Regulatory Impact Statement – Cabinet paper for policy decisions for Resource Legislation Amendment Bill Departmental Report

Agency Disclosure Statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for the Environment (the Ministry, or MFE) to accompany the Cabinet paper "Policy decisions for Resource Legislation Amendment Bill Departmental Report".

Scope of RIS

The proposals that are currently contained in the Resource Legislation Amendment Bill (the Bill, or RLAB) have been previously agreed by Cabinet in February 2015 [CAB Min (15) 5/11 refers], July 2015 [CBC Min (15) 2/3 refers], and November 2015 [CAB-15-MIN-0199.01 and CAB-15-MIN-0245 refer]. This last Cabinet paper approving the Bill for introduction was accompanied by a full Regulatory Impact Statement, which can be found on the Ministry's website at http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/rlab. Many of the previously agreed proposals require some amendment to take into account new information, further analysis, and submitter views received on the Bill. Proposals related to the decommissioning regime under the Exclusive Economic Zone (EEZ) are set out in a separate RIS: "Resource Legislation Amendment Bill 2015: Decommissioning of offshore installations in the EEZ".

Interaction with other initiatives

The changes to the RMA should be considered in the context of other related work programmes that are currently underway, such as the National Policy Statement on Urban Development Capacity. The proposals in the RLAB are expected to complement and support the objectives of these other pieces of work in providing general system-wide improvements as a support to any further targeted measures that may be developed in the future.

Analytical constraints

This RIS is focused on the most viable options to address the issues raised subsequent to the Bill's introduction. Given the nature of the issues covered in the reform program, accurate quantification of the size of problems has not been feasible across all policy options. It is also difficult to identify the exact impact from many of the proposals in this paper as they will affect tangata whenua, local government, stakeholders and communities to a varied degree and with a mix of direct and indirect costs and benefits. The available evidence, or best informed assumptions that have informed the policy development, have been identified throughout the RIS.

Implementation and monitoring

The Ministry has developed an implementation plan and is currently working with stakeholders to develop guidance products. A targeted monitoring and evaluation plan for the reform program is also currently under development.

Consultation

Feedback from members of the public, local authorities and other interested organisations through the select committee's submission process has provided a basis for a number of the changes proposed in this paper. Agencies have also been consulted and given an opportunity to comment on the Cabinet paper. The consultation section of this document details outstanding agency concerns.

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Background

Government introduced the Resource Legislation Amendment Bill in 2015

1. The Resource Management Act 1991 (RMA, or the Act) is New Zealand's primary environmental statute, covering environmental protection, natural resource management and our urban planning regime. The overarching purpose of the RMA is to promote the sustainable management of New Zealand's natural and physical resources.

2. Resource management is a complex area where there is an intrinsic need to weigh up and trade off the often competing interests and values of the various user groups in the system. Any amendments to the legislative framework need to be able to strike the right balance between the various objectives at play.

3. In 2015, Cabinet made final decisions on policy proposals for reforms of the RMA and approved the introduction of a Bill (CAB-MIN-0245 refers). A full Regulatory Impact Statement ("the 2015 RIS") accompanied that Cabinet paper, and was later published on the Ministry's website at http://www.mfe.govt.nz/more/cabinet-papers-and-related-material-search/regulatory-impact-statements/rlab.

4. In December 2015 the Resource Legislation Amendment Bill (RLAB, or the Bill) was introduced to the House and after passing its first reading, was referred to the Local Government and Environment select committee. Submissions on the Bill opened in December 2015 and closed in mid-March 2016.

This RIS outlines some key proposed changes to the Bill

5. The Ministry for the Environment (MFE, or the Ministry) officials have analysed written submissions and attended oral hearings, and we have noted that there are some issues with the Bill as currently drafted. Many of these mirror the concerns raised in submissions. Some of these issues are not substantive and do not require Cabinet approval (such as drafting changes, consequential amendments and clarifications). Other issues do require a policy change. The impacts of the proposed policy changes are set out in this RIS.

6. Additional changes to the decommissioning regime under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) are set out in a separate RIS.

Overarching problem definition

7. The 2015 RIS[1] identified three main overarching problems contributing to the overall inefficiencies and inequalities within the system:
   - there is a lack of alignment and integration of policies and processes across the system
   - resource management processes and practices are not proportional or adaptable
   - the system makes robust and durable decision-making difficult.

8. These problems frequently manifest themselves in resource management processes and practices that are inconsistent, complex and uncertain. This ultimately leads to an increase in time and cost for system users.

9. The current RIS retains the use of these overarching problem definitions. The overarching problems are discussed in more detail below.

There is a lack of alignment and integration of policies and processes across the system

10. To achieve the sustainable management purpose of the RMA, the Act sets out hierarchy of planning instruments, from the purpose and principles in Part 2 of the Act, to national direction tools developed by central government, down through the various regional and district level planning documents prepared by councils.

11. National level objectives should "flow down" through the various planning levels from regional policy statements to district plans and finally to consenting decisions. Although there has been a significant amount of commentary on the perceived lack of national direction for strategic issues in the resource management system, there is also inconsistency in the way existing direction has been implemented in this hierarchy.

12. In contrast to its predecessor, the Town and Country Planning Act 1977, the RMA was designed to allow plan development and decision-making to be undertaken at the level of the affected community. This was so that local biophysical conditions and community priorities could be reflected in plans. For this reason, variation in regional and district plan rules across the country is expected and necessary.

13. However, not all variation is desirable. Inconsistencies and differences between council plans create problems for cross-boundary applicants and submitters. Misalignments with other pieces of legislation in the natural resources sector create duplication or conflict between policies and processes which creates unnecessary problems for activities that require permissions under more than one Act.

14. For the purposes of these reforms, we consider that variation is undesirable when it:

    - results in inconsistent incorporation of matters where national consistency is considered desirable
    - imposes costs on users that are disproportionate to its benefits (if any)
    - contributes to inconsistency and confusion which could be easily fixed with standardisation or alignment
    - means that benefits of other process improvements cannot be fully achieved (eg, electronic notification).

Resource management processes and practices are not proportional or adaptable

15. The RMA as enacted combined around 70 different pieces of legislation into one statute. This considerable consolidation and simplification in the RM system has benefited system users.

16. While there is an obvious tension between the need for simplification and streamlining and the need for processes to be adaptable to different situations, many of the current problems with the RMA indicate that this balance has not yet been struck correctly.

[1] Available at http://www.mfe.govt.nz/sites/default/files/media/RMA/RIS%20-%20Resource%20Legislation%20Amendment%20Bill%202015.pdf

17. In hindsight, it appears that policy makers underestimated the complexity of plan making under the RMA. In particular, how long it would take councils to produce plans, including the length of time it would take to complete public consultation. This affects the ability of plans to be flexible and responsive to new matters.

18. Additionally, many of the commonly heard complaints about the RMA from resource users relate to planning and consenting processes that are considered disproportionate to the activity in question and therefore very costly in terms of time and money.

19. While many applications and plans are large in scale and require the standard process, many examples have been identified where more tailored or streamlined processes would be more appropriate.

The system makes robust and durable decision-making difficult

20. In working towards the goal of sustainable management, there is an inherent need to weigh up competing interests. On a daily basis, decision-makers confront the fact that not all interests align perfectly and that trade-offs in values and priorities must be made.

21. One of the major principles on which the RMA is based – that communities are best placed to make decisions on the issues that affect them – does not envisage that there will be consensus on all important issues. It does, however, place vital importance on the plan-making process as the appropriate venue for assessing and reconciling community objectives.

22. Twenty-five years since the enactment of the RMA, the Act creates limited incentives for decision-makers to proactively provide upfront opportunities to further community objectives. In the name of maintaining all public avenues for participation in RMA processes, the focus has come to be more on the number of different available opportunities to comment or complain (dragging out the process beyond expected timeframes), and less concerned with the quality of input and whether it contributes to better decision-making.

23. In reality, many parties only engage with the RM system at the point of applying for a resource consent. The result of this is that the consenting side of the RMA, which is supposed to implement and reinforce the trade-offs decided on at the earlier plan-making stage, is used to re-litigate these issues. Long-winded appeals, objections and litigation reduce certainty for resource users, undermine the planning process and contribute to risk-averse decision-making.

24. The shortage of skilled and experienced decision-makers results in ongoing capability and capacity issues which also contribute to problems with the robustness and durability of decision-making at all levels under the RMA.

Objectives of the RMA reforms

Three main objectives sit underneath the overarching purpose of the Bill

25. The overarching purpose of the Resource Legislation Amendment Bill (the Bill) is to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way.

26. Sitting underneath this overarching purpose are three main objectives which address the problems outlined above. Specifically, the Bill seeks to achieve:

- better alignment and integration across the resource management system, so that:
  - duplication within the system is reduced and legislative frameworks are internally consistent;
  - the tools under the Resource Management Act 1991 (RMA) are fit for purpose; and
  - the RMA is implemented in a consistent way and the hierarchy of planning documents is better aligned.
- proportional and adaptable resource management processes, so that:
  - there is increased flexibility and adaptability of processes and decision-makers; and
  - processes and costs are able to be scaled, where necessary, to reflect specific circumstances.
- robust and durable resource management decisions, so that:
  - higher value participation and engagement in resource management processes is encouraged;
  - decision-makers have the evidence, capability and capacity to make high quality decisions and accountabilities are clear; and
  - engagement is focussed on upfront planning decisions rather than on individual consent decisions.

Changes to some Bill proposals are required to better meet these objectives

27. In addition to the overarching objectives of the reform package as a whole, the changes currently proposed to the package of proposals as outlined in the Bill seek to:

- improve the workability of certain proposals
- provide clarification
- improve and refine proposed new processes.

28. In this regard, the public consultation through the select committee process has been very useful in raising possible improvements to proposals. Submitter feedback was useful in pointing out unintended consequences that were not identified in the development of the Bill proposals and suggesting improvements. Some of the changes proposed reflect a need to re-evaluate the scope of proposals in light of widespread concerns, whereas some are practical changes proposed by councils to increase the ability of proposals to meet their objectives.

29. Table 1 shows the summary of the resource management reform objectives as set out in the 2015 RIS. The proposals in the Bill are grouped under the intermediate outcomes; however, many proposals will in effect contribute towards multiple objectives. For instance, we consider that the Collaborative Planning Process will contribute both to focusing engagement on upfront planning decisions (intermediate outcome 9) as well as encouraging higher value participation and engagement in resource management processes (intermediate outcome 6).

30. The proposals that we are suggesting policy changes to are highlighted in the table. For the most part, we consider that the proposed changes will make the Bill proposals more likely to meet the objectives outlined in the 2015 RIS. In some instances, however, a re-weighting of objectives was required for certain proposals as a result of consultation feedback and further analysis. More detailed discussion on the revised proposal's ability to meet identified objectives is set out in the relevant impact section for that proposal.

Table 1: Summary of reform objectives

Purpose	**A resource management system that achieves sustainable management of natural and physical resources in an efficient and equitable way**								
Overarching Objectives	**Better alignment and integration across the system**			**Proportional and adaptable resource management processes**		**RMA decisions are robust and durable**			**Minor/technical fixes**
Intermediate outcomes	*Duplication within the system is reduced and the legislative framework is internally consistent*	*The tools under the RMA are fit for purpose*	*The RMA is implemented in a consistent way and the hierarchy of planning documents is better aligned*	*Processes and costs are able to be scaled, where necessary, to reflect the specific circumstances*	*There is increased flexibility and adaptability of processes and decision-makers*	*Higher value participation and engagement in RM processes by those affected is encouraged*	*Decision-makers have the evidence, capability, and capacity to make high quality decisions and accountabilities are clear*	*Engagement is focussed on upfront planning decisions rather than individual consent decisions*	
Reform proposals	Provide for joint resource consent and recreation reserve exchange processes under the RMA and Reserves Act Align the notified concessions process under the Conservation Act with notified resource consent process under the RMA Simplify charging regimes for new developments by removing financial contributions Remove the ability for Heritage Protection Authorities that are bodies corporate to give notice of a heritage protection order over private land Remove the explicit ability of councils to regulate hazardous substances under ss 30 and 31 of the RMA	Streamlined and electronic public notification requirements and electronic servicing of documents Changes to NPSs and NESs	Mandatory National Planning Template to reduce plan complexity and provide a home for national direction New regulation-making power to provide national direction through regulation	Consent exemption for minor rule breaches Consent exemption for boundary infringements with neighbour's approval 10 day fast-track process for simple applications and a regulation-making power to enable this Introduce regulation-making powers providing the requirement for consent decisions to be issued with a fixed fee Require fixed remuneration for hearing panels and consent decisions issued with a fixed fee Changes to the plan-making process to improve efficiency and provide clarity	Provide councils with an option to request a Streamlined Planning Process for developing or amending a particular plan Improve Environment Court processes to support efficient and speedy resolution of appeals Enable the Environment Court to allow councils to acquire land A suite of technical amendments to reduce Board of Inquiry cost and complexity Enable the EPA to support decision-making processes Enable objections to be heard by an independent commissioners	No appeals to Environment Court for: boundary infringements and subdivisions (unless non-complying activities); and residential activities in a residential zone Preclude public notification for: residential activities in a residential zone; and subdivisions applications anticipation by plans Where subdivisions are not permitted, specify who can be considered an affected party (for limited notification purposes Introduce regulation-making powers providing non-notification of simple proposals with limited effects; limited involvement of affected parties for certain activities	Enhanced council monitoring requirements Improve the management of risks from natural hazards under the RMA Improve management of risks from natural hazards for subdivision applications Strengthen the requirements on councils to improve housing and provide for development capacity Clarify the legal scope of consent conditions New procedural requirements for decision-makers	Enhance Māori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements Provide councils with an option to use a Collaborative Planning Process for preparing or changing a policy statement or plan Narrow submitters' input to the reasons for notification Notification decisions will be made in reference to environmental effects and the policies and objectives of plans Require submissions to be struck out in certain circumstances	Minor changes to the Public Works Act to ensure fairer and more efficient land acquisition processes Provide for equal treatment of stock drinking water takes Provide regional councils with discretion to remove abandoned coastal structures Create a new regulation-making power to require stock to be excluded from water bodies Amendment of section 69 and Schedule 3 – Water Quality Classes Enable designations to be reviewed and rolled over when a district plan is reviewed in sections Add validation clauses to allow for consultation on stock exclusion, dam safety and aquaculture.

Overview of changes proposed

32. Some of the changes are minor improvements to the workability of proposals and do not significantly affect their ability to achieve the objectives. Others involve more substantial changes to the policy intent as a result of submitter feedback. Table 2 below provides an overview of the types of changes being made in each of the main sections of the Cabinet paper.

33. The changes proposed are arranged under the following headings:
    - National direction
    - Plan making
    - Consenting
    - Other matters
    - Minor and technical changes

34. In the analysis that follows, we set out:
    - the original problem definition
    - the proposal as drafted in the Bill and any anticipated impacts
    - the problem the current set of changes seek to address
    - the changes currently being proposed and any anticipated impacts.

35. For each proposed change, the ‘status quo’ against which impacts and alternatives are assessed is the proposal as drafted in the Bill.

36. In this document we keep our consideration of alternative options at the level of the particular changes being made to the original proposals, and do not reassess alternative options to the proposals as a whole. Further high level options analysis for each of the proposals can be found in the 2015 RIS, as previously referenced.

Table 2: overview of types of changes made in relation to each section of the RIS.

Proposal		**Address minor errors/drafting oversights or clarification of intent**	**Address unintended consequences**	**Process design improvement**	**Substantial change in aim or scope of proposal**	**Additional new proposal/s**
National direction	NES and NPS changes	✓		✓	✓	✓
	Template changes	✓		✓	✓	
Plan making	Streamlined planning	✓	✓	✓		
	Collaborative planning	✓		✓		
	Māori participation			✓		
Consenting	Exemptions and fast-track	✓		✓		
	Notification	✓	✓	✓	✓	
	Consent conditions	✓				
	Offsetting	✓				
Other matters	Public Works Act			✓		
Minor and technical	Procedural principles		✓			
	Conservation Act			✓		✓
	Validation clauses	✓				
	Implementation timeframes	✓				
	Stock exclusion fines			✓		
	Designation rollover	✓				✓

1 National Direction

37. Proposals covered under the national direction section include:

- Changes to National Policy Statements (NPSs) and National Environmental Standards (NESs)
- Changes to proposed new s 360D regulation-making powers.
- Changes to the proposed National Planning Template

38. Figure A below shows the tools that are proposed to be amended in this part of the resource management system, along with the changes as set out in the Bill (yellow boxes) and the changes that are now being proposed (in the blue boxes).

HIERARCHY OF CENTRAL GOVERNMENT INSTRUMENTS AMENDED BY THE BILL

Section 6 of the RMA (Matters of national importance):
sets out the matters that all persons exercising duties/functions must recognise and provide for

New s6 matter: the management of significant risks from natural hazards

National direction instruments:
set central government policy on matters of national significance

National Policy Statements (NPS)	National Environmental Standards (NES)	S360 regulations
Increased flexibility for NESs/NPSs: • Combined development of NPSs and NESs • Clarify that NPSs and NESs can be applied to specific areas • NPSs enabled to include more specific direction on how policies and objectives are to be achieved Enables NESs to: • Allow rules more lenient than the NES • Specify councils can charge for monitoring • Specify requirements for how councils undertake their functions to achieve standards		New regulation-making power to restrict council planning powers that • Duplicate other legislation • Place unreasonable restrictions on land
Proposed changes: • Redraft the combined process to enable a single consultation process for a national direction proposal. This process will apply to NESs, NPSs, National Planning Standards and section 360 regulations. • Ensure that where NPSs or NESs apply at a sub-national level, national notification is still required • Require changes to be justified through a s32 evaluation where an NES specifies that council rules or consents may be more lenient than the NES • Clarify that the NES can specify requirements and methods other than technical methods and amend the drafting so that an NES does not specify how consent authorities "achieve" the standard. New proposals: • Enable NESs to require regional councils to review existing land use consents, in addition to other consents they can already require a council to review • Clarify that electronic tools, models and databases can be incorporated in NESs and NPSs, and that any requirement to provide a copy to be satisfied electronically. • Enable NESs to specify consent duration • Enable an NES to permit an activity without satisfying the significant adverse effects test where a relevant HSNO approval has been granted		Proposed changes: • Remove regulation making power for restrictions on land, and retain regulation making power for duplication or overlap with other legislation (but removing the subjectivity around when this can occur).

National Planning Standards (formerly National Planning Template):
deliver national consistency to planning instruments: and helps councils integrate community values with national policy

- Set structure and format of plans
- Prescribe content on matters requiring national direction or consistency

Proposed changes:
- Rename from "National Planning Template" to "National Planning Standards"
- Remove power to address matters of national significance, and clarify that National Planning Standards must be consistent with national direction.
- Better define 'matters of national consistency' through more detailed criteria, including supporting the implementation of national direction.
- Allow councils to incorporate National Planning Standards directly into plans without consultation, where this would duplicate consultation on the development of the National Planning Standards.

Changes to national direction instruments

BACKGROUND

Problem

39. Central government direction is an important mechanism for providing consistency and direction on matters that are nationally important, or where regional variation creates excessive costs and difficulties. Councils have considerable discretion as to how they implement the RMA, but there has historically been insufficient use of national direction tools to guide local government.

40. National Policy Statements (NPSs) and National Environmental Standards (NESs) are part of a suite of different tools through which national direction can be carried out.

41. NESs and other regulations affect resource users directly and cover a broad range of matters from technical standards (eg, air quality standards) to standards that act as plan rules (eg, the NES for Telecommunications Facilities). NPSs, including the New Zealand Coastal Policy Statement, state objectives and policies on matters of national significance and have immediate effect on some resource management decisions, eg, consent authorities must have regard to NPSs when making decisions. However, in many cases it takes some time for councils to develop the additional policies and plan rules that are required to give effect to NPSs.

42. There is a lack of flexibility in when and how these tools can be used. This limits their ability to respond quickly and adaptively to specific issues.

43. Existing NPS and NES instruments have been costly and lengthy to develop. This is partly because it is not always clear from the outset which of the national direction tools is most appropriate to address a given problem, but once an NES or NPS has been initiated, there is a statutory process to be followed which does not allow for that instrument to be substituted with another. These 'sunk costs' (in terms of both time and money) can mean that a process is maintained that will not deliver the most appropriate solution to a problem. This reduces the ability of these tools to respond to emerging issues and means that councils have to operate in a 'gap' where a need for national direction has been identified but it is not yet clear how they should address the issue in a nationally consistent way.

44. The broad discretion of the RMA has led to instances of planning rules that unreasonably restrict land uses or restrict land uses that are regulated through other legislation such as the Building Act and the Hazardous Substances and New Organisms Act 1996 (the HSNO Act). This leads to confusion and duplication of costs where resource consents duplicate conditions required through other Acts, or impose greater requirements than the other Acts. The costs imposed on resource users to ensure compliance with these types of rules are not commensurate with the *de minimus* adverse environmental effects (if any) that would result from non-compliance.

Bill proposals

Changes to NESs and NPSs

45. The Bill makes three minor changes to the processes for developing NPSs and NESs. These will address some issues that have previously been identified as limiting development of instruments. The changes are:

- a combined development process for NPSs and NESs, through joint consultation, development and publication, to allow greater flexibility over the appropriate tool to address a resource management issue
- increased powers for NPSs to give more specific direction about how they should be implemented in plans
- allowing NPSs and NESs to be developed in relation to a specific geographic area to address a local resource management issue that has national significance.

46. The following enabling powers for NESs aim to create more flexibility in their use. The need for these has been identified during previous NES development:

- enabling council rules to be more lenient than the NES
- allowing NESs to specify that councils may charge to monitor activities permitted by an NES
- enabling NESs to specify requirements for councils.

New regulation-making powers

47. The Bill also introduces new regulation-making powers to:

- permit specified land uses so as to avoid unreasonable land use restrictions
- prohibit a council from making specified rules or types of rules that unreasonably restrict land use for residential development
- specify rules that will be overridden by the regulations and must be withdrawn because they unreasonably restrict land use for residential development
- prohibit or override rules that duplicate or overlap with other legislation, such as the HSNO Act.

Impacts

Changes to NESs and NPSs

48. Proposed changes to NESs and NPSs will go some way in ensuring that the tools used to achieve alignment through the planning hierarchy are fit for purpose. Specifically, the changes will:

- speed up development, improve integration and reduce costs (where instruments are being developed concurrently)
- improve certainty about how these instruments can be used and allow more flexibility in their use
- improve clarity about when national instruments (and notification and consultation with the public and iwi) can be targeted to a specific geographic area
- support NESs classifying more activities as permitted with greater assurance of compliance monitoring
- increase central government's ability to influence council actions for achieving environmental standards.

