certain resources as these relationships are sometimes held more strongly at the hapū level than the iwi level.

226. I propose that local authorities may seek to form MWaR/IPA with hapū (or iwi) where appropriate. This proposal would allow for flexibility where hapū hold strong relationships with particular areas and resources without committing local authorities to engage with all hapū.

Contents of arrangement may identify whether iwi authorities delegate participation in types of processes, including delegation to hapū

227. Enabling iwi authorities to delegate to another party or parties would assist in the mitigation of iwi authority capacity issues and to support local authorities consulting with an appropriate party. Including specific reference to the delegation of responsibilities to hapū would not change the intent behind this decision, but it would recognise that hapū often hold strong relationships with particular areas and resources.

228. I propose that Cabinet agree that MWaR/IPA may identify whether iwi authorities delegate participation in particular processes, making specific reference to the involvement of hapū.

Dispute resolution: for disputes arising during negotiation of MWaR/IPA

229. Disputes may arise during the negotiation of MWaR/IPA. The dispute resolution process should resolve matters of disagreement in a way that is likely to lead to durable relationship agreements between iwi and local authorities. The role of the Crown in any dispute resolution process should be consistent with the Crown's duties as a Treaty partner and this point was strongly supported in submissions on the RLAB and NSFW. However, it is also appropriate to provide for the resolution of disputes where the parties do not wish to resolve their dispute through Ministerial intervention.

230. The distribution of costs associated with resolving disputes should be equitable and provide appropriate incentives to avoid unnecessary disputes.

231. I propose that Cabinet agree that before any dispute arises, the iwi and local authority:

- must agree to a non-binding form of alternative disputes resolution (ADR) where the process and the mediator/arbitrator is jointly selected and the costs are met by the parties; and

- may seek Ministerial intervention if the parties are still in dispute after using the ADR, and the Minister for the Environment has the authority to appoint a Crown facilitator or direct the parties to particular alternative dispute resolution processes.

Dispute resolution: for disputes arising during operation of a concluded MWaR/IPA

232. Disputes may arise during the operation of concluded arrangements. If no dispute resolution process is provided for, there is a risk that these disputes will escalate, carry on indefinitely and/or result in litigation.

233. I propose that Cabinet agree that that the parties, in their MWaR/IPA, must specify a process for resolving disputes about the implementation of the arrangement (with costs to be met by the parties).

Relationship with Treaty Settlement Legislation

234. On the 23 February 2015, Cabinet noted that any potential conflicts between the proposed reforms and existing arrangements in Treaty settlement legislation will be addressed through appropriate drafting instructions to ensure the existing arrangements will prevail [Cab Min (15) 5/11 paragraph 35 refers].

235. I propose that Cabinet agree to reconfirm the above decision.

Matters to be rescinded

236. On the 23 February 2015 Cabinet agreed to include provisions for Iwi Participation Arrangements. Further decisions were made on 4 June 2015 and 9 November 2015 which relate to the proposals below.

237. In the interests of clarity, I propose that the decisions in Cab Min (15) 5/11 paragraphs 28-33, CBC Min (15) 2/3 paragraphs 126-128 and Cab-15-Min-0199.01 paragraphs 59-60 are rescinded and instead, Cabinet agree to the following proposals.

Resourcing

238. If support for the implementation of MWaR/IPA is not available, there is a risk that the arrangements will fail to meet their objectives, particularly for small, under-resourced iwi and local authorities. The same risk applies to the other Māori participation proposals in the RLAB and NSFW, which place additional obligations on iwi and local authorities.

239. Further work will be undertaken to identify what support, including training and guidance, may be required to ensure the effective implementation of the Māori participation mechanisms of the RLAB and freshwater reforms.

Appendix 6: Policy detail for Minor and Technical Amendments – Other matters

240. The following additional issues have been either identified by officials or raised by submitters (or both) and are being proposed for change.

Amend legal weighting (and enforceability) of section 18A procedural principles

241. The new section 18A requires decision-makers to apply a range of process matters in decision-making.

242. In response to submitter concern and legal advice indicating that this section carries enforceable actions, I propose to amend the legal weighting (and enforceability) of the new section 18A procedural principles by adding qualifiers to the wording (e.g. “must take all practicable steps to” or “must take all reasonable steps to”).