Regulation-making powers

49. The new regulation-making powers will facilitate the removal of existing planning rules and prevent future rules that:

- unreasonably restrict development and/or
- impose unreasonable costs and/or
- duplicate controls provided through other legislation.

50. These targeted regulation-making powers are most likely to achieve the outcomes sought by removing existing planning rules and preventing future rules that unreasonably restrict development and/or impose unreasonable costs, and/or are duplication of other controls provided through other legislation.

51. . This option provides certainty in achieving the outcome sought, while providing appropriate safeguards and constraints in alignment with the Legislation Design and Advisory Committee guidelines. We consider that if the regulation-making powers are used, they will go some way in ensuring that planning rules and documents are implemented consistently.

CHANGES TO THE BILL PROPOSALS

Problem

Changes to NESs and NPSs

52. There are a number of issues with the proposed changes to NPSs and NESs. These have been identified through:

- concerns and suggested improvements raised in submissions
- further analysis of proposals by officials
- the ongoing development of national direction instruments by central government.

53. We consider that amendments to the Bill (and the introduction of several new matters) are therefore necessary to ensure that these tools are fit for purpose.

Regulation-making powers

54. There was significant opposition to this proposal from submitters. Submitters were concerned that there are insufficient checks and balances on the potentially far-reaching powers, and a high risk of unintended consequences.

55. Further analysis has determined that the same objectives can be achieved with existing tools, and that the use of these tools rather than the new regulation-making powers may alleviate some of the concerns around sufficiency of process.

Proposed changes

56. The following changes (set out in **Table 3**) are proposed as a result.

TABLE 3: CHANGES TO NATIONAL DIRECTION INSTRUMENTS	
Clause 34: Combined development of NESs and NPSs	**Issue:** • The Bill proposes to introduce an option for combined development of NESs and NPSs. While there are no significant barriers at present to developing a cohesive set of national direction using multiple instruments (see for example, the recent consultation document *Next Steps for Fresh Water*), there is an opportunity to improve the development of national direction in this process and make the combined process more flexible. • The process steps in the Bill as drafted are not well-aligned. It is not clear that other national direction tools (regulations and National Planning Standards (formerly National Planning Template)) can use this process. The existing process would also add a notification step and unnecessary cost to the development of NESs. **Proposed change:** *Redraft the combined process to enable a single consultation process for a national direction proposal. This process will cover NESs, NPSs, National Planning Standards and section 360 regulations.* • The changes will make it clearer how a combined process would work. The steps refocus national direction toward problem solving and enable greater flexibility to adopt the most appropriate instrument for the issue. • The redrafting will signal a one-step consultation process that replaces existing notification and consultation requirements for NPSs and NESs. This is aligned with the current NES process, with optional consultation on wording of the instruments following the first consultation process. There will also be provision for this consultation process to fulfil the consultation requirements for a National Planning Standard or a section 360 regulation if these are deemed more appropriate means of achieving a solution to the issue. • This single step consultation process is a significant change for the development of NPSs, which currently requires consultation on the draft wording. The process will include an option for the Minister to release an exposure draft of a final proposal, recognising that the specific wording of national direction can be very important for decision makers in the resource management system. • This will largely mean that the consultation process for developing an NES or an NPS will be the same, however, it will still be possible to develop a stand-alone NPS or NES. There will only be one step of statutory consultation whatever is chosen. However, if a National Planning Standard proves to be the preferred option for delivering national direction, the Minister will still have to consult on the proposed wording of the Standard. • The current requirement (section 46(a)) for an NPS to seek and consider comments from the relevant iwi authorities and [others] before preparing a proposed NPS will not be included in the new process. The combined process will be largely in line with the current development process for NESs (section 44), which requires the Minister to "notify the public and iwi authorities of the [national direction proposal] and the Minister's reasons for considering that the standard is consistent with the purpose of the Act; and to establish a process that the Minister considers gives the public and iwi authorities adequate time and opportunity to comment on the [national direction proposal]..." • For the avoidance of doubt there is a section which specifies that "nothing in the consultation provisions will override

	the Crown's Treaty of Waitangi, Treaty settlement legislation and other legislative obligations to iwi/Māori. The RMA provides a number of legislative obligations, such as requiring persons exercising powers under the RMA to recognise Māori rights and interests, recognise and provide for Māori relationships with ancestral lands, water, sites, wāhi tapu, and other taonga, have particular regard to kaitiakitanga and take into account the principles of the Treaty. The RMA also enables local authorities to enter into joint management agreements with or transfer powers to iwi and/or hapū. **Alternative options considered:** • *Removing section 46(a) from the RMA (pre-consultation on NPS).* This would reduce the consultation requirements for NPS to one consultation on the specific wording. This would somewhat reduce costs and time. The consultation on specific wording could be undertaken at the same time as notification requirements for NES. However, this would not promote the alignment of tools, nor the intent to focus on problem solving rather than pre-determining an instrument. • *A one-step consultation process with consultation on the final words of the national direction instrument(s).* This would ensure that end users of the national direction could see exactly how it will be worded, which would give them a greater degree of certainty about its likely final form. However, this would mean the benefits of earlier consultation would be lost: wide consultation on the problem to ensure it is well-defined and that policy choices will be well targeted; and the ability to change the proposed instrument without having to restart the process.
Clause 105 New 360D regulation-making powers	**Issue:** • The Bill introduces new regulation-making powers to: a. permit specified land uses so as to avoid unreasonable land use restrictions b. prohibit a council from making specified rules or types of rules that unreasonably restrict land use for residential development c. specify rules that will be overridden by the regulations and must be withdrawn because they unreasonably restrict land use for residential development; and d. prohibit or override rules that duplicate or overlap with other legislation, such as the HSNO Act. • This proposal was one of the most opposed proposals in the Bill. There are also concerns that the new regulation-making power is highly subjective and will result in the Minister having far-reaching powers. The proposal creates duplication in the resource management system, as it is possible to achieve the intent of (a), (b) and (c) through other mechanisms in the RMA and in the proposal for National Planning Standards (formerly the National Planning Template), albeit over a longer timeframe. **Proposed changes:** *Remove parts (a), (b) and (c) of the regulation-making powers and retain (d) to remove and prohibit rules that create overlap between the RMA and other legislation* • The powers that remain in (d), if used, will reduce the ability for councils to have rules on some issues that communities feel are necessary. However, removing overlap between the RMA and other legislation will reduce

	unnecessary costs and regulatory burden in the planning system. • *Remove the subjective wording relating to 360D(1)(d) in 360D(3)(b) and (8) concerning when these regulation-making powers could be used*. This would increase the perception of neutrality in determining whether such overlap or duplication exists between the RMA and other legislation. **Alternative options considered:** • *Insert an explicit reference into the Act to specify topic areas covered by legislation that councils would not be allowed to manage through their plans.* This would preclude the ability to manage overlap between council rules and other legislation in future. However, this would potentially require ongoing changes to the Act, which would not fulfil the objective of creating more flexibility in the national direction system.
Clause 25, 28, 30-32: Area-specific NESs and NPSs	**Issue:** • The Bill proposes to allow NESs and NPSs to be developed to apply to any specified district or region, or to any other specified part of New Zealand. Notification requirements would apply only in those specified areas. The intent of NESs and NPSs is to provide national direction on matters of national importance, not simply to provide direction that can only apply to the whole country. Although there are no specific plans to develop area specific NESs or NPSs, the ability to do so for an area-specific issue has national implications. • A large proportion of submitters considered that where a national instrument is developed to address a nationally important issue, it is appropriate that all New Zealanders should be aware of the issue and able to provide their views on the matter • An NES can already apply to specific areas, under section 43(3), which refers to section 360(2). Clause 25 replaces 43(3), which allows all provisions relating to NESs to be in the same place for ease of reference. This does not represent a change in policy. However, only part of section 360(2) has been imported into the drafting. The residual text is not covered, specifically "*any regulations may apply from time to time by the Minister by notice in the gazette*" and *"[apply] to any specified class or classes of persons'*. There was no intention that this text be removed and we are recommending that it be reinstated in drafting. **Proposed change:** *Amend current drafting to ensure that where NPSs or NESs apply at a sub-national level, national notification is still required.* • This will have no additional impacts than current processes for NESs and NPSs, as all NESs and NPSs currently require national notification. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change. Leaving this proposal as drafted would mean that there is a risk that people, organisations and businesses who have an

	interest in (or would be affected by) a national direction proposal would not find out about it. This lack of engagement in the notification processes would mean there could be a lack of balanced viewpoints in the development of the NPS or NES. This option could be cheaper than currently drafted national notification requirements, but the marginal cost of national over local notification is relatively minor, and is outweighed by the benefits to the policy development process.
Clause 27: Enable rules in plans to be more lenient than an NES	**Issue:** • The Bill enables councils (where appropriate) to set rules in plans that are more lenient than an NES. This will support the policy intent of those NESs designed to enable development, such as the NES for Telecommunication Facilities. • Feedback from the submissions process has indicated that the process steps for applying the 'leniency' provision in an NES are not clear. Submitters have also expressed concerns that this provision could be used to undermine nationally determined 'bottom lines', including environmental bottom lines. However, the provisions in section 43A enable NESs to set plan rules (not only 'bottom lines'), and since those provisions were enacted in 2005, several NESs have been developed to set plan rules. • It is therefore important to specify that use of leniency in an NES will only occur where it is justified, and that this is done in accordance with the purpose of the Act, following appropriate consultation and evaluation processes. **Proposed change:** *Require changes to be justified through a s32 evaluation where an NES specifies that council rules or consents may be more lenient than the NES.* • This provision will mirror that for stringency. Where an NES allows a council to make more stringent rules than the standard, the council must undertake a section 32 evaluation as part of the standard Schedule 1 process. Section 32(4) specifies that "if the proposal will impose a greater prohibition or restriction on an activity to which a national environmental standard applies than the existing prohibition or restrictions in that standard, the evaluation report must examine whether the prohibition or restriction is justified in the circumstances of each region or district in which the prohibition or restriction would have effect." • This type of provision does not currently apply to the proposal for leniency but a similar requirement would ensure that more lenient rules could not be put in place without careful evaluation and justification at the local level. • This requirement may add additional costs to councils. Each council would need to evaluate its individual circumstances before deciding if plans are outside the national standard are required. Clause 27 is an enabling provision, which would need to be carefully considered in each case. The costs and benefits of applying it would be assessed in the development of the NES. **Alternative options considered:** • *Remove option for leniency altogether.* This would reduce the flexibility of the NES development process because it means rules can only be applied where they will very clearly be appropriate for all areas, or there is the risk that

	national rules will be applied where they are not appropriate for all areas. • *Introduce criteria for the use of leniency to ensure national 'bottom lines' are not breached.* This was suggested by some submitters. However, it would be difficult to construct meaningful criteria that would apply in all situations. Any NES has to comply with the purpose of the RMA and this provides high-level criteria that must be satisfied. Any NES allowing councils to apply more stringent or more lenient plan rules will have to justify this decision in line with the purpose of the Act, as will councils for any individual rule.
Clause 26: Direction on how functions are to be performed by consent authorities to achieve the standard	**Issue:** • The intent of this proposal is to increase the scope of NES powers to include the range of methods that councils can be directed to use from the purely technical (as currently enabled), to methods that would enable councils to take a role in assisting or advising resource users who are required to comply with the NES. This would support the flexibility for an NES to address complex resource management issues. • There was no intention for the policy to add extra requirements for councils to "achieve" an NES over and above what they are required to do in section 44(7) and (8) of the Act. The drafting also needed clarification on the term 'methods', as well as a correction of the term 'consent authority'. **Proposed change:** *Clarify that the NES can specify requirements and methods other than technical methods and does not specify how consent authorities "achieve" the standard.* The above proposals are drafting amendments to ensure the original policy intent is reflected. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change. Leaving as drafted could result in confusion and costly litigation for councils if they were perceived to not be "achieving" the NES.
New matter – expand the types of consents an NES can direct a council to review	**Issue:** • 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. Existing land use consents prevail over an NES. There are instances where achieving the purposes of the Act may require a change to conditions of existing land use consents. For example, this could occur where new information arises about the effects of certain land uses, or where cumulative impacts of land uses are creating serious problems. • There are also 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 an NES. • This is particularly problematic where land use, water take and discharge consents are "bundled", as they often are in relation to dams and farming consents for example. If NESs were to be developed in these topic areas, they would not

	be as effective as they could be in dealing with specific issues, even if existing consents are forming a large part of the problem that the NES aims to address.
	
	Proposed change: *Expand the types of consents an NES can direct a regional council to review to include land use consents that are administered by the regional council.*
	• This is an enabling provision, meaning that the impacts of an NES that would do this would be considered in the development of the NES. Impacts would be most significant to existing land use consent holders subject to review who may face a degree of investment uncertainty, and to councils who would face the costs of reviewing consents.
	• There would be three main safeguards to ensure this provision would not be used unnecessarily:
	  ○ a section 32 evaluation report would need to be prepared and considered before an NES is finalised
	  ○ this power could only enable the review of consent conditions, and does not give the NES power to cancel the consent
	  ○ the review would be subject to the existing processes for reviewing consent conditions including potential notification, hearings and appeal.
	
	Alternative options considered:
	• *Allowing an NES to directly override existing consents OR direct a council to review all land use consents, administered by both regional councils and district councils.* Both of these alternatives are deemed to create too much investment uncertainty for existing consent holders. The first alternative would also be risky and costly for MFE when developing the NES. Analysis would need to be undertaken on consents that would be overridden, and then the overriding of any such consents with new conditions would need to be administered without the local context-specific knowledge to assist in writing those new conditions. There is also no central repository of resource consents to draw on.
	• *Allowing an NES to direct a council to review a land use consent where it is bundled with other consents* – this would address the issues where consents are bundled but would not address matters where a land use consent alone is creating adverse effects on the environment that the government wishes to address.

New matter: Enable an NES to specify consent duration	**Issue:** • There is no explicit enabling power for an NES to specify consent duration and it is not clear in the legislation that consent duration is one of the conditions that can be varied under section 43A. Consent duration is set out under section 123, and in the case of aquaculture under section 123A. • There are situations where specifying a consistent duration of consent (where effects are relatively known) would help achieve the intent of an NES. For example, where the NES envisages allowing appropriate transition time for an activity that may need to be phased out or moved in the longer term as part of council planning decisions, but it is desirable to provide investment certainty in the meantime.

	Proposed change: *Enable an NES to specify consent duration.* • This is a new proposal which introduces an enabling provision for the government to use within the framework for developing NESs, just as an NES is currently able to set consent conditions. If used, the provision could provide for appropriate transition times for activities that need to cease in the near but not immediate term. For example, one of the policy proposals NRS agencies are considering for an NES for aquaculture is to specify a short-term consent category (eg, up to ten years) in order to allow certain types of marine farms to continue for a time while councils complete planning to implement the New Zealand Coastal Policy Statement. Aquaculture industry stakeholders have expressed support for the proposal in principle. It will not be possible for the Government to specify a consent duration that is longer than the times specified under the Act. • This is not a retrospective provision and would only allow an NES to specify consent duration for new consents or for consents that are being renewed. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change. Retaining the Bill proposal would constrain the options for managing existing aquaculture space by way of national direction, and other topic areas in future. NESs could continue to specify standards, methods and requirements, but not in relation to consent duration.
New matter: Incorporate electronic materials by reference into NESs and NPSs	**Issue:** • The use of electronic tools, models and databases to inform and assist decision-making is increasing, but at present it is necessary to ensure such materials are available in printed versions at MFE. This can entail the storing of cumbersome amounts of paper which are seldom accessed • The process for incorporating material by reference in an NPS, NES or NZCPS is set out under Schedule 1AA of the RMA. The power is used, inter alia, to incorporate "material which deals with technical matters and is too large or impractical to include in, or print as part of, the NES, NPS or NZCPS". The requirements are that: o material is written o that a copy of the material be lodged with the Ministry for the Environment and be available for sale o amendments or replacements of material be published in the Gazette. • It is not clear that electronic tools, models and databases are deemed to be 'written materials'. Furthermore, printing electronic tools, models and databases can entail thousands of pages which must be updated regularly. Providing these in hardcopy is burdensome for MFE. **Proposed change:** *Amend Schedule 1AA to clarify that electronic tools, models and databases can be incorporated in NESs and NPSs, and that any requirement to provide a copy to be satisfied electronically.*

	• The proposal changes the requirements surrounding NESs and NPSs to allow for more recent technologies to be included. Specifically, there are instances where electronic tools, models and databases are critical to the implementation of an NES or NPS but are not easily incorporated into the instruments • This will benefit the development of NESs and NPSs, as it will support consistent use of electronic materials across the country when appropriate for the NES or NPS at hand. The need is most immediate for NESs, which are described as technical standards. Using such tools will support councils' implementation of NESs and NPSs, where nationally agreed tools, models or datasets are the most efficient way of supporting the instrument and corresponding rules in plans. **Alternative options considered:** • *Updates of electronic materials that are incorporated by reference do not need to go through a gazettal process*. This option was considered, but would be difficult because it challenges the principle of legal certainty and it is important that a particular version of a tool can be referenced • *Extend this proposal to Schedule 1 in general,* for the same reasons as those that apply to national instruments. Schedule 1 covers incorporation by reference in policy statements and plans developed by local government, with the same requirements as those in Schedule 1AA. However, no analysis has been done of the demand for such changes or whether council use would require any different provisions to those for central government.
New matter: Enable an NES to permit an activity without satisfying the significant adverse effects test where a relevant HSNO approval has been granted	**Issue:** • Under section 43A(3), an NES cannot classify an activity as permitted if it has a significant adverse effect on the environment once any permitted activity conditions are applied. The intent of the section is to ensure an NES does not permit activities that require site-specific consideration. Attempts to develop NESs that include matters that are dealt with under the HSNO Act have been halted by this provision. For example, council rules on vertebrate toxic agents (VTAs) unnecessarily duplicate the controls set under the HSNO Act, but it has proved difficult to make an NES for VTA use because of the wording of this test. A regulation under section 360 is being developed instead. It is more appropriate that such matters are developed under an NES. • The requirement to assess whether an activity meets section 43A(3) overlaps to a large extent with EPA decisions under the HSNO Act. The EPA can only approve an application if the positive effects of the hazardous substance or new organism outweigh the adverse effects. For new organisms, minimum standards also apply so that the EPA must decline applications for full release if the organism is likely to cause significant effects such as displacement of any native species, deterioration of natural habitats, or significantly affect New Zealand's inherent genetic diversity or human health and safety. It is appropriate that hazardous substances and new organisms are assessed under the HSNO Act, without duplication in an NES. **Proposed change:** *Amend the Act so that if an activity that is intended to be permitted under an NES utilises an organism or*

	hazardous substance approved by the EPA under the HSNO Act 1996, it is not subject to 43A(3). • The EPA can apply controls to address any adverse effects of the hazardous substance or new organism. However, an NES is an activity-based standard and there may be effects of an activity that go beyond the substance itself, in which case it is appropriate for the NES to provide further conditions if it permits the activity involving the substance. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change. The Bill proposal unnecessarily limits the development of some NESs, and it is not considered appropriate for the RMA to apply a duplicate assessment of a substance to that of the EPA under the HSNO Act.
Clause 29: consequential change	**Issue:** • Clause 29 inserts a new section setting out the contents of an NPS, including expanded powers for an NPS. All of these powers will also be available to a National Planning Standard. One of these is the ability of an NPS (or a National Planning Standard) to put constraints on the content of plans, and require that councils implement this without using a schedule 1 process. **Proposed change:** *Make consequential changes to section 55 of the Act to ensure an NPS can require councils to implement any constraints on the content of their plans without using a Schedule 1 process. This power will also apply in relation to National Planning Standards.* • This change has no regulatory or financial impacts for central or local government. Any such impacts would need to be considered during development of an NPS or National Planning Standard that seeks to out constraints on council plans. **Alternative options considered:** • No alternative options other than the proposal as currently drafted were considered for this option.

Impacts

57. The national direction changes in the Bill seek to achieve the following objectives:

- ensuring that the tools in the RMA are fit for purpose by:
  - increasing their flexibility and adaptability
  - reducing the time and cost of development
- enabling better alignment and integration in the resource management system.

58. The changes proposed to the proposals as currently in the Bill retain the overarching objectives outlined above. However, they also address issues raised in submissions around the scope and overlap of the suite of new and amended tools proposed in the Bill.

59. Many of these proposals are enabling provisions or amendments to enabling provisions (the three new proposals, and changes to area specific NESs and NPSs, and leniency provisions). It is highly unlikely that all these enabling provisions would be exercised in the same NES. The combined impacts are therefore not highly relevant in the assessing the suite of proposed changes to the Bill.

Changes to support flexibility and adaptability of tools

60. All of the proposed changes support flexibility and adaptability in the suite of national direction tools, supporting the reform objective that tools in the RMA be fit for purpose.

61. The proposed set of refinements to the original national direction instruments proposals, including the changes to the National Planning Template proposal, clarify the role of each of the national direction tools in the suite and provide greater flexibility. The changes will still retain the overall powers of the package to comprehensively address resource management issues.

62. We have specifically recommended amending those proposals that would not have supported the alignment of the resource management system.

Changes to reduce the time and cost of development

63. We consider that the amended joint process for national direction, area-specific NPS and (to a lesser extent) incorporation by reference of electronic tools are all changes that will contribute to reducing the time and costs of the development of national direction instruments, if used.

Changes to address issues of scope raised through submissions

64. The proposed changes to 360D regulation-making powers address concerns about the potentially wide-ranging nature of new powers. These changes provide some limits to regulation-making powers and signal more clearly the areas of duplication and redundancy that the proposals primarily aim to address. They will reduce the chance of unexpected consequences that may result from the ‘chilling effect’ of broad central government powers.

Changes to the proposed National Planning Template

BACKGROUND

Problem

65. The RMA is largely put into practice by local government. However, central government can provide direction on specific national, regional or local issues, in a number of different ways.

66. Specific instruments under the RMA to provide central government direction include National Policy Statements (NPSs) and National Environmental Standards (NESs). These set standards, objectives and policies which apply at a national level. In addition to the above instruments, changes to improve national consistency can be made:

- by means of regulations
- through the exercise of Ministerial intervention powers
- the use of special legislation
- by amending statutory functions and powers of decision-makers under the RMA itself.

67. Since the RMA was introduced in 1991, a common criticism from a range of participants in the RM system is that there has been insufficient guidance from central to local government. There has also been an absence of any national standards setting out how plans should be structured and formatted. This horizontal and vertical misalignment of policies and plans within the resource management system has led to a range of problems, including that:

- plans are complex, inconsistent, and hard to compare between regions and districts
- there is considerable variation in how and whether NPSs are given effect to
- there is duplication of local authority efforts in developing provisions that could be standardised nationally
- plans are difficult to monitor and audit consistently
- there is inadequate 'flow down' through the planning hierarchy from national to regional and local plan making, and on to decision-making on consent applications.

Bill proposal

68. To address these issues, the Bill introduces a new National Planning Template. As set out in section 58B of the Bill, the purpose of the National Planning Template is to:

- assist in achieving the purposes of the Act
- set out requirements or other provisions relating to any aspect of the structure, format, or content of regional policy statements and plans to address matters that the Minister considers -
    - to be nationally significant
    - to require national consistency
    - to be required to address any of the procedural principals set in section 18A.

69. Under the Bill as currently drafted, the National Planning Template has a potentially very wide scope. It can specify:

- the structure and format of plans
- requirements for electronic delivery
- objectives, policies and rules on any topic that must or may be included in plans.

Impacts

70. A common structure and format would significantly improve the consistency and user-friendliness of plans (for users who use plans from multiple regions), and would reduce the duplication of effort required to make plans. While this may reduce councils' ability to come up with innovative solutions for plan making, we consider that this risk is outweighed by the considerable benefits of the proposal. The template's structure and format can also help to reduce the long-term costs of plan making (although there is likely to be an increase in short-term implementation costs), improve plan's comprehensiveness, improve links strategic and spatial plans, and improve the links between objectives, policies and methods and rules.

71. The resource legislation amendment package is an opportunity to add template provisions into the primary legislation. If they are not included now it could be some time before these can be officially incorporated. The template could still be developed for voluntary use, but this would mean losing many benefits.

CHANGES TO THE BILL PROPOSAL

Problem

72. Submissions to Select Committee were generally very supportive of a Template to standardise "basic" plan elements, such as structure and format and definitions. However, a range of concerns were raised about the wide powers of the Template and the lack of clarity in its relationship with National Policy Statements (NPS) and National Environmental Standards (NES). In addition, submissions identified a lack of clarity about how the Template would be implemented.

73. We agree that it is unclear how the "national significance" aspect of the template relates to the national direction which is already possible under NPS and NES. This lack of clarity is likely to lead to legal uncertainty.

74. With respect to implementation of the Template, the Bill indicates that some implementation will require a Schedule 1 process and some will not. But it does not clearly indicate when each of these options should be used. If implementing most Template content requires a full Schedule 1 process, the standardised provisions may not remain "standard", as there is nothing in the Bill that prevents Template provisions from being iteratively changed by decision and appeals.

Proposed changes

75. The following changes (set out in Table 4) are proposed as a result.

TABLE 4: CHANGES TO THE NATIONAL PLANNING TEMPLATE	

Scope	**Issue:**
	• The scope of the Template is potentially very broad, and there is a lack of clarity on the nature and intent of the Template and its role within the suite of RMA instruments.
	
	Proposed changes
	• *Rename from "National Planning Template" to "National Planning Standards"*
	  o This better reflects the instrument's role in prescribing standardised content for matters of national consistency (as opposed to being a pure formatting tool without substantive content)
	• *Remove power to address matters of national significance, and clarify that National Planning Standards must be consistent with national direction.*
	  o This will reduce overlaps in scope and purpose of the National Planning Standards with other national direction instruments
	• *Include additional criteria for the purpose of the National Planning Standards eg, supporting the implementation of national direction.*
	  o This change makes the purpose of the National Planning Standards more explicit
	
	Alternative options considered:
	• No alternative options other than retaining the proposal as currently drafted were considered for this change.

Implementation	**Issue:**
	• It is not clear how the National Planning Standards will be implemented by councils. There is a lack of incentives to adopt standardised mandatory content.
	
	Proposed change:
	• Enable a National Planning Standard to *direct councils to:*
	  o *incorporate content directly into plans without further local consultation*
	  o *choose content from a suite of provisions (eg, zones) and incorporate this content into their plans using a Schedule 1 process. This process would focus on how the content is applied to the local context and would not repeat consultation already undertaken on the wording of the national planning provision.*
	• This will ensure the effective rollout of standardised planning content and prevent re-litigation of matters through the Schedule 1 consultation process that has already been publicly consulted on in the development of the particular Planning Provision.

	Alternative options considered: • No alternative options other than retaining the proposal as currently drafted were considered for this change.

Impacts

76. These changes will improve the effectiveness of the new instrument and give it a clear place within the national direction system. The changes will reduce overlaps in scope and purpose of the Template with other national direction instruments. It will also clarify that the National Planning Standards:

    - help achieve a level of national consistency or standardisation in planning
    - support the effective implementation of national policy developed in NPSs and NESs, and through regulations.

77. To achieve this, the National Planning Standards require a comprehensive implementation strategy. Implementing the first set of National Planning Standards will be phased to align as best as possible with each council's plan review cycle. This will minimise the short-term implementation costs for councils to update their plans. These costs will be off-set by reduced plan-making costs over the long-term.

78. By increasing this clarity and reducing duplication, it is considered that these amendments to the proposal will make it more likely to meet the objectives of:

    - ensuring that the tools in the RMA are fit for purpose
    - enabling better alignment and integration in the resource management system.

2 Plan making

79. Proposals covered under the plan making section include:

- Changes to the Streamlined Planning Process
- Changes to the Collaborative Planning Process
- Māori participation changes.

Changes to the Streamlined Planning Process

BACKGROUND

Problem

80. The existing process for preparation, change and review of policy statements and plans is set out in Schedule 1 of the RMA. This process involves public notification of the proposed plan or policy statement, a call for submissions, followed by further submissions from certain particularly affected parties. Council officers then prepare a report on submissions, which is followed by a hearing if any submitter has indicated that they wish to be heard. Appeals to the Environment Court are available on the final decisions made by the council to anyone who has made a submission.

81. Plan making under this process can take a long time. Since 1991, plans have taken an average of six to eight years to be developed and become operative. Government has therefore used special legislation or regulations to ensure that plan-making processes are timely enough to respond to priority issues.

Bill proposal

82. The Bill introduces an optional Streamlined Planning Process (SPP). This provides a new plan-making process that can be made sufficiently proportional to the scale and nature of the issues involved.

83. Under this proposal, councils will be able to request, directly from the Minister, a process to address matters such as:

- the implementation of national direction
- a significant community need (or urgency)
- the unintended consequences of a plan
- where councils wish to develop combined plans.

84. Any SPP directed by the Minister must, as a minimum, provide for:

- consultation with affected parties (including iwi)
- an opportunity for written submissions and report showing how those submissions have been considered
- an assessment of costs and benefits.

However, the Minister can add additional process steps (such as a hearing, or a technical review, if the matter is highly technical in nature).

85. Once agreed, the council must follow the SPP as set out in the Minister's Direction, rather than the standard plan-making process as set out in Schedule 1. Under the SPP, the council then sends its draft decision on the proposed plan or plan change to the Minister for approval. This step acts as a check on the quality of the council's decision, as it is proposed that there will be no appeal rights on decisions made under a SPP except judicial review..

Impacts

86. The proposal will provide for more flexibility in planning processes and timeframes and allow these to be tailored to specific issues and circumstances. This will enable, for example, a faster planning process for urgent issues, or where there is a community need, as well as faster implementation of national direction. This flexibility in the choice of process will avoid the need for special legislation and provide greater certainty within the system compared with developing ad hoc special legislation.

87. The removal of appeal rights is necessary to reduce risk of delay and ensure the objectives of the streamlined process are not undermined. It also reinforces the role of elected decision-makers. It will also realign RMA plan making (in certain circumstances) with the process for developing a national environmental standard, which provides for comments on the proposal but does not have any rights of appeal.

88. However, public concerns around reduced opportunities for participation and loss of appeal rights may mean that councils will not request a streamlined process, or that their decision to request it may be judicially reviewed. The process will be very resource intensive for the Ministry for the Environment and workload will be difficult to predict given that the process is triggered by council request. Councils may also be less willing to make a request if they have to seek the Minister's approval of their draft decision on the proposed plan or plan change.

89. Risks can be mitigated to some extent by additional features being included to specify the purpose and criteria around the use of the power. We consider that it is appropriate that there are constraints on a power that will modify rights that are set out in a primary statute. The ability to reduce public participation opportunities and appeals rights should not be an unfettered discretion. The objective is to ensure that the power is reasonably flexible but also operates in a transparent manner and there is certainty. It is also important that the interests of the Crown and iwi participation are not compromised through the process.

CHANGES TO THE BILL PROPOSAL

Problem

Private plan changes

90. A private plan change process can be used to change any provision (or introduce new provisions) in any district or regional plan. The main difference with a private plan change is that someone other than the council initiates the plan change process and sets the agenda and timeframe. They may be used, for example, by a landowner or developer in order to provide for some type of private benefit. In other respects, a private plan change is much like any other change to a plan. The costs of a private plan change that is accepted and processed by councils are met by the initiator.

91. It is not currently clear whether and how privately initiated plan changes can enter the SPP or what rights a plan change initiator has in meeting the costs of an SPP. This uncertainty could result in legal challenges around the costs of the SPP that are passed onto private plan change initiators.

Designations and heritage orders

92. Under the RMA, areas of land can be designated for use as network utilities (such as roads and telecommunications facilities) or large public works (such as schools and prisons). These designated areas (or 'designations') are identified in district plans, usually in the maps. Once a designation is in the plan, the proposed works can be carried out there at any time. A heritage order is similar in effect and has a similar process to a designation. Where a heritage order is included in a district plan, no one, without the prior consent of the heritage protection authority, can do anything that would compromise the effect of the heritage order.

93. Currently if a designation is not included in a full plan review, the designation ceases to exist once the new plan becomes operative. The clauses of Schedule 1 which address incorporating heritage orders and designations into a proposed plan have been omitted from the current drafting for the SPP. This will result in uncertainty and a

potential for legal challenge around the inclusion of any designation or heritage order in an SPP.

94. It is beneficial to enable new designations to be included in an SPP process to provide for integrated land use planning to occur. The types of public work that are designated can support the proposed development or require careful planning around what can occur adjacent to the public work.

Minister's Direction to councils

95. The Minister's Direction sets out the process steps the council must undertake for a particular SPP.

96. The Bill only provides for councils to initiate a change to the direction. Unforeseen issues could arise during the SPP process and the Minister may want to amend the direction to ensure that the issues are adequately considered in the plan-making process; eg, further consultation or specialist input may be required to ensure that informed decisions are made during the process.

Proposed changes

97. Three sets of changes are proposed to the SPP as set out in the Bill (outlined below). These changes are intended to clarify how designations and private plan changes are included in a SPP.

Allow private plan changes to enter an SPP

98. Plan changes may be initiated by the council or requested by private individuals.

99. For a private plan change to be eligible to enter an SPP, the council must either adopt the plan change as their own or obtain the agreement of the person who initiated the private plan change before making a request for an SPP. When a private plan change is accepted by a council it remains the initiator's plan change and they are charged the costs of processing the plan change.

100. The initiator of a private plan change will also retain the ability to withdraw their plan change from the process at any point.

Provide for designations and heritage orders in an SPP

101. It is proposed that plan changes that include both new and existing designations or heritage protection orders can be included in a request for an SPP, subject to the agreement of the requiring authority or the heritage protection authority (HPA).

102. The relevant requiring authority or heritage protection authority will have the right to comment on the designation/heritage order aspects of the proposed planning instrument before the local authority finalises its draft decision and sends it to the Minister for approval.

103. If the Minister seeks any reconsideration or change to a designation when the proposed planning instrument is sent for approval then the Council will reconsider the proposed planning instrument and then send any changes to the relevant requiring authority or heritage protection authority. They will then have the right to comment on the designation/heritage order aspects of the proposed planning instrument before it is resubmitted to the Minister for approval.

104. When the Minister has approved the proposed planning instrument the recommendations on designations/heritage orders are provided to the relevant requiring authority, which makes the final decisions on their designation/heritage order. This retains the current Schedule 1 process where the requiring authority makes the final decision unless it is appealed to the Environment Court.

105. Where the requiring authority agrees to the approved recommendation without change, appeals will be limited to points of law in the High Court. If the requiring authority amends the recommendation as part of their final decision then merit appeals on any amended aspect of the decision will be available through the Environment Court. For example, if the requiring authority amends one of the ten recommended conditions on the designation then that condition can be appealed to the Environment Court but the other nine conditions (and other designation aspects) can only be appealed to the High Court on a point of law.

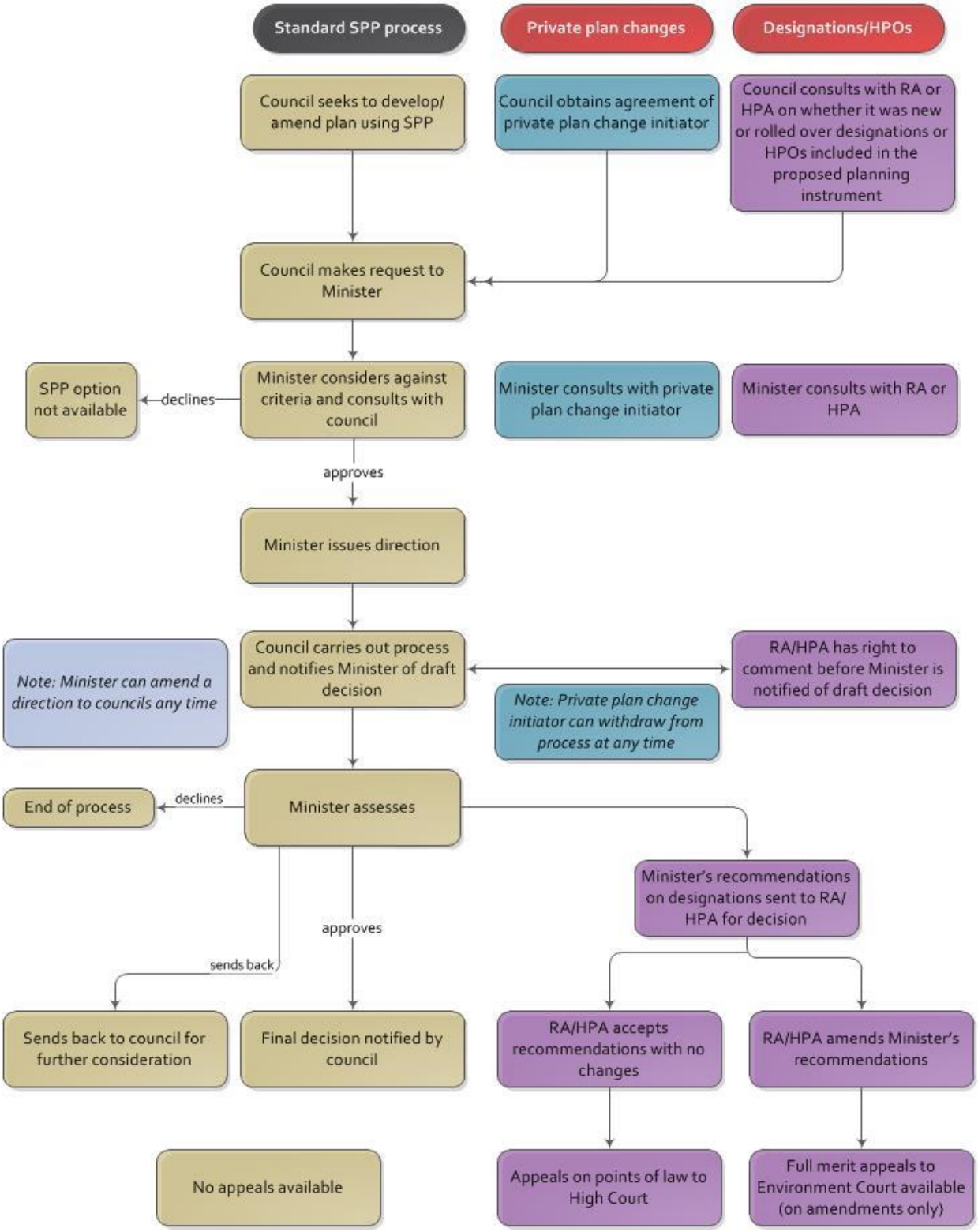
Enable the Minister to amend a Direction to councils

106. The proposed change will allow the Minister to amend the Direction at any time following a consultation process. The Minister could, for example, specify that the council must carry out further consultation on the proposed planning instrument to address an unforeseen issue.

107. Figure B below shows the key changes (in blue and purple boxes) that are being proposed to the current SPP (as set out in the Bill).

STREAMLINED PLANNING PROCESS

Fast track process for urgent/important issues (or to rectify minor error in plan)



Impacts

108. Providing clarity around how designations and private plan changes will be provided through an SPP will provide some certainty for the requiring authority and private plan change initiator around the process that will be followed and their rights under an SPP. It will enable consideration of a proposed planning instrument and any necessary infrastructure being provided for by way of designations, in an integrated manner.

109. The amendments will clarify the rights that a private plan change initiator has in the Streamlined Planning Process and protect their existing Schedule 1 rights to withdraw a plan change that is processed as a private plan change (not adopted by Council). The change should not significantly delay the SPP process. Costs may increase slightly but not significantly. Consultation requirements and the ability to withdraw are considered important to protect the initiator, who pays the costs of the private plan change.

110. It is proposed to provide for limited appeal rights for designations in the SPP due to the nature of designations and their impact on private property rights. The introduction of appeals in SPP for designations will not hinder the rest of the plan (or plan change) proposed under an SPP coming into effect once the Minister's approval has been obtained.

111. Clearly enabling the Minister to amend the Direction mirrors the existing ability of councils to request an amendment, as provided for in the Bill. It is possible that the perceived expansion of the Minister's power in this regard will mean that councils will be less willing to use this process. However, overall we consider that there is no significant change to the Minister's powers as compared to the current Bill proposal, and the relative powers of the Minister and the council balance each other sufficiently. It is also important that the SPP is able to respond to matters or issues that were not foreseen (eg, raised through submissions) when the Direction was initially developed.

112. Cumulatively, we consider that the amendments to the proposal will make it more likely to meet the objective of increasing flexibility and adaptability of processes and decision-makers.

Changes to the Collaborative Planning Process

BACKGROUND

Problem

113. Decision-making institutions and incentives under the RMA are not suited to making difficult decisions about complex problems where different values are at play. The lack of front-end engagement by councils on the full range of interests and values in the community, including iwi/Māori, has led to an adversarial approach to planning and results in issues that should be resolved through planning processes being re-litigated or dealt with on a consent-by-consent basis.

114. While there is nothing to stop councils carrying out collaborative processes under the RMA as it currently stands, the existing Schedule 1 process provides *de novo* appeal rights which enable the Environment Court to hear matters afresh, including new evidence and information not presented or considered earlier in the planning process. This does not incentivise early engagement in a planning process and decisions that have been made collaboratively could be undermined later through litigation.

Bill proposal

115. To address these issues, the Bill introduces a new optional Collaborative Planning Process (CPP). This is based on the approach recommended by the Land and Water Forum (LAWF). However, it differs from the LAWF recommendation that it be compulsory for water plans, and is now proposed to be available for all planning matters.

116. Key features of the CPP as proposed in the Bill are outlined below.

- A balanced and representative collaborative group is appointed (including at least one iwi representative if nominated).
- The collaborative group presents the local authority with a consensus report, which is publicly notified. The consensus report must include:
  - recommendations on which the group has reached consensus,
  - a summary of the costs and benefits identified in relation to the recommendations,
  - any alternatives considered,
  - a record of matters on which the group did not reach consensus, and
  - a summary of how the group considered the views of the community in coming to its recommendations
- The local authority drafts a policy statement or plan based on the consensus report, during which advice must be sought from iwi authorities. The local authority is free to draft its own provisions on parts of the plan or policy statement on which the group has not reached consensus.
- The local authority publicly notifies the proposed plan or policy statement, calls for submissions and then provides a summary of the submissions to the collaborative group and iwi for comment
- Hearings are led by a review panel, which is able to require mediation and undertake cross-examination. The review panel must comprise 3 to 8 members who are accredited (under s 39A of the RMA), have appropriate knowledge, skills and experience in relation to the RMA, the local community and the

matter that is the subject of the hearing (these and further criteria are outlined in clause 64 of the Bill). The review panel provides recommendations to the local authority, however the review panel must not recommend any changes to a proposed policy statement or plan unless changes are required:
    - to be consistent with the consensus position of the collaborative group
    - to ensure compliance with legislative or regulatory requirements including any Treaty legislation
    - because submissions raised matters that are in scope of the plan, but were not previously considered by the collaborative group or the local authority.
- The local authority makes decisions on the review panel's recommendations and notifies the amended plan.
- Appeals are limited to points of law (to the Environment Court) unless the local authority deviates from the review panel recommendations in preparing the final plan. In this case, appeals to the Environment Court by way of rehearing (rather than the usual *de novo* hearings) are available.

Impacts

117. The CPP could be beneficial for common-pool or contentious planning matters where there is resource scarcity and/or different values within the community need to be balanced. Where the planning matters are simple or minor, they would not require the level of investment of a collaborative process. For this reason the CPP is optional for councils.

118. The removal of *de novo* appeal rights is necessary to incentivise the community to participate meaningfully throughout the process and ensure the consensus position of the collaborative group is maintained.

119. This proposal will better enable robust plan making under the RMA, taking into account community values and interests early on in the planning process, and thereby reducing litigation costs and lengthy delays at the end of the plan-making process.

CHANGES TO THE BILL PROPOSAL

Problem

Appeals

120. The nature of appeals under the CPP differs to the current Schedule 1 planning process, which allows *de novo* appeals on merit in all instances[2]. Under the CPP, appeals are available on merit by way of rehearing but only where the decision of the council differs from the recommendations of the review panel.

121. Changing the nature of appeals and their availability is a key means to:

    - achieve upfront engagement in the planning process
    - encourage reaching consensus
    - ensure the consensus position is given effect to in the final plan.

    It is an important part of the policy with respect to the collaborative planning process.

[2] Note that in both processes appeals on points of law are always available.

122. However, submitters have raised issues with some of the details of the appeals process. They also questioned whether natural justice is sufficiently provided for in all cases. For example, on the parts of the plan where there is no consensus, the council can currently draft the provisions itself, and there will be no appeals available on these parts where the council accepts the recommendations of the review panel. Concerns have been raised on the potential lack of testing of provisions drafted in this way.

123. Additionally, as currently drafted the review panel is constrained as to what it can recommend (to avoid unduly deviating from consensus position). This has resulted in uncertainty regarding the review panel's ability to provide recommendations on the proposed plan, based on the subsequent information provided to it from submitters.