Environment Court to have regard to decision that is subject of appeal or inquiry

243. The RLAB adds a requirement for the Environment Court to have regard to any reports prepared by the consent authority for the purpose of a hearing on the decision, and the outcome of any pre-hearing meetings or alternative dispute resolution (ADR) processes, when determining an appeal on a resource consent.

244. Submitters representing the legal sector consider that this amendment is unlikely to have any influence on the current best practice of the Court. Instead, this proposal may slow down court processes and have unintended consequences. It is considered unlikely to achieve the policy intent of speeding up court processes and resolution of appeals. The strengthening of the judicial conferences and alternative dispute resolution processes proposed by the RLAB will be able to provide the clarity and focus for the any hearing which this amendment was intending to achieve.

245. For the reasons above I therefore propose to remove from the RLAB the requirement for the Environment Court to have regard to any reports prepared by the consent authority for the purpose of a hearing on a decision, and the outcome of any pre-hearing meetings or alternative dispute resolution (ADR) processes when determining an appeal on a resource consent [CAB Min (15) 5/11 paragraphs 112.2 and 120 refer].

246. Cabinet Minute (15) 5/11, paragraph 112.1, proposed a requirement for councils to have regard to the outcome of any prehearing meeting at a council hearing. This was not included in the RLAB as section 99(7) of the RMA already contains this requirement.

Enable heritage orders and designations to be part of a sectional review

247. Schedule 1 provides for the review and “roll over” of existing designations during whole district plan review but explicitly excludes plan changes from this process. Under the current Schedule 1 process, a designation ceases to exist if it is not included in a proposed district plan and the proposed district plan becomes operative. Similarly, Schedule 1 also provides for existing and new heritage orders to be included in a proposed plan that is being reviewed as a whole. These provisions are explicitly excluded from applying to plan changes.

248. An amendment to the RMA is required to enable heritage orders and designations to be included and rolled over when a district plan is reviewed in parts through a series of plan changes.

249. I propose to amend the RMA so that the existing rollover process applies to any relevant plan change that is part of the councils ten year review of the district plan.

Legal effect of rules and limited notified plan changes

250. The new limited notification of a plan change will be able to propose new rules into an existing plan without the public being aware of the proposed rules at the time that they are first notified. I propose that rules included in a plan through a limited notification plan change process should not have any legal effect or be able to be treated as operative until the public is aware of the plan change. Even in a limited notified plan change process the decisions on submissions will be publically notified. I propose that the rules should not have any legal effect or be able to be treated as operative until the decisions on submissions are publically released, as this could be the earliest point in the process that the public is aware of the new rules.

251. If the new rules in a plan change are protecting the natural environment or heritage and should have legal effect upon notification of the plan change, the council will still be able to publically notify rather than limited notify the plan change so that the rules can have immediate legal effect upon notification.

Board of Inquiry technical change: Sub-delegation

252. The Minister for the Environment has the power to cost recover the actual and reasonable costs incurred in relation to a Board of Inquiry deciding on a Nationally Significant Proposal. This power is delegated to the Environment Protection Authority (EPA), which is turn is sub-delegated by the Board to EPA officials.

253. The Minister for Conservation is involved when a Nationally Significant Proposal includes the coastal marine area. Currently there is no parallel power for the EPA Board to sub-delegate cost recovery functions to officials, which means that the EPA Board is lumbered with administrative tasks. I propose a minor and technical amendment to extend the same sub-delegation powers to the Minister for Conservation as exists for the Minister for the Environment with regard to cost recovery.

Board of Inquiry technical change: Stop work provisions

254. Clause 81 of the RLAB inserts new section 149ZG into the RMA. This provides the EPA with the power to stop processing a Nationally Significant Proposal and suspend the Board of Inquiry if the applicant has outstanding costs.

255. Currently these stop work provisions only apply if the applicant fails to pay after 20 working days of receiving a written notice from the EPA requiring them to pay. While the EPA considers that 20 working days might be appropriate in some cases, it may be that a different timeframe is more appropriate. Enabling the EPA to set the timeframe provides greater flexibility in negotiating with the applicant should their payments fall in arrears. This would likely lead to more positive resolution of the matters.

256. To ensure the workability of the equivalent provisions under the EEZ Act, I also propose to remove clause 229 of the RLAB that sets out the requirements to suspend a process when there are outstanding costs. This is because section 147 of the EEZ Act already sets out the requirements for the EPA to suspend processing of a proposal.

Board of Inquiry technical changes: Liability of Board of Inquiry members

257. The RMA sets out that a member of a Board of Inquiry is not liable for anything the member does, or omits to do, in good faith in performing or exercising the functions, duties powers of the board. There are similar provisions in the EEZ Act, for parties performing functions under this Act. I propose to amend the RLAB to clarlfiy that these provisions apply to Boards of Inquiry under the EEZ Act.

Changes to infringement fees for stock exclusion regulations

258. New provisions in the RLAB provide for regulations to be developed to exclude dairy cattle from water bodies by 2017. The new provision also prescribes infringement offences for non-compliance and sets a maximum infringement fee of $750.

259. A Regulatory Impact Statement is being prepared for the regulations and will be provided when Cabinet considers the detail of the regulation. It finds the costs of fencing are the order of $4-$12 per meter depending on terrain and the type of fence. Analysis indicates that the maximum fine of $750 stipulated in current drafting may be insufficient as a deterrent when compared to the costs of fencing. I therefore propose revised infringement regime of $100 per stock unit with a maximum of $2,000.

260. An increase in infringement fines for this purpose is supported by several submissions, which note the current maximum is too low to be an effective deterrent and that it would cost councils to pursue prosecution at these rates, which would then be passed on to ratepayers.

261. I consider that a maximum penalty of $2,000 is necessary to provide a sufficient incentive to comply with the regulations. The Ministry of Justice has been consulted on the provisions for the proposed infringement.

Validation clauses

Water

262. Through the *Next Steps for Fresh Water* discussion document, I have publicly consulted on incorporating a monitoring requirement for macroinvertebrates into the National Policy Statement for Freshwater Management 2014 (NPSFM), as well as this government's election promise to exclude stock from water bodies by 2017. Both of these matters require enabling amendments in the RLAB to be enacted before they can be progressed into regulation.

263. I am planning a second phase of consultation (among other fresh water matters) to occur later in 2016. Depending on relative timings, validation clauses may be necessary to clarify the legitimacy of consultation undertaken on these and any other changes not currently provided for, that may be proposed to the NPSFM.

264. I also propose to consult on national direction relating to aquaculture and dam safety. These proposals will include aspects that rely on expanded scope and flexibility for a NES and/or a NPS. If I commence consultation on these instruments prior to the amendments in the RLAB taking effect, then validation clauses will be required.

Aquaculture

265. I propose to consult on a national environmental standard and/or a national policy statement relating to aquaculture. This will include aspects that rely on expanded scope and flexibility for a NES and/or a NPS. If I commence consultation on these instruments prior to the amendments in the RLAB taking effect, then validation clauses will be required.

Dam Safety

266. I propose to consult on a national environmental standard for dam safety. This will include aspects that rely on the expanded scope and flexibility for an NES that this Bill introduces. If I commence consultation on this instrument prior to the amendments in the RLAB taking effect, then validation clauses will be required.

Crown Minerals Act 1991 amendment: Reduce the minimum notification timeframes of certain mining access arrangements on conservation land from 40 working days to 20 working days

267. The RLAB amends section 49 of the Conservation Act 1987 by reducing the minimum public submission period for concession applications from 40 working days to 20 working days. This matches the timeframe allowed for publicly notified consents under the RMA.

268. The amendment applies only to concessions, therefore any other public notice would still require a notification period of at least 40 working days.

269. Section 61C(3)(a) of the Crown Minerals Act 1991 requires the Minister of Conservation to publicly notify an application for an access arrangement to allow significant mining activities on public conservation land, in accordance with section 49 of the Conservation Act 1987.