Designations and heritage orders

124. Provisions of the RMA which address incorporating heritage orders and designations into a draft plan have not been included in the Bill. This is an oversight from when the CPP was available for freshwater only.

125. If a district or unitary council elects to use the CPP for a plan review then they must be able to address existing designations and heritage orders within that process. In addition, the opportunity to consider notices of requirement (new designations) that may be part of the plan change or review also needs to be included. In order to achieve the aims of the reforms it is necessary to ensure that a council is able to consider all relevant elements of a plan within a single process.

Proposed changes

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

126. A number of changes are proposed to address concerns raised through submissions to refine the nature of the appeals process. Firstly, there are proposed amendments to the ability of the review panel to recommend changes. As currently drafted, the review panel is constrained from making recommendations which differ materially from the collaborative group's consensus position (cl 53(4)) and are further constrained by a 'scope envelope' in clause 53(5). This sub-clause restricts changes made by the review panel to be within: the notified plan, submissions, iwi comments on the summary of submissions and any material provided to the panel over the course of the hearing.

127. The role of the review panel is to:

- test the extent to which the consensus position is given effect
- test the extent to which the notified plan achieves the purpose of the Act
- hear submissions and make changes necessary arising from submissions.

128. In order for them to undertake this role, and to strengthen the final plan, it may be necessary for the review panel to be able to make changes to the consensus position. However, we propose that this should still be within the current scope envelope (contained in cl 53(5)) and that the collaborative group's response should be sought, indicating support or otherwise for the change. Where the collaborative group agrees with the review panel's proposed changes, the appeal process remains the same. Where they disagree, we are proposing that appeals on merit

will be available (on those parts of the plan) regardless of which recommendation the council puts in the final plan.

129. In practice, the collaborative group and the review panel might work together to moderate their views and reach a mutually agreed recommendation. We do not propose to make this exchange explicit in the drafting but instead address it through guidance. The rationale for leaving it to guidance is to provide flexibility and to reduce the level of prescription that some submitters have commented on.

130. Where the group does not agree with the change proposed by the review panel, appeals on merit are available as per current drafting on those parts of the plan to:

- the collaborative group
- anyone who made a submission or further submission
- iwi who commented on the summary of submissions.

Provide for the collaborative process to address designations and heritage orders

131. The collaborative process outlined in the RLAB has not made specific provisions for how designations and heritage orders will be considered. This detail is necessary, as currently under the RMA both designations and heritage orders have different decision-makers (requiring authorities and heritage protection authorities respectively).

132. For the purposes of achieving both efficient and effective plan making it is necessary to align the processes so that all plan provisions can be considered within one process. At the same time, it is necessary to provide flexibility to requiring and heritage protection authorities so that the current decision-making pathways can prevail where they choose not to be involved in a CPP.

133. Under the RMA, Part 8 and select clauses of Schedule 1 address designations and heritage orders processes.

134. Relevant Schedule 1 clauses relate to existing designations which must be **'rolled over'** (with or without modification) into a proposed plan plus any new designation/heritage orders initiated by the territorial authority.

135. New designation/heritage order applications (**notice of requirement**) from requiring authorities other than a territorial authority (such as a network utility operator or Minister of the Crown) can be considered through four pathways under the RMA. They are:

I. direct referral to the EPA (s145)
II. direct referral to the Environment Court (s198A)
III. being notified (as in a consent) with a submission/hearing process (s169) or,
IV. being notified as part of a District/Unitary draft plan (s170).

136. In all cases of direct referral, the final decision-maker is the entity the application was referred to. In the case of council run processes, the council makes a recommendation to the requiring authority and the requiring authority is the final decision-maker. The fourth process above (iv. being notified as part of a draft plan) is most similar to what is being proposed where a collaborative process is used.

Process for a notice of requirement

137. A notice of requirement (a new designation) will also be able to be considered through a collaborative process but only where the requiring authority/heritage protection authority agrees to be part of the collaborative group. If they do not then the current notice of requirement processes under the RMA detailed above will still be available.

138. Where the requiring authority/heritage protection 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.

139. 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 then under the new changes proposed, merit appeals would be available by way of rehearing to the Environment Court.

Process for a roll-over of designations

140. 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, the proposal is to apply two decision-making pathways for rolled over designations within the collaborative process which could occur in conjunction. Whichever pathway is used will hinge on whether the requiring authority agrees to be a member of the collaborative group.

141. Where requiring authority/heritage protection authority 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.

142. 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 and heritage orders will apply (on those parts of the plan). In this situation the collaborative group could still consider the designation and 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

143. To encourage the use of the collaborative process the council will be required to invite the relevant requiring authority/heritage protection authority to be part of the collaborative group, however participation would be optional. In addition, councils will 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.

144. This means that a council could require affected land owners to collectively nominate a representative who will then have responsibility for reporting to and from the affected parties' wider group to the collaborative group.

145. In order to provide assurance for requiring authorities, the process will also:

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

    b. Retain the ability of the requiring authority/heritage protection authority to withdraw the notice of requirement at any time and also to retain choice over the process used.

Alternative options

146. Several alternative options were considered to incorporate designation/heritage order processes into the CPP. These vary as to the degree to which new applications can be considered by a collaborative group and the decision-making process.

- *Schedule 1 processes only* – by applying only the Schedule 1 provisions, we would provide for existing designation roll-overs and new designations from the territorial authority, but not new applications from Ministers of the Crown or network utility operators. There would be no necessity to include a member of the requiring authority in the collaborative group and decision-making would be subject to the collaborative process.

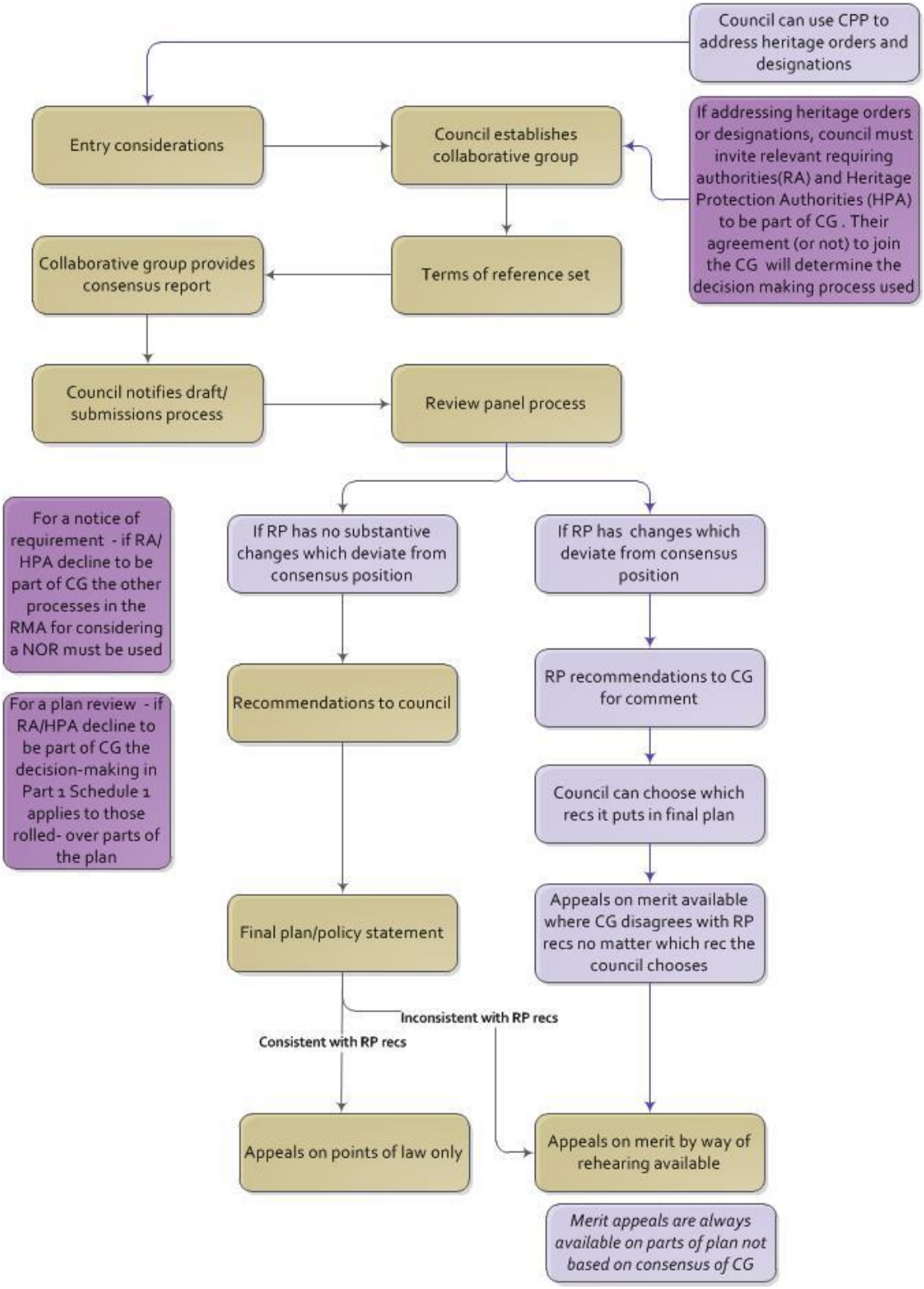
- *The council is the final decision-maker in all instances* – allow the collaborative process to consider 'rollovers' as well as notices of requirement. Remain flexible on whether or not the authority is 'in the tent' of the collaborative group. The decision-making process of the CPP would apply in all cases. The risks with this are lack of certainty for those involved and risks that decision-making is made by a body other than the one that has financial responsibility for the works.

- *The existing decision-making processes for designations apply in tandem with a CPP* – this option equates to a 'carve-out' for designations and would forego the benefits that might be gained in having a collaborative group consider the designation in the first instance.

147. Figure C below shows the key changes proposed to the existing CPP proposal. The proposed changes are in the purple boxes. *Note that this is intended to provide an overview of the proposal and the changes, but does not contain all the detail of each proposed change.*

COLLABORATIVE PLANNING PROCESS

To facilitate consensus decision-making for planning issues with diverse interests



Impacts

Allow review panel to be able to make 'substantive' changes

148. While this change will reduce the certainty provided to the collaborative group that their recommendations will be given effect to in the final planning document, 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.

149. 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 and the collaborative group on the summary of submissions and any other material provided to the review panel as relevant.

150. This additional step may impose additional costs and time on the plan process. Clause 56 contains a requirement that the proposed policy statement or plan must be finalised no later than two years after being notified. This is the standard timeframe under the current Schedule 1 process. It does not change the maximum legal time for decision making but may add additional time to the review panel process if and where it occurs. It would be difficult at best to estimate this given the variables involved. We do note that an extension to this timeframe can be sought under Schedule 1, clause 1 as applied by RLAB clause 52 (new section 80A).

151. We consider that any additional time imposed will be offset by the opportunity to ensure the plan is effective and reflects all stakeholder views. For example, one of the criticisms levelled at collaborative processes in general is the risk that due to power imbalances, decisions may be either hijacked by stronger members or decisions will be reduced to environmental bottom lines and favour development over the environment. In providing the review panel with the ability to deviate from the consensus position (but still within the scope envelope described above) this step would provide a check and balance on this risk and therefore any additional costs are justified. We also note that this is not a compulsory step and may not occur in all circumstances.

Allowing appeals on parts of the plan that were not subject to consensus

152. The current restriction on merit appeals is the key means to encourage upfront consensus. Allowing appeals on parts of the plan that were not subject to consensus could significantly affect the incentive of the consensus group to collaborate and reach consensus. However, as currently drafted a council must draft parts of the plan that are not based on consensus, and no appeals are available on the content. On balance it is considered that this has more potential to result in breaches of natural justice than a lessening of the incentive for the collaborative group to reach consensus.

153. We therefore consider the change necessary in order to test the council drafted plan provisions. It is important to retain the ability to test the decisions of lower jurisdictional bodies where consensus has not been reached and ensure decision-making is sound. Otherwise this could be viewed as a Schedule 1 (standard RMA plan making) process with no right of appeal.

Designations and HPOs

154. In order to achieve the aims of achieving high quality upfront engagement in plan-making processes, it is necessary to ensure that a council is able to consider all relevant elements of a plan within a single process - including designations and HPOs. We consider this amendment will increase the proposal's ability to achieve this objective.

155. Impacts to requiring authorities will be mitigated by their ability to choose which process to use for a notice of requirement, the invitation to be on the collaborative group and the continued ability to withdraw the application at any time.

Overall impacts

156. It is considered that these amendments to the proposal will make it more likely to meet the objectives of ensuring that engagement is focused on upfront planning decisions rather than individual consent decisions.

Māori participation changes

BACKGROUND

Problem

157. There are many examples of iwi participating successfully in resource management processes. However, engagement is inconsistent across the country, and the effectiveness of existing relationships between iwi and local authorities varies. In some regions, Māori have not had the opportunity to be engaged in resource management processes. The lack of any statutory requirement for local authorities to establish working relationships with iwi can lead to increased disagreement and delays later in the planning process

Bill proposals

158. The Bill aims to enhance iwi participation in decision-making and transparency over how Māori interests in the resource management system are considered by:

- requiring councils to invite iwi to form iwi participation arrangements (IPAs)
- enhancing consultation requirements

Iwi participation arrangements

159. Under an IPA, local authorities would be required to invite iwi authorities to form a relationship arrangement. The arrangement would detail how iwi and local authorities would work together through the policy statement and plan-making processes. The arrangement would set out the agreed processes for the way in which parties would give effect to any iwi participation legislation provisions, if relevant, and the way in which iwi authorities could identify resource management issues of concern to them.

160. The council would need to comply with the processes agreed to under the arrangement when preparing their plans under Schedule 1. However, the council would not be required to suspend the preparation of a policy statement or plan, or any other part of the plan-making process (as prescribed under Schedule 1 of the RMA), during the negotiation of a relationship arrangement.

Enhanced consultation requirements

161. Under the enhanced consultation requirements local authorities would be required to:

- provide a relevant draft policy statement or plan to iwi authorities for comment and advice
- have particular regard to any advice received on the draft plan, and to allow adequate time and opportunity for the iwi authorities to consider and provide advice
- summarise all advice received by iwi authorities and outline their response in section 32[3] reports

[3] Section 32 of the RMA requires that new proposals are examined for their appropriateness in achieving the purpose of the RMA, and that the benefits, costs and risks of new policies and rules are identified and assessed.

- consult tangata whenua through the relevant iwi authorities on whether it is appropriate to appoint a commissioner with an understanding of tikanga Māori and of the perspectives of local iwi or hapū. If the local authority considers it appropriate, it must appoint at least one such commissioner, in consultation with relevant iwi authorities.

162. These requirements exist with regard to all iwi authorities, whether or not they have entered or intend to enter into an IPA with the relevant local authority.

163. It is noted that Treaty settlements will explicitly be referred to and would not be limited by any changes to the RMA.

Impacts

164. Over half of local authorities currently already have some form of structured arrangement with Māori. The arrangements vary between Memoranda of Understanding (MOUs), joint committees, advisory boards, and forums.[4] However, implementing the proposal may incur additional costs. These costs will vary across different councils, and will depend on scale, scope and complexity of the arrangements. Costs will generally be short term, but for meaningful relationship building and outcomes, ongoing maintenance is required.[5]

165. There will also be costs for iwi authorities to participate in a MWaR/IPA including upfront costs and operational costs to support the arrangement. These costs may be greater for Māori with limited planning experience and those with limited capacity and capability to engage effectively in the amended planning process.

166. The enhanced engagement is intended to result in improved efficiencies and potential cost sharing in the long term.

167. It is difficult to calculate the impacts of greater iwi participation in resource management issues due to a lack of robust data.[6] Māori will have a stronger voice and Māori perspectives will be better reflected in council planning documents. Application of Treaty-based relationships to the local government arena would also benefit Māori over time. Moreover, the gain to society (as opposed to Māori specifically) from further Māori involvement in planning processes is estimated to be substantially greater than the costs.

CHANGES TO THE BILL PROPOSAL

Problem

168. The relationship arrangement provisions as outlined in the Bill are limited in scope and do not provide for a number of other resource management matters that could be the subject of such an agreement, for example consenting, monitoring and enforcement.

169. To encourage participation and the ongoing use of the relationship agreement, it needs to have acceptance and buy-in from the groups who are likely to use it. If

[4] Ministry for the Environment, 2014. Resource Management Plans Database. Unpublished data.
[5] Te Puni Kōkiri, 2013. *Kaitiaki Survey – Results Report.* Unpublished draft.
[6] NZIER, 2011. *Māori participation in the RMA*.
http://tepuna.mfe.govt.nz/otcs/cs.dll?func=ll&objaction=overview&objid=3720667

the views of groups representing iwi are not taken into account in the formulation of the proposal, it is less likely to be used and may be seen as a check box exercise rather than a basis for meaningful engagement on important issues.

170. The Freshwater Iwi Leaders Group (ILG) has proposed an alternative to IPAs. That proposal, called Mana Whakahono a Rohe (MWaR), has a wider scope in terms of the local authority duties, functions and powers on which the parties to the arrangement would engage.

171. The MWaR proposal set out in the Ministry's *Next Steps for Freshwater* (NSFW) consultation document was based on the ILG proposal. Officials have considered both the IPA and MWaR proposals in the development of advice and recommendations. Changes made to the Bill proposal have been made with the aim of increasing the acceptability of the proposal by aligning it more closely to the MWaR proposal.

Proposed changes

172. Figure D sets out the relationship arrangement provisions as they are drafted in RLAB, and compares them to the changes currently proposed as a response to submitter feedback and the MWaR proposal. Table 5 below provides more detail on each of the proposed changes, the rationale or policy intent behind those changes, as well as any alternative options considered.

RELATIONSHIP ARRANGEMENTS

	Proposal as drafted in the Bill	Proposed changes
Establishing the agreement – Purpose/ Principles	Purpose - to provide an opportunity for local authorities and iwi authorities to agree ways in which tangata whenua may participate in Schedule 1 processes (s58K) Submission feedback: To reach a written agreement about how authorities will work together in consenting and the plan making process	Purpose: a) provide a mechanism for local authorities and iwi 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 b) 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
	No principles included	Principles: in working together to develop a relationship agreement, and in working together under that agreement, be required to act in a manner consistent with the following guiding principles: a) using their best endeavours to ensure that the purpose of the arrangement is achieved in an enduring manner b) working together in good faith and a spirit of co-operation c) being open, honest, and transparent in their communications d) recognising and acknowledging that the parties will benefit from working together by sharing their respective vision, knowledge and expertise e) committing to meeting statutory timeframes, and minimising delays and costs associated with those statutory processes f) recognising that the arrangement cannot limit any relevant provision of any iwi participation legislation or any arrangement under that legislation, and
Establishing the agreement – Initiation	Councils initiate 30 working days after a local government general election (s58L (2)) Submission feedback: Iwi initiated at any time; and 60 days for the local authority to convene a working party	Iwi initiated at any time except within 90 days of a local authority election Provision for local authorities to propose initiation with iwi or hapū Allow for an existing arrangement to be deemed a MWaR/IPA
		Timeframe for local authorities to respond to an invitation: 60 days
Establishing the agreement – Timeframes for concluding	Conclude within 6 months or as agreed (58N(1)) Submission feedback: Conclude within 18 months or as agreed	Timeframe for concluding: 18 months or as agreed
Operation of the agreement – Content of the agreement	Content: plan making (s58M) Submission feedback: Include consenting	Content: Must include; • Plan making • Appointment of commissioners (plan making) • Monitoring May include • Consenting • Other duties the parties agree on • Delegation of participation by the iwi authority • Describe how iwi authorities will work together collectively under an arrangement
	Dispute Resolution during the operation of the agreement	
	A process may be identified in the arrangement (s58M (c)(i))	Dispute Resolution for the operation of an agreement: Within the relationship agreement, the parties must specify a process for resolving disputes
Operation of the agreement – Maintenance of the agreement	No content prescribed for reporting, amendment of internal processes, review, conflict of interest, resourcing or termination	Reporting: Annually through the National Monitoring System
		Amendment of internal processes: Local authorities must amend their internal processes within 6 months or as agreed to give effect to the relationship agreement
		Review: The arrangement must be reviewed at least every 6 years
		Conflict of interest: The parties must agree and record a process for identifying and managing any conflicts of interest
		Resourcing: For the operation of the agreement
		Termination: The arrangement can be amended or terminated only by mutual agreement

Relationships with existing agreements
Iwi participation legislation will prevail in the event of any consistency with a relationship agreement. Where iwi/hapū have agreed a role in a resource management process with a local authority, greater than that provided for in the Bill, those obligations/relationships will be maintained unless otherwise agreed between the parties to that agreement.

TABLE 5: PROPOSED CHANGES TO RELATIONSHIP ARRANGEMENTS	
Purpose and principles	**Issue:** • The purpose of the relationship arrangements needs to be modified to address the proposed change in scope. • The arrangements as drafted in the Bill do not currently contain any principles for iwi and local authorities to abide by in the development and implementation of the arrangements, including through the dispute resolution process. **Proposed changes:** • *Modify the broad purpose of the arrangements from* o "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 processes set out in Schedule 1" to o *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* o *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.* Facilitating the implementation of local authorities' statutory obligations in working with iwi under the RMA should encourage greater national consistency in the level of collaboration between iwi and local authorities on resource management matters. • *Add principles that apply to relationship arrangements.* Iwi and local authorities in working together to develop a MWaR/IPA, and in working together under an arrangement are to be required to act in a manner consistent with the following principles when developing and implementing an arrangement; o *Use their best endeavours to ensure that the purpose of the relationship arrangement is achieved in an enduring manner.* o *Work together in good faith and a spirit of co-operation.* o *Be open, honest, and transparent in their communications.* o *Recognise and acknowledge that the parties will benefit from working together by sharing their respective vision, knowledge and expertise.*

TABLE 5: PROPOSED CHANGES TO RELATIONSHIP ARRANGEMENTS	
	○ *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 arrangement under that legislation.* The proposed principles align with those commonly used in Treaty settlement arrangements. The list is not exhaustive and the parties will be free to agree on additional principles. **Alternative options considered:** • *Include the following purpose*: "*Agree that the purpose of a relationship agreement 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, or hapū, participate in;* ○ *the preparation, change, or review of a policy statement or plan in accordance with the processes set out in Schedule 1* ○ *consenting* ○ *appointment of hearing commissioners* ○ *monitoring and bylaws"* It is considered that these duties functions and powers are the mechanisms to achieve the purpose, but are not the purpose itself. By identifying them as the purpose, this wording detracts from the establishment of an evolving relationship between the parties and may unrealistically raise the expectations of the parties in the initial establishment of the proposal. • *Add principles that apply to MWaR/IPA*. No alternative options other than retaining the proposal as currently drafted were considered for these changes. Omitting principles from the relationship arrangement is not recommended as this would not provide a context on which to establish the relationship arrangement. It would also provide a lack of context for decision-making through the dispute resolution process.
Initiation of arrangements	**Issue:** • Some submitters on the Bill expressed that ○ iwi should be able to initiate the arrangements ○ it is often appropriate to engage with hapū, rather than iwi, on the management of certain resources. ○ the proposal of a 6 month timeframe for concluding an IPA is too short, especially for iwi and local authorities with multiple agreements. ○ the requirement to form a new arrangement could undermine or duplicate existing arrangements • To support effective relationship arrangements, local authorities will need to review their internal policies and processes so they are consistent with the effective implementation of the relationship arrangement.

TABLE 5: PROPOSED CHANGES TO RELATIONSHIP ARRANGEMENTS	
	Proposed changes: • *Enable iwi authorities to initiate relationship arrangements at any time except 90 days before a local body election and set a 60 working day time limit, unless otherwise agreed, for a local authority to invite relevant iwi authorities and local authorities to a meeting (hui). At the meeting, the parties would discuss the negotiation process including timing and the parties to the negotiation* – this would ensure that iwi have the flexibility to engage in the following ways: to seek a new relationship arrangement in circumstances where none exists; to seek a new relationship where they are unsatisfied with their existing arrangement; to choose not to initiate a new arrangement if they are satisfied with their existing arrangement. This is especially important where iwi authorities engage with multiple local authorities and may therefore need to enter into multiple arrangements. Given the potential number of arrangements, it will be beneficial to encourage iwi and local authority parties to collaborate and, where appropriate, minimise the number of arrangements. If relationship arrangements are initiated by iwi authorities, it is appropriate to extend the timeframe for responding to an invitation to 60 working days to allow local authorities more time to convene a meeting with the relevant parties, or to agree an alternative time to suit the needs of the parties. Relationship arrangements could be initiated by iwi at any time except 90 days before a local body election. The exclusion period would minimise the burden on local authorities and provide greater consistency in engagement for iwi authorities. • *Extend the timeframe for concluding a relationship arrangement, unless otherwise agreed, from 6 to 18 months* – this will provide more time for the development of a positive working relationship between the parties and allow for meaningful engagement. This will support the development of more robust arrangements. The 18 month timeframe and ability to agree to further extend the time also avoids the risk that the parties will be required to initiate dispute resolution before they have had sufficient time to resolve any disagreements between themselves. The 18 month timeframe should also assist local authorities in planning and prioritising their resources. • *Allow local authorities to extend an invitation to hapū or an iwi authority to establish an arrangement where the local authority considers it is appropriate* – this change will remove the risk highlighted by the Iwi Leaders Group that focussing only on iwi level engagement will ignore the strong relationships hapū often hold with particular areas and resources (these relationships are sometimes held more strongly at the hapū level than the iwi level). The change will also be consistent with Joint Management Agreements under the RMA (section 36B) which a local authority may establish with either an iwi authority or a group representing hapū. • *Allow an existing arrangement to be deemed a MWaR/IPA* – this proposal will provide flexibility and efficiency of process and allows for iwi and local authorities to set out their own priorities, and continue or grow their existing positive relationships or working arrangements. • *Require local authorities to review their internal policies and processes to ensure they are consistent with the relationship arrangement within 6 months of the arrangement being concluded or as otherwise agreed by the parties.* To implement a relationship arrangement effectively, a local authority will need to review their internal policies and procedures. Requiring them

TABLE 5: PROPOSED CHANGES TO RELATIONSHIP ARRANGEMENTS	
	to undertake this review will avoid unnecessary delays which may impact on the ability of an iwi authority to engage in the matters agreed to in the relationship arrangement. Where an arrangement is more complex, or significant review is required, the recommendation provides for an extension of the timeframe as agreed between the parties. **Alternative options considered:** • An alternative process considered enabled iwi authorities to initiate the process without requiring local authorities to consider inviting other parties to be part of that process. That process did not support efficiency of process or minimise the burden on local authorities, so it was further developed into the proposal described above.
Contents of agreements	**Issue:** • Submitters on both the Bill and the NSFW consultation have expressed that: o enhanced consultation requirements under new section 34(A) and new clause 4A will cause delays to the plan-making process, resulting in increased costs and resources for both iwi and local authorities, and consultation fatigue for iwi. o the enhanced Māori participation provisions could create issues over conflicts of interest because iwi have various commercial/business/economic interests. • Bill submitters have sought the inclusion of consenting in the content of a relationship arrangement, this aligns with the MWaR proposal. • In addition to plan-making and consenting, the MWaR proposal includes monitoring in the content of the arrangements. **Proposed changes:** • *A relationship arrangement must record in writing parties' agreementsabout:* o *who the parties to the arrangement are* o *how any applicable Treaty settlement mechanism will be supported or upheld* o *how an iwi authority may participate in the preparation or change of a policy statement or plan* o *how they will work together on monitoring under the RMA* – for example the local authority could agree to engage an appropriate iwi affiliated organisation to carry out certain data gathering about local awa. Another example could include an arrangement to train, upskill and perhaps involve local iwi members in the monitoring processes. This would only include arrangements on participation in council monitoring processes already allowed for under the RMA. o *what process has been agreed for identifying and managing potential conflicts of interest* – this will likely reduce the potential for additional costs and delays associated with disputes and litigation. Identifying a process for addressing conflicts of interest upfront may also encourage iwi to participate where uncertainty around a perceived conflict of interest may have been an inhibiting factor.

TABLE 5: PROPOSED CHANGES TO RELATIONSHIP ARRANGEMENTS	

	• *A relationship arrangement may record in writing parties' agreements about:*
	  ○ *how iwi authorities will work together collectively under the arrangement to engage with the local authority or authorities.*
	  ○ *whether an iwi authority delegates participation in particular processes, making specific reference to the involvement of hapū*.
	  ○ *how a local authority consults an iwi authority on consenting, including the process for notification.* Including consenting addresses the risk of disputes or litigation arising during the consenting process. For example, the parties may agree to prioritise matters of interest and importance to iwi to maximise efficient and meaningful participation. This will also reduce the consultation burden where consultation is not desired by iwi authorities. It should be noted that this option does not seek to extend any participatory rights in relation to consenting to iwi that they would not otherwise have under the RMA.
	  ○ *any other RMA duties functions or powers as agreed by the parties.*
	
	The mandatory content of relationship arrangements is intended to allow these arrangements to support efficiency of process. It is consistent with the goal of the proposal that matters should be addressed upfront, reducing uncertainty and process inefficiency further down the track. The non-mandatory content above will support the parties to tailor their relationship arrangement to suit their needs.
	
	Alternative options considered:
	
	• No alternative options other than retaining the proposal as currently drafted were considered for these changes.

Maintenance of agreement	**Issue:** • The Bill drafting of IPAs is silent on whether the parties to a relationship arrangement must review their arrangement. • The Bill drafting of IPAs is silent on whether the parties to a relationship arrangement must report to the Minister • The Bill drafting of IPAs is silent on whether they can be terminated. This does not provide any certainty to the parties about the longevity of the arrangement and may be a barrier to the use of the policy. • If support for the implementation of relationship agreements, including funding, is not available, there is a risk that relationship arrangements will fail to meet their purpose 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.

TABLE 5: PROPOSED CHANGES TO RELATIONSHIP ARRANGEMENTS	
	Proposed changes: • *Require arrangements to be reviewed every 6 years or as otherwise agreed by the parties.* A 6 year review process, rather than a shorter review period, will enable the relationship arrangement to be fully operational before the parties review their arrangement. It is also consistent with Local Government Representation Review Process timeframe. • *Require data to be collected through the National Monitoring System with additional reporting, if any, to be agreed by the parties.* Local authorities are currently required to provide monitoring and reporting under s35 of the RMA. Additional data could be collected in relation to the relationship arrangements as part of this existing monitoring and reporting process. This data would be high level showing where relationship arrangements have been concluded or initiated, the parties involved, and the matters addressed under the arrangement. This data will be shared with the Minister of Māori Affairs and the Minister of Local Government. The parties can report on additional matters if they wish to. The collection of this data will provide visibility on the uptake and implementation of the MWaR/IPA policy. • *Agree that a relationship arrangement will not be amendable or terminable except by mutual agreement of the parties* – this will ensure that unilateral termination of the arrangement is not possible. This supports the considerable time and effort iwi and local authorities will invest to negotiate and implement a relationship arrangement. Amending existing arrangements is likely to be the most efficient way of responding to changing circumstances. The recommendation enables the termination of the arrangement where there is mutual agreement. • *Agree to a package, including funding, to support effective implementation of the Māori participation mechanisms of the RLAB and freshwater reforms.* The successful operation of MWaR/IPA is reliant on the establishment of positive working relationships. Providing support to the parties and certainty about the ability to review, amend or terminate the arrangement may reduce the barriers for some parties desire to enter into the arrangements. It may also reduce the potential for disputes to arise. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for these changes.
Dispute resolution	**Issue:** • Disputes are likely to arise in the negotiation and operation of relationship arrangements, particularly where arrangements affect the interests of more than one iwi authority. The objective of any dispute resolution process should be to resolve matters of disagreement in a way that is efficient and likely to lead to durable arrangements between iwi and local authorities. **Proposed changes:** • *Require the parties to agree that for disputes arising during the negotiation of a MWaR/IPA, before any dispute arises, the iwi*

TABLE 5: PROPOSED CHANGES TO RELATIONSHIP ARRANGEMENTS	
	and local authorities must agree to: ○ *a binding form of alternative dispute resolution (ADR) where the costs are met by the parties and both parties are in agreement on the process* *OR* ○ *a non-binding form of alternative dispute resolution where the process and the mediator/arbiter is jointly selected and the costs are met by the parties* *AND* ○ *If the parties are still in dispute after using the alternative dispute resolution they may seek Ministerial intervention and the minister for the Environment ahs the authority to appoint a Crown facilitator or direct the parties to particular alternative dispute resolution processes to conclude the arrangement.* • *Require parties to 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).* This will reduce the chances of any disputes escalating by establishing a dispute resolution process that is satisfactory to all parties before any dispute arises. This option is more likely than the existing Bill drafting (which states that parties "may" specify a dispute resolution process) to lead to the efficient resolution of disputes. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for these changes. No dispute resolution provision in a MWaR/IPA arrangement may require the local authority to suspend any RMA process

Impacts

173. These changes will, in combination, ensure that the proposal better meets its objective to promote early and constructive engagement between local authorities and iwi and hapū in the resource management process and provide the increased flexibility to allow the parties to form tailored arrangements best suited to their needs. The changes will promote positive long-term working relationships between local authorities and iwi authorities and better recognise cultural values and the Māori world view.

174. The two most significant changes proposed are the broadening of the scope of MWaR/IPA to allow for the inclusion of resource consenting and monitoring functions and removing the requirement on local authorities to initiate arrangements and instead enabling iwi authorities to initiate.

Broadening the scope of MWaR/IPA

175. The inclusion of consenting and monitoring processes in arrangements may have significant impacts for iwi and local authorities, but it is important to note that the changes only enable the parties to specify a level of engagement in relation to these elements and do not require them to do so. Therefore, these changes may in some cases have little to no impact.

176. If the parties were to agree in their arrangement to considerable involvement in both consenting and monitoring the economic impacts on local authorities would be noticeable as they would need to dedicate some staff time to amending internal processes and ensuring involvement with relevant iwi or hapū.

177. The economic impacts on iwi would be much more significant as an overall proportion of the resources they have available. The iwi authority (or hapū) would have to dedicate considerable resource to be involved in consent decision-making processes. However, costs could be reduced by using an equivalent process to the RLAB process in relation to commissioner appointments for plan changes. Iwi involvement in monitoring could require dedicated personnel from the iwi, although this cost could be met or contributed to by the council.

178. These economic costs would only eventuate if both parties agreed to include these matters in the MWaR/IPA.

179. There may be considerable economic benefits from the inclusion of consenting processes in arrangements as early involvement could result in iwi identifying the key areas of interest. This would enable the parties to focus their engagement and resources in that area and minimise resource expenditure in areas iwi do not consider a priority. It may also reduce the risks of iwi challenging consents and costly appeals later in the process.

180. The fiscal impacts on central government from these changes will be no more than those associated with the originally scoped IPA proposal.

181. A more comprehensive arrangement that covers a broader range of planning processes is considerably more aligned to a holistic Māori cultural understanding of the environment and this provides considerable cultural benefit in aligning the proposal to better fit with the values of the parties.

182. The inclusion of iwi authorities in monitoring functions may have positive environmental impacts particularly where iwi authorities are able to not only assist but expand the ability of local authorities to monitor certain areas through the use of matauranga Māori.

Iwi initiation

183. Allowing iwi to initiate arrangements provides for a more flexible approach that will likely result in a more even spread of negotiations than under the original proposal.

184. Iwi initiation could create uncertainty for local authorities as to when iwi authorities would seek to initiate an arrangement and therefore there is a risk that councils would not be able to prioritise their resources to engage in the preparation of an arrangement. However, this risk can be minimised by the proposal to allow for an extension to the length of time for concluding the arrangement by mutual agreement, and through an exclusion period around local body elections.

185. Additionally, the economic costs to local authorities of having to initiate and negotiate all arrangements concurrently, as originally proposed, would have created a huge resourcing hump and thus large cost. Providing for iwi initiation will almost certainly result in arrangement requests coming in at different times allowing for a more even spread of resources for the local authority.

186. Enabling local authorities to invite other parties to establish joint arrangements will minimise the long term resource impact of monitoring multiple arrangements.

187. Iwi authorities will no longer be required to respond to invitations to enter into an arrangement that may have come at a time where they did not have the resources available to properly negotiate the arrangement.

188. This means that iwi authorities may also choose not to initiate an arrangement if existing agreements are considered adequate. In this case there would be no economic impacts on either party.

189. The fiscal impacts on central government from these changes will be no more than those associated with the originally scoped IPA proposal.

Inclusion of hapū

190. Allowing local authorities to initiate arrangements with hapū, and providing for delegation to hapū, may have significant positive cultural impacts. This change acknowledges that within Māori culture it is often hapū level groupings that have particular mana over locations or taonga and thus are the right group to be involved in any arrangement.

Status of existing arrangements

191. The changes proposed to clarify the status of existing arrangements or agreements should reduce the economic impacts on both local authorities and iwi authorities by allowing them to deem their existing arrangements a MWaR/IPA. For

every existing arrangement used in this manner the economic impact on the local authority is substantially reduced and the impact on iwi removed completely.

192. This change also removes the risk of iwi or local authorities being forced create new arrangements when their current relationship is working well. Maintaining positive working relationships ‘as is’ has cultural benefits as well as reducing the risk of unnecessary work.

Contents of arrangements: Enhanced consultation requirements

193. Allowing parties to contract out of the proposed enhanced consultation requirements removes a considerable economic burden on both parties if they choose to use the contract out provisions and addresses the concern raised in numerous submissions that these enhanced consultation requirements will be a substantial resourcing burden.

194. This also ensures iwi authorities can concentrate their resources and efforts into consultation and involvement on issues of most relevance to them.

New reporting requirements

195. The new requirements to report back to the Minister on MWaR/IPA will have a small economic impact on local authorities. As local authorities already provide reporting data on other matters this impact will be minor.

196. There will also be a minor fiscal impact to central government in receiving and processing this new reporting data.

Provision of a package to support the implementation of the MWaR/IPA

197. Providing a resourcing package to implement MWaR/IPA will considerably ease the economic impact on iwi and local authorities and provide them with the assistance to build a working relationship and properly and effectively implement the proposals.

198. The fiscal impacts to central government on providing this package will be considerable. It will require staff time for training and guidance as well as the potential for direct funding to iwi or local authorities to assist in the negotiations.

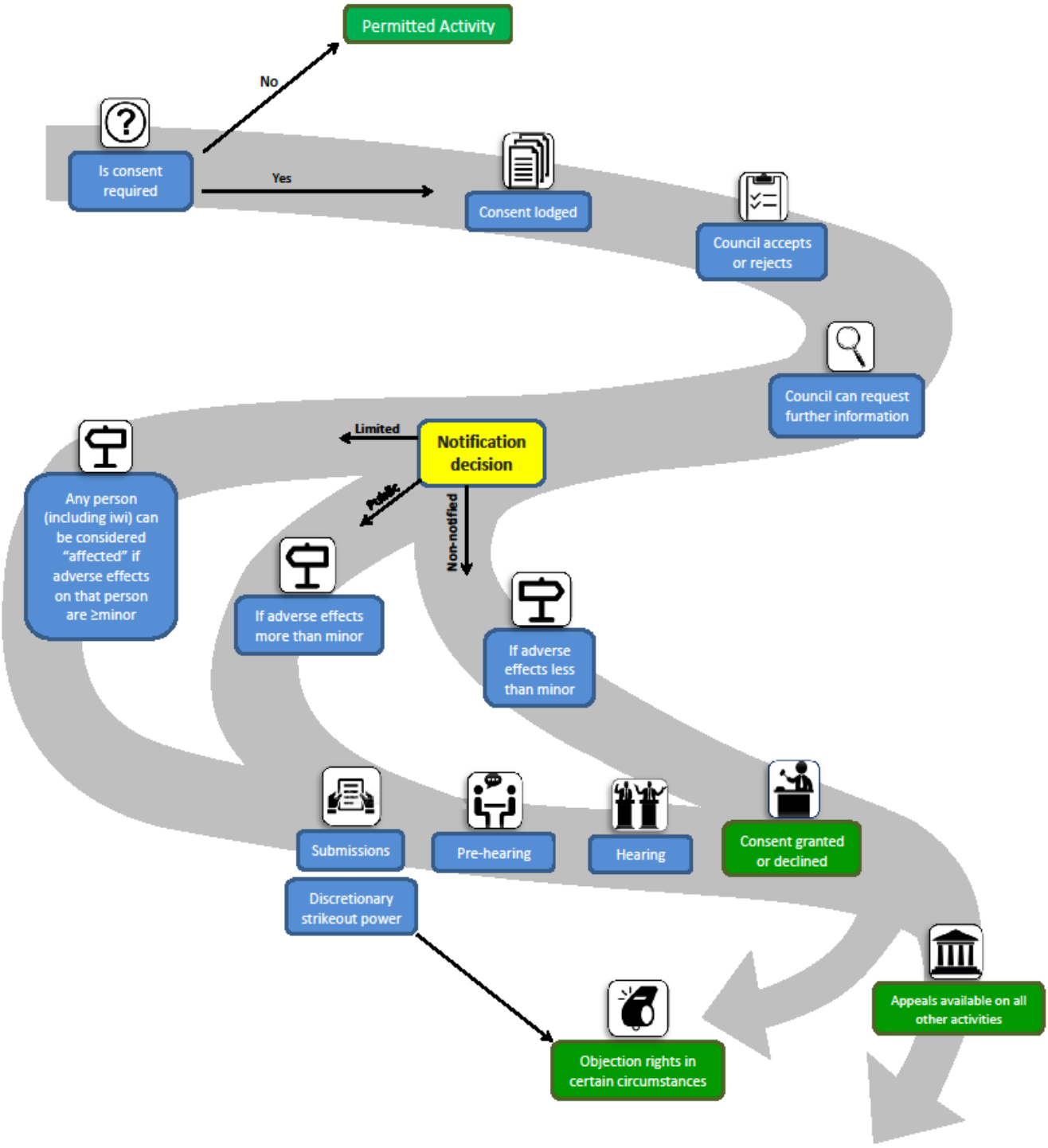
3 Consenting

199. Proposals covered under the consenting section include:

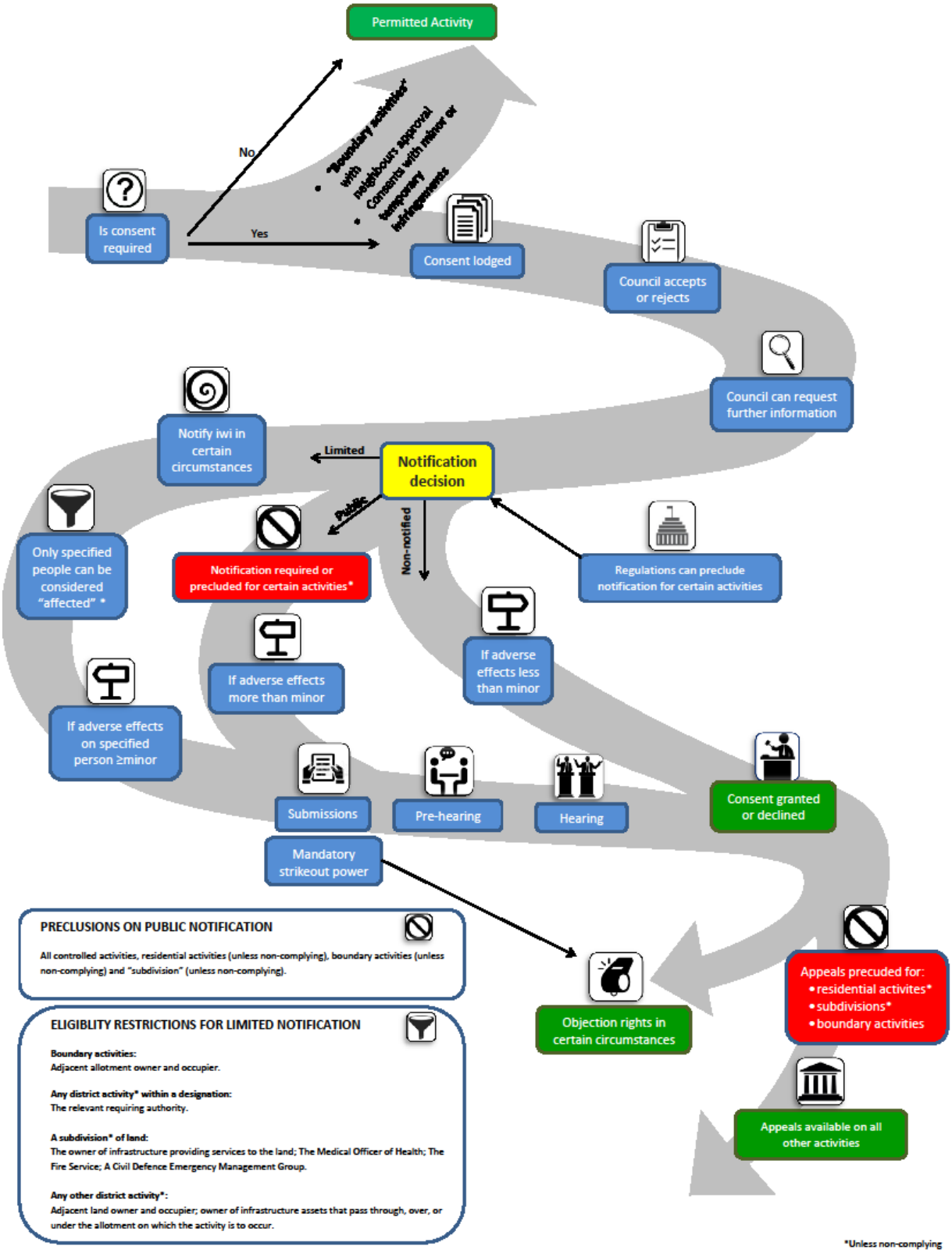
- Exemptions and fast-track changes
- Changes to notification provisions and appeals
- Consent conditions changes
- Changes in relation to offsetting

200. The figures below set out the current consenting pathways under the RMA (Figure E), then the changes proposed by the Bill (Figure F), followed by the changes currently proposed to be made to those proposals (Figure G).