270. As an access arrangement is not a concession, it would still require a notification period of at least 40 working days.

271. I consider it makes practical sense to amend the notification timeframe for publicly notified access arrangements as specified in section 61C of the Crown Minerals Act 1991, from 40 working days to 20 working days, through a consequential amendment. This would align it with the amended notification timeframe for concession applications under the RLAB and with resource consents under the RMA. This recommended change was supported by OceanaGold in its submission on the RLAB.

Alignment between the Resource Management Act 1991 and the Conservation Act 1987: Common definition of 'working day'

272. The definition of 'working day' under the Conservation Act 1987 and the Resource Management Act are similar, but have different dates for the cessation of business over the Christmas and New Year period. The term 'working day' is defined in

section 2 of the Conservation Act 1987, and excludes "a day in the period commencing on 25 December in any year and ending with 15 January in the following year". In comparison, a 'working day' is defined in the RMA as excluding "a day in the period commencing on 20 December in any year and ending with 10 January in the following year."

273. I propose to amend the Conservation Act 1987 definition so that the Christmas and New Year exclusion period aligns with the RMA definition.

274. I consider that this would provide a more consistent approach for members of the public participating in processes under each Act and may be more reasonable for staff processing various applications or performing statutory functions in the lead up to Christmas holidays. This amendment minimises overall transaction costs across government agencies and local authorities. There would be no requirement to change the overall number of working days to achieve alignment.

Public Works Act 1981: Solatium adjustment criteria

275. The Regulations Review Committee considered the RLAB clauses in accordance with Standing Order 318(3). The Regulations Review Committee sought justification and criteria for applying clause 172 section 72E, which enables future adjustment to the PWA solatiums amounts via Order in Council.

276. The Minister for Land Information and I advise that clause 172 section 72E is justified because:

- the current $2000 PWA section 72 solatium amount has not changed since 1975. Because the amount is specified in primary legislation it has been difficult and time-consuming to (attempt to) amend. This means that both acquiring authorities and landowners now consider the $2000 is very inadequate for its purpose.
- clause 172 section 72E is intended to introduce a more efficient and appropriate mechanism (the regulations process) for updating the solatium amounts and/or percentages more regularly, so that they maintain their effectiveness and are fitness-for-purpose over time.

277. We propose that clause 172 section 72E is retained and amended to include these criteria and conditions for future adjustments to the solatium compensation levels:

- *Adjustment does not occur more often than once every five years.* The main reason for this condition is that the nature and purpose of the solatiums are not linked to any one factor that requires more frequent updating. Secondly, more regular adjustment could affect the acquisition schedules for larger scale public works, potentially creating inequity for affected landowners.
- *The Minister for Land Information must publicly consult on the proposed solatiums and/or solatium options, including consulting with acquiring authorities and local authorities.* This condition is consistent with good regulatory practice and is appropriate given the level of public interest in and the impact of the PWA.
- *When adjusting solatium amounts and percentages, the Minister for Land Information should take into account (in addition to good-practice policy criteria and the consultation comments*):

a. the purposes of the solatiums (including the differences between a land acquisition and a home acquisition

b. the national average house sales price and the national average land sales price

c. equivalent international compensation

d. the Consumer Price Index (CPI).

- *Solatium amounts can only be increased. Percentages (of acquired land value) can be increased or decreased*. The reason for this clarifying amendment to clause 172 section 72E is that in the medium-long term, relevant costs (average house/land sales prices, CPI) increase, not decrease. For the solatiums amounts to remain relevant, they need to increase. The percentage might need to increase or decrease, depending on the circumstances at the time of adjustment.

278. Officials advise that during the Resource Management reforms policy development, various criteria and conditions for setting solatiums amounts were considered and consulted on. These conditions and criteria (solatiums purposes, the average property sales price, international equivalents, CPI) were considered the most relevant and appropriate and informed 2013 Cabinet policy decisions on the RLAB 'up to $50,000' and 'up to $25,000' solatiums amounts.