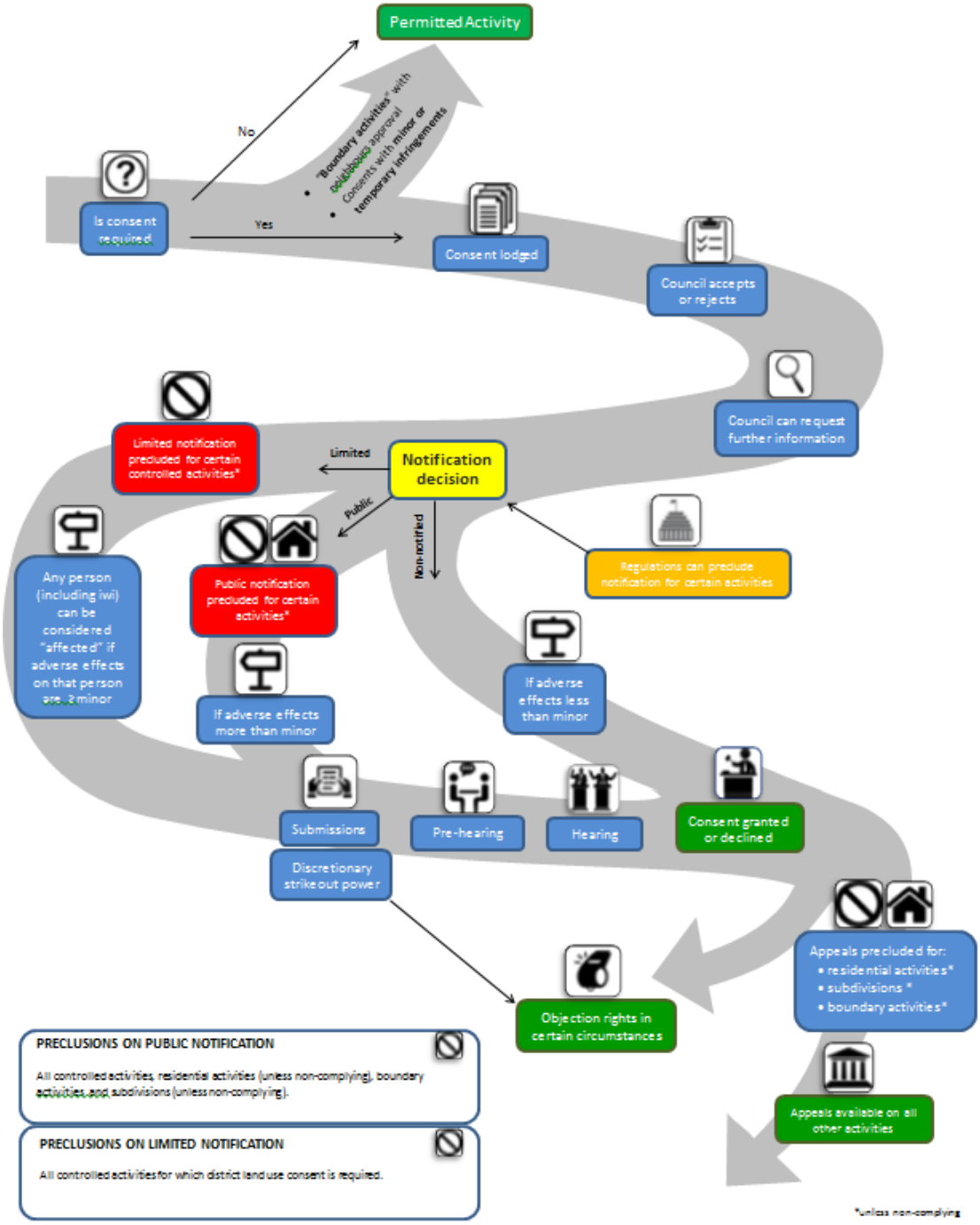
Current RMA Consent Process



RLAB Consent Process



Proposed Consent Process



Exemptions and fast-track provisions

BACKGROUND

Problem

201. Many of the commonly heard complaints about the RMA from users relate to consenting processes that are considered disproportionate to the activity in question and are costly in terms of delays, time and money. While many applications are large in scale or deal with complicated issues and require the standard process, examples have been identified where tailored processes would be more appropriate.

202. Some resource consents are required because of breaches to plan rules that are very minor or of a technical nature. In other instances, a proposal may breach a boundary rule where the only potential adverse effects are extremely localised and the affected neighbour has provided written approval.

203. In such cases the resource consent approves an activity that was very nearly permitted, or the written approval of the neighbour removes the requirement to consider any effects on that neighbour – yet the applicant must proceed through the normal resource consent application process. They may be faced with costs that are not proportionate to the proposal, and delays that seem unnecessary given the minor or technical nature of the rule breach.

204. Additionally, the RMA's standard 20 working day statutory timeframe for non-notified applications applies to a wide range of activity types that vary significantly in terms of scale and complexity. While the 20 day process is appropriate for the majority of applications, it can result in undue time and financial cost for applicants seeking consent for simpler proposals.

Bill proposals

Exemptions

205. To address these issues, the Bill introduces consent exemptions for minor rule breaches and boundary activities as follows:

- Where a marginal or temporary breach of a rule occurs, the consent authority will have the discretion to give notice to the applicant that the activity is to be treated as a permitted activity.
- Where a proposal requires resource consent because of the breach of a boundary rule (where a structure breaks a rule in relation to its distance from, or dimensions in relation to, a site boundary) and written approval has been obtained from the affected neighbour, the consent authority will be required to treat the activity as permitted.

206. Once considered to be a permitted activity, resource consent will not be required under either of the above situations.

Fast-track

207. The Bill also introduces a 10 day fast-track process for applications with controlled activity status (not including subdivisions) or activities identified in regulations.

208. The consent authority would have 10 working days to:

- accept or reject the application
- make the notification decision (if needed)
- decide whether to grant or decline consent.

209. If a hearing is necessary or the consent authority decides that the proposal should be fully or limited notified (including due to special circumstances), the application would cease to be fast-track.

Impacts

210. The exemption changes will remove, as much as possible, the cost and time burden of obtaining resource consent for more straightforward infringements. These types of infringements account for a significant proportion of resource consent applications. The proposal would remove time and financial costs for the applicant and the reduced workload would mean that councils could focus resources on the processing of more substantive applications.

211. Recent data from the National Monitoring System shows that in the 2014/2015 reporting period, 97% of resource consent applications were decided within statutory timeframes.[7] While compliance has always been reasonably high, it has increased since 2010, when the Government introduced regulations requiring councils to give applicants a discount if they take longer than the time limits set out in the RMA.[8] The fast-track proposal will leverage this mechanism to deliver further time and cost efficiencies while improving the proportionality of the consenting system.

212. These proposals will contribute towards the outcome of scaling resource consent processes and costs to reflect the specific circumstances.

CHANGES TO THE BILL PROPOSAL

Problem

213. Submitters have raised a number of issues with the workability of the exemptions and fast-track proposals. Most of these issues were raised by local government submitters (including Local Government New Zealand), who made up a substantial number of the total submitters on these proposals.

Proposed changes

214. Table 6 below shows changes proposed to the exemptions provisions (marginal and temporary, and boundary activity), as well as the fast-track provisions in the Bill. The changes are mainly technical in nature, and several are the result of workability issues raised by submitters including councils.

Impacts

215. Providing a lapse date to consent exemptions (both marginal and temporary, and boundary activity) will improve certainty for future owners and neighbours of sites where an exemption has been issued, because an exemption will not remain 'live' indefinitely. This change will also improve the workability of consent exemptions and ensure consistency with the resource consents and certificates of compliance which provide for lapse dates.

216. The proposed change to clarify that a certificate of compliance cannot be obtained for activities issued with a consent exemption will avoid the need for further processes, which can be perceived as being bureaucratic and will not be necessary. It will also ensure consistency of practice and provide more integrity to the approval process for consent exemptions.

[7] http://www.mfe.govt.nz/rma/rma-monitoring-and-reporting/reporting-201415/resource-consents/resource-consents-processed

[8] Between 2007/08 and 2010/11, the proportion of resource consents processed on time increased from 69 per cent to 95 per cent, with the discount regulations believed to be a contributing factor.

217. The proposed change to provide a 10 working day timeframe for the processing of boundary activity exemptions will provide timeframe certainty to all parties involved in the process. It is considered that a 10 working day timeframe will provide councils adequate time to carry out the necessary assessment of the application (including a site visit if necessary) as well as any associated administrative tasks. A statutory timeframe of 10 working days will also align with the timeframe that is being introduced for fast-track applications.

218. The proposed change to remove regional controlled activities from the fast-track process addresses submitter concerns that it may not always be appropriate for all regional council controlled activities to be subject to the ten working day statutory time. The nature of regional consents is such that technical review, scientific assessment or assessment of cultural effects is often required. Consultation with iwi is also often required for regional council consents, particularly when assessing water related applications. Doing this in ten days could place additional strain on both iwi and council resources.

219. Data collected by the National Monitoring System for the 2014-2015 period, shows that certain types of regional resource consents that are controlled activities (such as discharge permits) take significantly longer to process than land use consents.

220. A blanket carve-out of regional consents from the fast-track process will also be easier to implement in practice than attempting to "carve out" only certain types of regional consents and will avoid adding additional complexity to the consent process.

221. Cumulatively, the proposed changes to the consent exemptions and fast-track processes will contribute to the objective of ensuring that processes and costs are able to be scaled where necessary to reflect the specific circumstances.

TABLE 6: PROPOSED CHANGES TO CONSENT EXEMPTIONS AND FAST-TRACK PROVISIONS	
Clause 122 (s87BA and s87BB): Providing a lapse period for marginal and temporary exemptions and boundary activity exemptions	**Issue:** • 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 relevant rules at the time. **Proposed change:** *If unimplemented, exemptions would lapse five years after the date of issue.* • This would align and provide consistency with the lapse period for resource consents as currently set out by section 125. It avoids introducing a new timeframe to the RMA and is the most straightforward in terms of implementation. **Alternative options considered:** • *Whether implemented or not, exemptions would lapse on the date that any new rules relevant to the activity become operative.* This would ensure activities that are provided with an exemption are not allowed to continue should relevant new rules become operative. However, this would introduce undue complexity and uncertainty and would potentially leave both councils and applicants open to unnecessary challenge. It could be difficult for councils to monitor and enforce this option and it is not considered reasonable to require applicants to keep track of new rules becoming operative. This is considered unrealistic, especially for applicants who are lay people. • *If unimplemented, exemptions would have a lapse period of two years.* This reduced lapse period would decrease the number of permitted but unimplemented activities. However it would increase complexity within the RMA by introducing an additional lapse period.
Clause 122 (s87BA and s87BB): Eligibility for a certificate of compliance for activities granted an exemption	**Issue:** • A certificate of compliance states that an activity can be done lawfully in a particular location without a resource consent. Both boundary activity exemptions and marginal and temporary exemptions state that an activity is a "permitted activity" if certain criteria are met and a notice is issued by a consent authority. An applicant may choose to obtain a certificate of compliance after obtaining an exemption as a certificate of compliance has a recognised legal standing. **Proposed change:** *An activity that has been provided with an exemption is not eligible for consideration for a certificate of compliance.* • We consider that explicitly stating this will ensure consistency of practice and reduce the risk that the proposal will swap one form of bureaucracy for another. **Alternative options considered:** • *A certificate of compliance (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).* Once an exemption is obtained, and provided all other relevant rules are met, in certain circumstances it would be possible for an applicant to demonstrate that an activity meets the criteria to obtain a certificate of compliance. Obtaining such a certificate would confer protection from any future plan changes and provide certainty in respect of existing use rights, whereas it is unclear whether an exemption alone would provide the same protections.

Clause 122 (s87BA): Providing a statutory timeframe for boundary activity exemptions	**Issue:** • While it is anticipated that councils would seek to make a decision on this exemption as efficiently as practicable, without a statutory timeframe there is unnecessary uncertainty for all parties involved. This issue has been raised by both councils and industry. **Proposed change:** *A statutory timeframe of 10 working days is provided.* • 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: o 10 working days – Boundary activity exemption and fast-track applications o 20 working days – Non-notified resource consent o 60 working days – Notified resource consent with no hearing o 100-130 working days – Notified resource consent with a hearing • 10 days 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. **Alternative options considered:** • *A statutory timeframe of 5 working days could be provided*. It is considered that this timeframe should be achievable in terms of the assessment and administrative tasks involved in processing the exemption. This may, however, place stress on council resourcing and could result in exemptions being prioritised over other more substantive applications. • *No timeframe is specified*. Instead section 18A, as introduced by clause 8, could be relied upon for councils to act in a timely manner. Section 18A Procedural principles will require that councils performing functions under the RMA "use timely, efficient, consistent, and cost-effective processes that are proportionate to the functions or powers being performed". This option would avoid imposing additional timeframes on councils, however it does not provide certainty to either councils or applicants.
Clause 121 (s87AAC): Appropriateness of fast-track process for regional council consents.	**Issue:** • Concerns have been raised that controlled activity regional consents can be too complex to assess in ten working days. The nature of regional consents is such that technical review, scientific assessment or assessment of cultural effects is often required. The Bill as drafted would see all regional council controlled activity consent applications subject to the fast-track timeframe. **Proposed change:** *The fast-track provisions should not apply to regional council controlled activity applications.* • This change means that the fast-track process will only apply to district land use consents that are controlled activities and those activities identified in regulations under section 360F(1)(a). • This change addresses submitter concern that it is not appropriate for regional council controlled activities to be subject to the ten working day statutory timeframe due to the fact that such applications often require technical review, scientific assessment or assessment of cultural effects. Consultation with iwi is also often required for regional council consents, particularly when

	assessing water-related applications. Doing this in only ten days could place additional strain on both iwi and council resources. **Alternative options considered:** • *Remove only some types of regional consents with controlled activity status from the fast-track process.* This option would partially address the broad brush comments from submitters that regional consents are too complex for the fast-track process. However, this option would not resolve all concerns about the inappropriateness of regional consents to be subject to the fast-track process and would introduce further complexity to the consent process by providing differentiation between various types of controlled activity consents (i.e. discharge permits, coastal permits, water permits, and land use consents) that are all assessed by the same consent authority. Such differentiation could prove difficult to navigate in practice from an end-users perspective.
Clause 121 (s87AAC): Ability to opt out of the fast-track process	**Issue:** • 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. **Proposed change:** *Allow applicants to 'opt-out' of the fast-track process.* • Applicants may consider lesser cost more important than speed of processing their consent. To avail of 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. • 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. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change.

Changes to notification provisions and appeals

BACKGROUND

Problem

223. Decisions on whether resource consent applications (and other matters requiring this decision) should be non-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, including for proposals for which there is a high level of certainty about how localised or widespread the adverse environmental effects will be. The current process requires council time and resources to justify decisions made around notification because of the potential threat of legal action through judicial review.

224. A further problem is that the scope for making submissions on resource consent applications is currently very wide. Submissions may be made on any aspect of a notified application, and any person who makes a submission can subsequently appeal the decision to the Environment Court. This can undermine the purpose of notification and seeking submissions, which is to give decision-makers useful, focused input to assist them in making a well-informed decision. Submissions on peripheral issues can have time and cost implications for decision-makers and applicants who respond to such issues.

225. The current regime also provides appeal rights to the Environment Court for submitters on any notified or limited notified consent application. This means a development with particular effects, for example a residential subdivision in a residential zone, or the construction of houses within residentially subdivided land, can be appealed even if those effects have been anticipated and accepted at the planning stage. Appeals from neighbours or the wider public (whether threatened or real) have considerable power to reduce housing supply, delay developments, or prevent developments occurring at all.

226. The scale of this problem is difficult to quantify as the system does not record the different decisions applicants might make because of uncertainty in the system or the threat of appeal.

Bill proposals

Clarifying the notification process and involvement of affected parties

227. The Bill amends the notification provisions by specifying a mandatory step by step process for notification. This introduces new limitations on who may be potentially notified (based on the type of activity for which resource consent is sought and / or the classification given to that activity in a plan or NES), before undertaking an effects-based assessment of the proposed activity. These changes, as detailed below, are primarily focused on streamlining housing consents and are designed to:

    - increase certainty as to whether applications will be subject to public notification

- reduce time (and therefore cost) associated with making notification decisions
- lessen risk-averse behaviour from consent authorities by reducing the potential for judicial review of notification decisions.

228. The Bill also refines consideration of affected parties for limited notification of subdivision and district land use activities (eg, housing, commercial and industrial activities and agriculture) by introducing limitations on who is eligible to potentially be an affected person.

229. A new provision is also introduced to allow councils, when undertaking an effects-based notification assessment of a resource consent application, to disregard the adverse effect of the activity if they are already taken into account by the objectives and policies of the relevant Plan.

230. In addition to the new approach to notification, the Bill proposes to:

- require councils to identify the specific adverse effects that bring them to decide to notify an application
- record those specific effects and include them in the public notice
- require submissions to be focussed on those effects.

Regulation-making powers

231. The Bill also includes a new regulation-making power to enable regulations that can specify applications which must be processed without public and/or limited notification, and restrict the persons who are eligible to be considered affected by that activity (identified in the regulations).

232. This proposal was intended to be particularly relevant in residential zones by removing the need to assess effects and justify decisions regarding more peripheral parties for certain specified activities. This simplifies the council's decision-making process.

Narrow submitters' input to reasons for notification

233. If submissions on notified resource consent applications do not meet certain criteria, they must be struck out. Submissions must:

- be related to the reasons for notification
- be supported by evidence
- have a sufficient factual basis
- if pertaining to be independent expert evidence, be made by a person with suitable experience and qualifications.

234. If a submitter's submission is struck out, no Environment Court appeal against the consent decision will be available.

Removal of Environment Court appeals in certain circumstances

235. There is currently wide scope for advancing appeals to the Environment Court against resource consent decisions on any public or limited notified consent application. Appeals from neighbours or the wider public (whether threatened or real) may have considerable power to reduce housing supply, delay developments, or prevent developments occurring at all. The Bill therefore proposes to remove rights of appeal for applicants and submitters in relation to decisions on boundary activities, subdivision of land (regardless of zoning) and residential activities (unless non-complying activities). It also introduces the requirement that where

appeals are not otherwise precluded, a submitter may only appeal in respect of a matter raised in their submission.

Impacts

236. The notification and appeals proposals seek to streamline consent processes, introduce proportionality, and focus input from submitters on the most important matters in a resource consent application. They also prescribe a specific processing pathway for housing related consents.

237. The proposed changes are intended to avoid unnecessary time, cost and uncertainty implications for activities that are broadly consistent and/or anticipated by the applicable plan. The changes will provide a clear assessment process if the RMA, regulations, or plans specify that public or limited notification is precluded.

238. In residential zones in particular, but for district land use activities generally, this proposal seeks to simplify the council's decision-making process on notification by removing the need to assess effects and justify decisions regarding more peripheral parties. It will also reduce the risk of judicial review and avoid it from any party other than those that are specified. This will benefit the majority of applicants for consents for land use activities that 'fit' with the relevant plan, including residential housing developments, commercial and industrial activities, and help councils by relieving them of the current assessment requirements.

239. Risks of the proposal include the reduction in genuinely affected parties participating in the consenting process, and the increase in complexity for the process of determining who can be involved in resource consent processes. This has the potential to generate additional costs in the short term for both councils and applicants until practice is established that reflects the new notification framework.

240. Much of the information coming out of the National Monitoring System (see Monitoring and Evaluation section below) will greatly assist in establishing trends in both council and applicant behaviour. This will inform future decisions about how to achieve the right level of involvement in resource consent applications.

CHANGES TO THE BILL PROPOSALS

Problem

241. Submitters on the Bill have raised a range of issues in relation to the notification proposals. Some issues relate to the ability of the proposals to achieve their stated objectives and practical implementation problems. Others relate to perceived natural justice issues around restricting input at the notification and appeals stages. Specific concerns raised by submitters include:

- the current notification regime is working well (case law is well established)
- the new regime is overly complex and introduces more uncertainty, contrary to the objective to simplify and streamline
- restrictions have not been nuanced to the development pressures that exist in key areas
- the new regime excludes parties that are genuinely affected and would constructively add to decision-making
- the new regime reduces involvement of iwi in applications that may have cultural impacts
- councils can already preclude notification at the plan-making stage

- there would be greater risk of reverse sensitivity issues arising from these changes
- councils may change plans so that there are less controlled and more non-complying activities
- councils need time to change their plans to accommodate the new notification regime.

242. There was also a general concern over how constrained eligibility is for being considered an affected person for different types of consents.

Proposed changes

243. **Table 7** below sets out the detail changes proposed to the notification provisions.

TABLE 7: PROPOSED CHANGES TO NOTIFICATION PROVISIONS AND APPEALS	
Clause 125 (s95A): Scale of residential development precluded from public notification	**Issue:** • Clause 125 of the Bill amends section 95A of the RMA to list activities that are precluded from public notification, as well as introducing a definition of 'residential activity' to support the preclusion on public notification for this category of activity. • Submitters have questioned the interpretation and scope of this provision. Feedback centres mainly around whether only small scale residential development is to be precluded from public notification (a single house on a single lot), or whether large scale housing developments are to be captured in the definition. **Proposed change:** *Change the Bill's provisions so that there is no restriction on the scale of residential activities precluded from public notification (other than non-complying activities)* • These changes will expand the scale of residential activities (on residentially zoned land) to apply to the full spectrum of housing development types (eg, single dwelling through to multi-unit development). **Alternative options considered:** • *Clarify the drafting so that the preclusion on public notification only related to a single dwelling on a single lot.* However, this would not achieve the full breadth of intent around streamlining all housing consents, including large multiple lot comprehensive housing developments. This option could be used in tandem with the regulation-making power under 360G which may achieve a more targeted suite of preclusions. However, the preferred option is to have these clearly laid out in the Act.
Clause 125 (s95A): Include regional consents related to housing in the group of activities precluded from public notification	**Issue:** • Due to the various types of activities and the different types of preclusions in the Bill, there may be unintended consequences for the integrated and streamlined delivery of housing supply. This includes the different treatment that exists in the Bill for the notification of district and regional consents which, where they are integral to the provision of housing, may hinder the timely processing of housing related applications. **Proposed change:** *Include regional consents related to housing on residentially zoned land in the group of activities precluded from public notification* • This change will focus the reforms on facilitating the streamlined delivery of housing by bringing the full range of consents relating to a housing proposal within the preclusion on public notification. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change.
Clause 127 (s95D) and clause 129	**Issue:** • This proposal gives consent authorities the ability to disregard adverse effects if those effects are taken into account by the objectives and policies of the relevant plan. A number of significant implementation issues have been identified by a wide

(s95D): Notification decisions made in reference to objectives and policies	spectrum of submitters (including potential applicants and councils), including: ○ it is impractical to undertake this assessment when plans will have objectives and policies that 'pull in different directions' (ie, seek to achieve different things). ○ it is more appropriate to undertake an objective and policy assessment at the final decision stage (having heard views of submitters) rather than at the notification stage ○ the lack of clarity over what would constitute an adverse effect having been "taken into account" introduces further complexity and subjectivity into the notification decision and opens another avenue for judicial review ○ a plan's activity classification for a certain proposal (eg, controlled, discretionary etc.) already takes into account the extent to which the adverse effects are considered appropriate in an area with a given zoning classification ○ this proposal is considered unlikely to achieve the policy intent of achieving 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. **Proposed change:** *Remove this clause in its entirety.* • This change is largely a reversal back to the status quo. **Alternative options considered:** • Various options have been considered to address the concerns with the proposal which have been described above, including: ○ clarifying the intent of terminology such as "take into account" and "considered in the context of the [plan]" ○ allowing a greater lead-in period until the provision would have effect (to give greater time for plans to be changed accordingly) ○ precluding notification if an application is consistent with the objectives and policies of the relevant plan. • Although these various changes may have addressed some of the issues submitters have identified, several fundamental issues identified by submitters would remain.
Clause 125 (s95A and s95B): Specifying adverse effects in a notice	**Issue:** • There was significant submitter concern about the proposal to specify adverse effects in notices (where such effects are the reason for notification). Reasons include: ○ increased time and cost for councils to ensure all effects are identified ○ the risk that not all effects will be identified at notification; increased risk of judicial review for councils ○ confusion whether all adverse effects need to 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 them. **Proposed change:** *Remove the requirement for adverse effects to be specified in a notification notice.* • This change is largely a reversal back to the status quo.

	Alternative options considered: • No alternative options other than retaining the proposal as currently drafted were considered for this change.
Clause 120 (s41D): Submission strikeout to be discretionary rather than mandatory	**Issue:** • The proposal to make the strikeout of submissions on resource consents a mandatory requirement if certain criteria are met was widely opposed by submitters. Concerns include: o lack of direction over how the criteria should be interpreted o the scope of criteria themselves (including the requirement that submissions be confined to adverse effects identified by the consent authority) o the inability for submissions to include commentary in relation to positive effects o the creation of an additional avenue for judicial review o the increased likelihood of adversarial hearing processes o increased time spent debating the merits of a submission when the current practice of hearing such submissions but giving them little time or weight in the decision is working well. **Proposed change:** *Make all submission strikeouts a discretionary power and create one set of strikeout criteria that apply to all hearings, including a new criterion relating to the use of offensive language.* • These changes are largely a reversal back to the status quo (ie, what is currently in the RMA) with some additional matters being made available to the decision-maker when considering whether to strike out all or part of a submission. They ensure more flexible management of submissions whilst still requiring decision-makers to consider the appropriateness of submissions. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change.
Clause 125 (s95B) and clause 128 (s95DA): Eligibility to be considered an 'affected person' for limited notification	**Issue:** • There were widespread submitter concerns on this proposal. A large number of submitters raised concerns about the restricted number of parties that are eligible to be notified for different types of resource consent. The primary reason for this concern is expressed as the prevention of parties being involved who may genuinely be affected by the activity, or for which encroachment closer to their operations represents a higher risk of reverse sensitivity. **Proposed change:** *Remove the restrictions on eligibility for limited notification in the Bill apart from boundary activities (and activities that may be prescribed in regulations)* • These changes are largely a reversal back to the status quo (ie, the existing effects-based test for limited notification), with the exception that eligibility restrictions will still apply for boundary activities and activities that may be prescribed through regulations. This change would remove a large part of the complexity created by the Bill. The preclusions on public notification for housing-related consents would still mean only 'affected parties' could be notified. It would also address the substantial

	number of submissions made in relation to reverse sensitivity effects. **Alternative options considered:** • *Expand the list of eligible persons for limited notification of certain activities to include more parties.* The risk of any list is that it may not capture all of the genuinely affected parties for applications of potentially wide scope and effects. Such lists also add to the complexity of the provisions themselves. The current RMA test for an affected party is widely understood and the feedback in submissions from all sectors is that this test should remain as the mechanism for determining limited notification.
Clause 125 (s95B) Preclusion on limited notification of consent applications for controlled activities	**Issue:** • There was concern at the preclusion on applications for resource consent for activities with controlled activity status from being limited notified (other than for subdivision consents). Submitters considered that the ability to have input into such applications, and particularly for regional controlled activities, was important, especially in terms of influencing consent conditions (which was noted as having the potential to make a significant difference to the environmental impacts and the ultimate acceptability of such proposals). **Proposed change:** *Remove controlled activity regional consents from the preclusion against limited notification*. • This change aligns with the decision noted above to remove controlled activity regional consents from the 10 working day fast-track consenting process (their inclusion in the fast-track process was one of the reasons for precluding limited notification in the first instance). It will address submitter concerns in that, when not otherwise precluded from notification by a rule in a Plan or NES (or through regulations), affected parties (identified through the s95E test) will be able to input into such applications. **Alternative options considered:** • *Remove only some types of regional consents with controlled activity status from the preclusion on limited notification*. As with the rationale for not proceeding with the option of removing only some types of regional consents from the fast-track process, this option would not address concerns regarding it being desirable for affected persons to have input into all types of regional consents. In addition, making some but not all regional controlled activities precluded from limited notification is considered likely to cause confusion for end users, particularly if it results in misalignment between the fast-track process and limited notification provisions.
Clause 135 (s120(1)(A)(b)): Scale of residential activities that are precluded from appeal.	**Issue:** • Clause 135 of 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. This reference to "single allotment" was intended to act as a limit on the scale of residential activity to which the preclusion applies. Interpretation issues have been identified which means that, as drafted, there is potential for this provision to be unclear or circumvented. There is also now a potential misalignment between the notification changes regarding the scale of residential activities precluded from public notification discussed above, and rights of appeal in relation to decisions made on resource consents for residential activities.

	Proposed change: *Amend clause 135 so that preclusions on appeals aren't limited to dwellings on a "single allotment".* • These changes will ensure appeals on all residential activities (other than non-complying activities) are precluded, irrespective of scale of the residential activity. This is, however, considered likely to exacerbate submitter concerns regarding appeal restrictions (to the extent that the intent of the current drafting would have been effective in constraining the scale of developments precluded from appeal). **Alternative options considered:** • *Clarify that the intent of the drafting is to only preclude appeals on smaller-scale residential activities such as a single residential dwelling on a single site, but that appeals (including on conditions) in respect of larger, multi-unit, multi-site developments may proceed.* Submitters have expressed concerns about the overall proposal to limit appeal rights in respect of decisions on resource consents, including residential activities. Any perceived widening of the scope of the existing appeal preclusions would likely exacerbate these concerns. However, given the overall policy intent in relation to the streamlined provision of housing, wider scope for the range of residential activities precluded from appeal is more consistent with the Bill's other provisions.
New matter: Bundling of assessment of multiple consents within one application	**Issue:** • Clauses 125 and 128 of the Bill restrict involvement in applications for resource consent. The effect of the Bill's provisions as drafted may be to act as a disincentive to the 'bundling' of consents related to the provision of housing. This could have unintended consequences for the streamlined delivery of housing. • Practice has developed to allow different consents to be 'bundled' together for a group of activities requiring consent for the same project. The most restrictive activity status is then adopted for the purposes of notifying and determining the application. The way the Bill is structured (in relation to the preclusions on public notification for certain activities, the restrictions in eligibility for limited notification, and the preclusions on appeal rights) means that there could be unintended consequences for the processing of related consents together. This would be particularly unhelpful for larger housing developments where it is preferable for consents to be bundled together, and for joint hearings to be held if necessary. **Proposed change:** *Ensure 'bundling' is enabled under the Bill* • 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, the status quo approach under the RMA will be retained. All consents would therefore be eligible for notification. This would be subject to the usual effects-based test under s95D or s95E as appropriate. • 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, all the component consents are eligible for appeal. Again, this will allow for the continuation of established practice under the RMA. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change.

Appeals to the Environment Court – new matter	**Issue:** • The preclusion on appeals to the Environment Court for decisions on certain consents could be circumvented if an applicant first objects to the consent authority against the decision (or conditions) and then appeals to the Environment Court against the decision on their objection. This is an anomaly that needs to be rectified. **Proposed change:** *Remove the ability to appeal against a decision on an objection where the ability to appeal to the Environment Court in the first instance has been removed.* • This will remove the inconsistency between appeal preclusions on resource consents compared to appeal preclusions on objections. **Alternative options considered:** • *Retain the status quo and monitor the volume of appeals made to the Environment Court on objection decisions*. The ability to object to conditions or substantive decisions will only be a potential redress mechanism in very limited circumstances. In most cases, it will not be a substitute for the ability to appeal to the Environment Court. Research suggests that there has been limited use of this appeal right. However, it is preferable to eliminate the identified anomaly altogether.

Impacts

244. The proposed changes to the notification and appeals components of the Bill have focused on the concerns raised by a large number of submissions on aspects ranging from the level of public participation through to specific technical issues around workability and implementation.

245. For notification, the changes retain the Bill's overall intent to streamline the delivery of housing through preclusions on public notification for the full range of residential activities and subdivision. This now includes regional consents. However, accommodation has been made for the significant concerns raised about the constraints on limited notification. This proposal has largely reverted back to the existing effects-based test for limited notification, with exceptions being made for boundary and some controlled activities. This means that there is less chance that parties who may be genuinely affected by the activity (more so than the general public) will be prevented from being involved.

246. The preclusion on appeals for residential activities has been expanded through deletion of the reference to a "single allotment" and through the changes to the scope of residential activities. However, the impact will be that a greater number of consent decisions related to housing will not be able to be appealed, which is likely to exacerbate submitter concerns in this regard.

247. The proposal to specify effects in the notice has been removed due to the significant concern raised about both the workability and potential impacts on decision-making. Public notices will still, however, be subject to the Bill's changes to increase electronic delivery of documents, use of online platforms, and ease of interpretation of notices.

248. The provisions for striking out submissions have been modified to provide more discretion for councils whilst still requiring councils and decision-makers to be aware of process costs and efficiency. The proposal to enable notification decisions to be made in reference to the objectives and policies of plans has been removed due to practical implementation issues and the additional uncertainty it adds to the process.

249. The initial provisions in the Bill, particularly around notification, were very complex. While some changes have been made to policies to achieve a more user-friendly process, it is considered that the high-level objectives around simplified and proportional processes, reduced costs and increased certainty have been maintained. The impact on the policy objectives around the streamlined provision of housing, in particular, is still achieved.

Changes to consent conditions

BACKGROUND

Problem

250. Resource consent conditions are an essential tool for decision-makers to manage the environmental effects of activities. A considerable body of case law has established key principles that conditions must adhere to in order to be valid. However, the potential scope and nature of conditions, as set out in sections 108 and 220 of the RMA, is very broad.

251. The RMA does limit the scope of conditions, but also specifies that conditions may cover any matter. This contributes to uncertainty around the scope of conditions that can be imposed, which gives rise to confusion and litigation between councils and applicants. This also means that applicants are often unaware of the sorts of conditions that may be placed on their consent and the subsequent cost of compliance.

Bill proposals

252. To address these issues, the Bill proposes to limit the scope of consent conditions to reflect best practice. Councils will be required to ensure that any consent conditions imposed must be directly connected to either:

- the provision which is breached by the proposed activity or
- the adverse effects of the proposed activity on the environment or
- content that has been volunteered or agreed to by the applicant.

Impacts

253. This amendment will improve certainty by providing a legislative requirement for what are already well-established principles, and there are no policy trade-offs involved. This provision is well-aligned with the Ministry's objectives of delivering a user-focused system with appropriate scope and mix of protection, use and development of resources.

254. Overall, the benefits of the proposal are considered to outweigh any potential risks. The proposal will codify best practice and provide greater certainty to resource consent applicants, as well as to consent authorities, on the scope of consent conditions.

CHANGES TO THE BILL PROPOSAL

Problem

255. Further analysis has highlighted that a number of changes are required to improve the workability of this proposal. The changes are mainly technical in nature. They are aimed at clarifying policy intent, and addressing any unintended consequences or significant drafting oversights (particularly where there are interdependencies with other Bill proposals). Several are the result of issues raised by submitters including councils.

Proposed changes

256. **Table 8** below shows changes proposed.

TABLE 8: PROPOSED CHANGES TO CONSENT CONDITIONS	
Clause 63 and 64 (s108 and s108AA): Conditions directly connected to a rule in an NES or regulation	**Issue:** • The drafting currently allows a condition to be imposed 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. The drafting does not explicitly allow a condition to be imposed if it is directly connected to a rule in a national environmental standard. • The current drafting also undermines the new regulation-making power relating to water permits that is being introduced by RLAB. A change is required to clarify that a requirements relating to consent conditions in regulations prevail over the Bill's limitations on consent conditions. **Proposed change:** *Amend new section 108AA to ensure that requirements relating to consent conditions in regulations prevail over the Bill's limitations on the scope of conditions, and that a consent condition can be imposed if it is directly connected to an applicable NES rule.* • These changes will clarify that a condition may also be directly connected to a rule in an NES. They would also make new section 108AA consistent with the existing section 108 which enables conditions to be imposed on consents "subject to any regulations". More specifically, it will ensure that any conditions that are prescribed under the new regulation-making power relating to water permits in the RLAB prevail. That power will enable the form and content (including conditions) of water permits and discharge permits to be prescribed. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change.

Clause 64 (s108AA):
 	
Allow conditions to be imposed that are directly connected to positive effects
	Issue:
	• The drafting does not allow the imposition of a condition that relates to a positive effect on the environment (unless it is agreed to by the applicant). At present, the drafting requires that a condition must be:
	  ○ agreed to by the applicant, or
	  ○ directly connected to an adverse effect on the environment, or
	  ○ directly connected to an applicable district or regional rule.
	
	Proposed change: *Ensure conditions on resource consents are able to be imposed if they are directly connected to an effect of the activity on the environment.*
	• It is not clear whether the Bill as drafted 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.
	• Such a consideration of positive effects would capture matters such as enhancement or where the developer is providing a measure of public good. Not allowing the imposition of conditions to secure positive effects could have perverse outcomes.
	
	Alternative options considered:
	• No alternative options other than retaining the proposal as currently drafted were considered for this change.

Clause 64 (s108 and s108AA):
 	
Conditions under section 106 and section 220 will not be restricted by new section 108AA
	Issue:
	• The current drafting would see sections 106 and section 220 restricted by new section 108AA. This could mean that allotments are inadequately serviced, legal access is not provided, or the effects from the significant risk of natural hazards may not be able to be avoided, remedied or mitigated.
	
	Proposed change: *Section 106 (Consent authority may refuse subdivision consent in certain circumstances) and section 220 (Condition of subdivision consents) should not be restricted by new section 108AA.*
	• 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.
	
	Alternative options considered:
	• No alternative options other than retaining the proposal as currently drafted were considered for this change.

Clause 64 (s108AA): Allow essential administrative conditions to be imposed on resource consents	**Issue:** • Administrative conditions required for the efficient implementation of resource consents may not meet the new tests in section 108AA. The section stipulates that conditions may only be imposed if they are agreed to by the applicant, directly connected to an adverse effect on the environment or directly connected to an applicable district or regional rule. **Proposed change:** *Ensure conditions on resource consents are able to be set that relate to a range of administrative type matters that are essential for the efficient implementation of the resource consent.* • Administrative conditions are an essential part of the operational mechanics of consents that allow them to work effectively. It is unclear whether administrative conditions are directly connected with the adverse effects of the activity on the environment or an applicable rule, and as such whether they will be able to be imposed. If this is not clarified it is likely that it would lead to uncertainty and inconsistent practice by local authorities. **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change.

Impacts

257. The proposed changes will ensure that the drafting:

- accurately reflects the policy intent of the proposal
- addresses any legislative gaps
- does not undermine other changes proposed in the Bill.

258. Cumulatively, we consider that the proposed changes will improve the workability of the proposal so that it better meets the objective of ensuring that decision-makers have the evidence, capability, and capacity to make high quality decisions and accountabilities are clear.

Changes in relation to offsetting

BACKGROUND

Problem

259. Section 104 of the RMA sets out the matters a consent authority must, and must not, have regard to when considering an application for a resource consent.

260. Offsetting measures that are volunteered by an applicant are currently able to be considered by resource consent decision-makers as a positive effect under s104(1)(a), and "any other matter" under section 104(1)(c). However, there has been varied application and interpretation of such matters and the RMA's only reference to 'offset' (in regards to financial contributions) is being removed by clause 153 of the Bill.

Bill proposals

261. To address these issues, Clause 62 of the Bill proposes to make environmental offsetting and compensation measures an explicit consideration under section 104 of the RMA.

Impacts

262. This amendment will improve certainty by clarifying how environmental offsetting and compensation measures are to be applied under section 104 of the RMA.

CHANGES TO THE BILL PROPOSAL

Problem

263. Although not an issue raised by submitters, it has come to our attention that although the Bill introduces an explicit requirement for offsetting and environmental compensation to be considered under section 104, no such consideration is required under section 168A(3) and 171(1) for territorial authorities making a recommendation / decision on a notice of requirement relating to designations. Although environmental offsetting and compensation could currently be considered as 'any other matter' under section 168A(3) and 171(1), it could be assumed that the government is intentionally excluding recommendations /decisions on notices of requirement for designations from considering offsetting and environmental compensation, which is not the policy intent.

Proposed changes

264. **Table 9** below shows changes proposed.

TABLE 9: PROPOSED CHANGES TO OFFSETTING	
Environmental offsetting and compensation to be considered for a notice of requirement	**Issue:** • The Bill introduces an explicit requirement for offsetting and environmental compensation to be considered under section 104, but no such consideration is required under section 168A(3) and 171(1) for a territorial authority making a recommendation or decision on a notice of requirement relating to a designation. Although environmental offsetting and compensation could currently be considered as 'any other matter' under section 168A(3) and 171(1), it could be assumed that the government is intentionally excluding recommendations/decisions on notices of requirement from having regard to offsetting and environmental compensation. **Proposed change:** *that when considering the effects on the environment from a notice of requirement for a designation, a territorial authority must consider any voluntary form of environmental compensation, off-setting or similar measure which is not encompassed by section 5(2)(c).* **Alternative options considered:** • No alternative options other than retaining the proposal as currently drafted were considered for this change.

Impacts

265. The proposed changes will clarify that environmental offsetting and compensation are matters to be considered by territorial authorities when making a recommendation/decision on a notice of requirement for a designation in a similar manner to resource consent decisions. This change will provide consistency to the RMA and avoid the potential for litigation regarding the intention behind, and effect of, the discrepancy that would otherwise exist.

266. We consider that this proposed change will improve the workability of the proposal so that it better meets the objective of ensuring that decision-makers have the evidence, capability, and capacity to make high quality decisions and accountabilities are clear.

4 Other matters

267. Proposals covered under this section include:

- Changes to the Public Works Act

Changes to the Public Works Act (PWA)

BACKGROUND

Problem

268. Under the PWA, solatium is paid to landowners whose home (their main residence) is being acquired. It is paid, when the landowner vacates the property, for the disruption, interference and other forms of inconvenience they face when their home is acquired for a public work. Solatium is additional to compensation for the market value of the property.

269. The solatium has not been increased from $2000 since it was introduced in 1975.

270. There is currently no equivalent solatium payable to landowners where the property acquired (such as a holiday home, or land without improvements) does not include their home. Feedback from public consultation raised concerns that the compensation process is unfair, as these landowners also suffer disturbance and inconvenience through acquisition.

Bill proposals

271. To address these issues, the Bill updates the $2000 solatium, introduces a new solatium and enables future updates, as follows:

- Increase solatium up to $50,000 whereby a payment of $35,000 is paid to all eligible landowners, with additional payment to eligible landowners who meet the following criteria:
    a. $10,000 for early (within 6 months) written agreement to the acquisition;
    b. $5,000 depending on their circumstances.
- Introduce a solatium for landowners whose acquired land does not include their home. This amount is set at 10% of the value of the land acquired, from a minimum of $250 up to a maximum of $25,000.
- Orders in Council may be made to amend the solatiums amounts in the future by increasing or decreasing the compensation limits and percentages set out in those sections.

Impacts

272. Figures from Land Information New Zealand show that for Crown acquisitions since 1 January 2015, the current PWA s 72 solatium has been paid approximately 40 times out of approximately 400 acquisitions.

273. The solatium changes provide a relevant, contemporary solatium payment for all eligible acquisitions to recognize the landowner disruption. The solatium changes are expected to incentivise landowners to enter into voluntary land acquisition agreements more readily with the Crown.

274. The ability for the Minister for Land Information to update these amounts in the future by Order in Council will ensure:

- the amounts remain relevant to meet the purpose of the solatium; and
- application of the PWA principle that the landowner is left no better or worse financially than before the acquisition.

CHANGES TO THE BILL PROPOSAL

Problem

275. The Regulations Review Committee considered the PWA clauses in accordance with Standing Order 318(3). The Regulations Review Committee recommended that the Select Committee:

- ask officials to justify the need to use Orders in Council to make future adjustments to the solatium
- consider amending the Bill to insert appropriate criteria to base these adjustments (eg, CPI changes or council rating valuations).

Proposed changes

276. We propose to include these criteria and conditions for future adjustments to the solatiums 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 is not linked to any one factor that requires more frequent updating. Secondly, more regular adjustment could encourage landowner holdout, affecting the acquisition schedules for public works and potentially creating inequity for affected landowners.
- *The Minister for Land Information must publicly consult on the proposed solatiums and/or solatiums 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 solatiums 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. Consumer Price Index (CPI).
- *Solatiums amounts can only be increased. Percentages (of acquired land value in Clause 172 s72C) can be increased or decreased*. The reason for this clarifying amendment to Clause 172 s72E 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.

Impacts

277. The proposed combined criteria and conditions will ensure an efficient, fair and appropriate process for updating the solatiums amounts and percentages more regularly. This will ensure that they are effective and fit for purpose over time.

5 Minor and technical changes

278. There are a number of minor and technical changes proposed to address drafting oversights or improve the workability of particular proposals.

279. Proposals covered under this section include:

- Amend legal weighting of s18A procedural principles
- Reduce notification timeframes of certain mining access arrangements on conservation land from 40 working days to 20 working days
- Common definition of 'working day': Alignment between the Resource Management Act 1991 and the Conservation Act 1987
- Add validation clauses to allow for consultation on stock exclusion (and the macroinvertebrate community index (MCI) monitoring requirement
- Implementation timeframes for changes to offsetting and consent conditions.
- Increase the stock exclusion regulation instant fines regime.
- Enable designations to be reviewed and rolled over when a district plan is reviewed in sections
- Align the drafting of the proposed functions in relation to development capacity with the National Policy Statement on Urban Development Capacity

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

280. Applicants wishing to undertake activities under the RMA are often subject to requirements and processes that are disproportionately costly, time-consuming, and uncertain.

281. To address this problem, new section 18A requires people exercising powers and performing functions under the Act to:

- use timely, efficient, consistent, cost-effective, and proportional processes
- ensure that policy statements and plans only include matters relevant to the purpose of the RMA and use clear and concise language
- promote collaboration between or among local authorities on common resource management issues.

282. This proposal received broad support from submitters, although there was significant concern that the prescriptive wording of this section (ie, the use of "must") carries enforceable actions.

283. The potential perverse effect of making this section enforceable is that it could increase the cost and uncertainty of processes, rather than promote procedural efficiency by increasing the potential bases for legal challenges. This could be particularly problematic when decision-makers exercise powers and functions that do not relate to the substance of policy statements/plans or collaboration between local authorities. For example, local authority notification of resource consent applications, the Environment Court in making decisions on appeals, and the exercise of Ministerial functions.

284. We have considered the option of inserting a clause, as recommended by a number of submitters, so that the section cannot be enforced against any person. We note that this option would reduce the risk of the provision being used inappropriately through technical legal challenges. However, there is a corresponding risk that it would also reduce the incentive for decision-makers to comply with the principles if they are not enforceable.

285. We therefore consider that the above issues could be best addressed by adding qualifiers to the wording of clause 8 (ie, by changing the "must" in proposed new section 18A to "must take all practicable steps to" or "must take all reasonable steps to"). These qualifiers still provide openings for challenge (eg, what is "practicable" or "reasonable") but would achieve the purpose of imposing a tighter requirement on councils than "must endeavour to". We consider that this change improves the workability of the proposal and ensures that the drafting more appropriately reflects the policy intent.

Reduce notification timeframes of certain mining access arrangements on conservation land from 40 working days to 20 working days

286. The Bill 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. The Minister of Conservation would have discretion to extend the public notification timeframe for concessions that are particularly large or complex, if he or she considers it is in the public interest to do so. The amendment applies

only to concessions, therefore any other public notice that is notified under section 49 would still require a notification period of at least 40 working days.

287. 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. As an access arrangement is not a concession, it would still require a notification period of at least 40 working days. DOC considers it makes practical sense to amend the notification timeframe for publicly notified access arrangements on conservation land from 40 working days to 20 working days, through an amendment to the Conservation Act 1987 or the Crown Minerals Act 1991. This would align it with the amended notification timeframe for concession applications under the RLAB and with resource consents under the RMA. This would enhance the benefits of the proposal by ensuring greater alignment for applications to conduct activities on public conservation land.

288. Anyone applying for a notified concession would benefit by a shorter process. Possibly two to four times per year, DOC will receive an application for an access arrangement and a concession and the council will also receive a resource consent application. Occasionally DOC will receive an access arrangement application that will or is likely to meet the criteria for public notification (over the last four years there have only been about three or four). No further risks are anticipated from the change other than any already noted in the RLAB for reducing the public notification timeframe. There are no direct cost implications for the Department of Conservation, central or local government as a result of the proposed change to reduce the timeframe for access arrangements. There is potential for some cost savings for applicants. These savings would result from increased efficiency and consistency in their planning and resource application processes.

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

289. The New Zealand Law Society, in their submission on the Resource Legislation Amendment Bill, proposed that a single common definition of "working day" in the Resource Management Act and Conservation Act be adopted, as it would support the intent of the Bill and the amendment to the Conservation Act, providing greater alignment when notifying a concession under the Conservation Act and a consent under the Resource Management Act.

290. There are several broad options to achieve the alignment:

    a. Amend the Conservation Act to cease working days on 20 December and recommence after 10 January,
    b. Amend the Resource Management Act to cease working days on 25 December and recommence after 15 January, or
    c. Amend both Acts to be consistent with other closely related legislation.

291. Officials have analysed other pieces of environmental legislation including the Fisheries Act 1996, the Crown Minerals Act 1991, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and the Local Government Act. As there seems to be no obvious common definition in other legislation, officials have not explored option c any further. In addition, any increase in the

number of days not considered ‘working days’ would not be consistent with the intent of the Bill.

292. Option b would require changes that would affect all business processes under the Resource Management Act for all councils. The definition of ‘working day’ was changed by the Resource Management Amendment Act 2003 to cease working days on 20 December and recommence after 10 January (working days had previously excluded the days between 20 December and 15 January). We consider that councils are unlikely to support an amendment to the definition of working day under the Resource Management Act, especially since it was amended relatively recently.

293. After analysing these three options, the preferred option is option a: to amend section 2 of the Conservation Act 1987 by inserting the RMA definition as follows:

“*working day means a day of the week other than—*

a. a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign’s birthday, and Labour Day; and
b. if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
c. a day in the period commencing on 20 December in any year and ending with 10 January in the following year.”

294. Amending the Conservation Act would require change that would affect all processes under the Conservation Act and those statutes listed under Schedule 1 of the Conservation Act. An analysis of all processes that would be affected by the proposed amendment has been conducted. Most of these provisions relate to minimum public notification periods for various applications, policies, strategies and plans, and would affect DOC business processes and persons making a submission. A very small number would have a minor effect on other entities including the Game Animal Council, the Fish and Game Council and the New Zealand Customs Service.

295. The preferred option, although it is only a minor change, is consistent with the objectives of the Bill, 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.

296. This amendment minimises overall transaction costs across government agencies and local authorities. Anticipated transaction costs will be as a result of updating IT systems and any related guidance or forms. The Department expects to absorb such costs within its baseline, although some reprioritisation may be required. There is no change in the number of working days as a result of the amendment, so there would be no reduction in productivity anticipated.

297. DOC has not consulted with iwi on this amendment, although as there is no reduction in the overall number of working days or timeframes for public submissions, this proposal is unlikely to raise any issues.

298. This amendment is expected to have minor impacts on business processes and a majority of those affected are likely to be either neutral or in support of the amendment.

Add validation clauses to allow for consultation

Stock exclusion (and the macroinvertebrate community index (MCI) monitoring requirement

299. The Minister for the Environment has publicly consulted (through the *Next Steps for Fresh Water* discussion document) on incorporating a monitoring requirement for macroinvertebrates into the National Policy Statement for Freshwater Management 2014 (NPS-FM), 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 Bill to be enacted before they can be progressed into regulation.

300. A second phase of consultation (among other fresh water matters) is planned to occur later in 2016. It is likely that the Bill will not have been enacted by this time. Depending on the timing, validation clauses may be necessary to legitimise consultation undertaken on regulations prior to the legal mandate being in place.

Aquaculture

301. Work is currently underway to develop a national environmental standard and/or a national policy statement relating to aquaculture. This will include aspects that rely on the provisions in the Bill which provide expanded scope and flexibility for an NES and/or an NPS. If consultation on this instrument is carried out prior to the amendments in the Bill taking effect, then validation clauses will be required.

Dam safety

302. It is also likely that consultation on a national environmental standard for dam safety will be carried out in the future. This will include aspects that rely on the expanded scope and flexibility for an NES that this Bill introduces. If consultation on this instrument is carried out prior to the amendments in the Bill taking effect, then validation clauses will be required.

303. We therefore recommend including validation clauses for any statutory consultation on:

- incorporating a monitoring requirement for macroinvertebrates into the NPS-FM
- regulations relating to stock exclusion
- elements of a national environmental standard or national policy statement in relation to aquaculture that relies on the proposals in the Bill
- elements of a national environmental standard for dam safety that relies on the proposals in the Bill.

304. The intent of including these validation clauses is to avoid potential legal challenges on the decision to consult on the contents of NPSs, NESs or regulations before the enabling powers are in place. However, this enables consultation to be undertaken in a timely manner, which will contribute to ensuring that the national direction instruments are developed in a robust manner and are fit for purpose.

Implementation timeframes for changes to offsetting and consent conditions

305. The proposal to consider offsetting of environmental effects and the proposal to clarify the legal scope of consent conditions currently come into force the day after Royal Assent. There is insufficient time for guidance to be prepared and a risk that the proposals will be implemented haphazardly. As it stands, there is a considerable risk to the successful implementation of the offsetting proposal, given councils would be required to implement the change immediately with very little guidance/support.

306. The proposal to clarify the legal scope of consent conditions is expected to be more straightforward for decision-makers to implement, however it aligns with and supports the implementation of the offsetting proposal. From an implementation perspective, it is considered that a transitional provision should be made for these clauses, so that they commence six months after Royal Assent, to align with the other resource consent related changes. This will allow councils to implement the bulk of the resource consenting changes at the same time.

Increase the stock exclusion regulation instant fines regime

307. Livestock incursions into waterways can cause significant damage in terms of both direct contamination of waterways, and impacts on local habitat quality. New provisions in the Bill provide for regulations to be developed to exclude stock from water bodies. New provisions for infringement regulations also provide the ability to stipulate infringement offences for non-compliance and current drafting for this is set at a maximum of $750. This was set relative to the current maximum infringement fee of $1000 under the RMA Fines and Fees Regulations; however these have not been revised since they were introduced in 1999.

308. 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. Submissions from councils also note they would incur an expense (which would be passed on to ratepayers) in pursuing prosecution at the current rates. As noted above, infringement fees in the RMA have not been adjusted for inflation since they were introduced in 1999. If it was adjusted for inflation based on the consumer price index (CPI), the current maximum would be in the vicinity of $1,445.00. We consider that a revised infringement fee regime of $100 per stock unit with a maximum of $2,000 is more appropriate.

309. The Ministry of Justice has been consulted on the proposed increase in infringement fees and supports the proposed changes. Ministry of Justice guidelines support higher maximum infringement fees to deter offending where either a significant economic benefit can result for the offender, or where high levels of deterrence are necessary. We consider that a maximum penalty of $2,000 is necessary to provide a sufficient incentive to comply with the regulations compared to the current Bill proposal. This will mean that the stock exclusion control tools proposed are fit for purpose.

Enable designations to be reviewed and rolled over when a district plan is reviewed in sections

310. 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. An amendment to the RMA is required to enable designations to be reviewed and rolled over when a district plan is reviewed in sections through a series of plan changes.

311. We therefore propose to amend Schedule 1 clause 4(8) so that the clause applies to any plan change that is reviewing a designation or designation(s) in accordance with the ten year review requirement. This will ensure that a consistent approach is taken irrespective of the way councils choose to review their plans.

Align the drafting of the proposed functions in relation to development capacity with the National Policy Statement on Urban Development Capacity

312. The Bill strengthens the requirements on councils to take account of the impacts of planning decisions on supply and affordability of land and housing by amending the Resource Management Act 1991 (RMA) to introduce 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.

313. Supporting these functions will be a comprehensive program of national direction and guidance, including a National Policy Statement. The NPS will consider, amongst other policy approaches, a requirement for councils to do an assessment of present and future demand for housing and land (residential and business) and how the resource management plan supplies that.

314. We propose to align the drafting of the proposed functions with the National Policy Statement on Urban Development Capacity. The NPS-UDC is in the process of being consulted upon, with submissions closing on 15 July 2016. Early indications are that some changes are likely to the definition of 'development capacity' as part of that process. The drafting in the Bill should be aligned with the definition in the NPS-UDC to ensure close alignment between the Bill and the final policy statement.

Consultation

The public has had an opportunity to comment on the reforms

315. The development of the proposals in the resource management reforms were informed by public consultation on an early version of the proposals in the February 2013 discussion document *Improving our resource management system*, along with several reports from independent technical advisory groups, work with stakeholder groups and research providers, surveys of the public and business, and monitoring of local government implementation of the RMA. Summaries and reports of earlier resource management consultation are available on the website of the Ministry for the Environment.

316. The Local Government and Environment Select Committee received submissions on the Bill between December 2015 and March 2016. Over 750 submissions were received, with the majority of these coming from individual submitters commenting on single proposals. A number of form submissions from various organisations were among these. There were also many substantial submissions from local authorities, environmental groups, business and industry organisations and other submitters who commented on multiple Bill proposals.

Submitters generally had mixed views on the Bill

317. Although few submitters endorsed the Bill outright, few expressed opposition to everything in the Bill. Many supported the Bill's objectives in principle, but questioned whether the amendments would achieve them.

Areas of support

318. Certain high-profile changes such as the national planning template and the alternative planning processes had broad support from a range of submitters at a conceptual level. However most submitters expressed concerns (sometimes significant) about some aspects of their workability, appropriateness or cost.

319. In addition, many submitters supported the more minor changes being made by the Bill, for example regulation-making powers to provide for stock exclusion, and changes to introduce requirements for electronic servicing and public notification.

Areas of concern

320. Most of the criticism or concerns with the Bill coalesced around several key themes which cut across a number of proposals. These were raised by a number of types of submitters, including councils, individuals, business/industry groups and environmental organisations, and included:

    - *Public participation.* There was widespread concern over the combined effect of the proposals on public participation. Submitters often cited broad public participation as the 'cornerstone of the RMA'. Particular concerns included restrictions on notification, redefining affected parties and restrictions on appeal rights, and the requirement for councils to strike out submissions that are not related to the reasons for notification.
    - *Appropriate level of decision-making.* A common theme raised in submissions was the longstanding importance in the RMA of devolved decision-making, and the legitimising process of community involvement in plan making. While more central direction was generally supported in principle, many submitters

considered that the new Ministerial powers and discretion was excessive, the content of regulations unclear, and that existing tools were adequate for setting national direction.

- *'Race-based provisions'.* Almost half of all submissions were from individuals 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 asked that iwi participation arrangements and related proposals be removed from the Bill.
- *Achieving outcomes.* While the broad objectives of the Bill were generally supported, many submitters questioned the ability of the proposals to achieve the stated objectives. Concerns centred on the complexity and potential cost of implementing the reforms as well as the need for wider system reform.
- *Environmental bottom lines.* A number of submitters expressed concern at the effects of proposed changes on environmental bottom lines. A key submitter on this theme was the Environmental Defence Society, whose submission was supported by a number of other parties.

321. Where relevant, submitter views relating to policy proposals (or proposed changes) set out in this RIS are provided in the analysis section of the relevant proposal (above).

A number of new proposals have not been publicly consulted on

322. Several new proposals which are not modifications of existing Bill proposals have not been publicly consulted on. These are:

    - National direction changes
        a. Enable an NES to specify consent duration
        b. Expand the types of consents an NES can direct a regional council to review to include land use consents that are administered by the regional council.
        c. Incorporate electronic materials by reference into NESs and NPSs
    - Minor and technical changes
        a. Common definition of 'working day'
        b. Include access arrangements in the Conservation Act /RMA alignment
        c. Increase the stock exclusion regulation instant fines regime
        d. Enable designations to be reviewed and rolled over when a district plan is reviewed in sections

323. Government agencies have been given the opportunity to comment on these proposals through several rounds of feedback on the Cabinet paper.

Government agencies were informed of the proposed changes in this RIS

324. The following agencies were consulted in the development of this policy: the Departments of the Prime Minister and Cabinet, Internal Affairs, Conservation, and Corrections; the Ministries of Business Innovation and Employment, Transport, Justice, Primary Industries, Education, Health, Culture and Heritage; Land Information New Zealand; Te Puni Kōkiri; the Environmental Protection Authority; the New Zealand Transport Agency; the Earthquake Commission; the New Zealand Defence Force; and the Treasury.

325. Agencies were invited to comment on the proposals in the Cabinet paper.

326. While many agencies have expressed general support for the proposed amendments, some agencies have also provided additional comments in certain key areas. Most of the issues raised in relation to the changes in this paper have been resolved through clarifications and discussion with agencies. The outstanding issues are outlined in Table 10 below.

TABLE 10: AGENCY COMMENTS		
Theme/proposal	**Comments**	**Agency**
National direction changes	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.	Department of Internal Affairs
	The Ministry of Education 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.	Ministry of Education, New Zealand Defence Force
Streamlined Planning Process	The Ministry of Education does not oppose the inclusion of Notices of Requirement/designations in the Streamlined Planning Process. However, it considers that the recommendations must make it clear that a requiring authority's designations being included in any SPP is the decision of the requiring authority and that despite being included, a requiring authority may withdraw its designations from the SPP at any time.	Ministry of Education, New Zealand Defence Force
Collaborative Planning Process	Allowing the review panel to make substantive changes conflicts with the intent of collaboration, and potentially undermines the process. If this power is provided, should be tightly constrained and limited to how it could be applied. Considers that the related proposal of allowing merit appeals where there is no consensus has the same kind of reduction in incentive for a collaborative group to reach consensus.	Ministry of Primary Industries
	The Ministry of Education opposes inclusion of designations in the Collaborative Planning Process. A consensus process is not an objective of Part 8 of the Act, rather Part 8 exists to elevate the provision of national infrastructure above local planning influences and decision-making. The inclusion of Notices of Requirements in CPP is wrong at all levels. It would inappropriately raise the local	Ministry of Education, New Zealand Defence Force

	community's expectation of their increased influence in terms of the provision of national infrastructure. It would also likely result in less thorough overall consultation and possibly enable certain parties in the community to capture the process for their own ends. The Ministry is also concerned that there are no identified objectives or outcomes identified in the paper that provide purpose to the inclusion of designations in CPP or SPP. The Ministry considers that there has been inadequate justification, impact and risk assessment of these proposed significant changes.	
Consenting changes	NZDF opposes the proposal to explicitly include offsetting and environmental compensation as matters which a territorial authority can consider in respect of notices of requirement for designations.	New Zealand Defence Force
Iwi Participation Arrangements	Concerns with the use of the term 'require' in clause b as there may be matters that are not relevant to the new agreement. Officials consider that as clause b allows for the parties to agree to use an existing agreement as the basis of a new one and what content should be included, the clause presents minimal risk.	Department of Internal Affairs

Implementation

The Government needs to take an active role in implementation

327. The resource management system is largely devolved, with the majority of processes and decisions under the RMA applied by councils, practitioners, iwi and other participants in resource management processes (such as applicants and submitters). The Government needs to take an active role to support these people with understanding and applying the changes appropriately to ensure the reforms are swiftly embedded into everyday practice and to minimise transition costs.

328. The initial 2015 RIS noted that a more active approach will be required by central government than previous changes to the RMA, reflecting:

- the relative size and significance of proposed changes compared with previous reforms,
- existing complexity and challenges within the resource management system
- the range of players involved.

329. Since the Bill was introduced, and in light of this new approach, the Ministry has been working to plan an implementation programme in parallel with the Select Committee process for the RLAB.

Implementation will involve a range of activities

330. Support to implement the resource management reforms will include:

- an initial roll-out package following enactment: for example, fact sheets, webinars and meetings
- ongoing guidance and training: for example, information for lay submitters and applicants, technical guidance for council staff, best practice guidance for RMA practitioners through the Quality Planning website, and updates to the Making Good Decisions accreditation programme for decision-makers
- development of statutory instruments that relate to proposed legislative changes
- consequential amendments to existing regulations
- support to implement new and amended Ministerial functions under the RMA: for example, possible requests from councils for streamlined planning processes.

MFE is leading implementation with support from other agencies

331. The Ministry is applying a project management approach to the 'roll out' and ongoing support for implementation of the resource management reforms. The project governance board includes representation from Te Puni Kōkiri and the Department of Internal Affairs to ensure wider perspectives about the particular impacts these reforms will have on iwi/hapū and local authorities are considered in this programme.

332. This programme is being supported by other agencies that have particular impacts or roles in implementation of the reforms, particularly the Environmental Protection Authority, Department of Conservation and Land Information New Zealand.

333. Work to develop new statutory instruments related to proposed legislative changes is being led through separate parallel programmes (for example, the proposed

national policy statement on urban development capacity, and the National Planning Standards).

Implementation will focus on the needs of stakeholders and end users

334. In 2015, the Rules Reduction Taskforce 'Loopy Rules' report recommended that "all government departments adopt a stakeholder approach". In May 2016, the Ministry's Resource Management System Directorate responded to this recommendation by producing a new Stakeholder Engagement Strategy which creates the architecture for the Directorate to carry out strategic engagement and guides teams to develop engagement plans.

335. In March and April 2016 the Ministry for the Environment undertook a series of meetings and workshops with a number of councils, iwi, non-governmental organisations, resource management practitioner organisations, state owned-enterprises and central government agencies. A wide variety of feedback was received, which is now being used to scope particular products for development to support implementation.

336. The Ministry will produce an engagement plan to apply the new Stakeholder Engagement Strategy to this implementation programme, informed by the meetings which took place in March-April 2016. This plan will cover:

- any short term engagement to support the development of written guidance, and
- any ongoing engagement to support implementation post-Royal Assent - for example, workshops, hui, webinars or other formats.

337. Ministry staff have begun drafting fact sheets and we will be seeking council input on draft guidance after the Bill has been reported back.

Monitoring, evaluation and review

MFE has obligations to monitor the implementation and effective of the RMA

339. In New Zealand, responsibility for RMA monitoring and reporting is divided between national, regional and local levels.

340. At the national level, the Minister for the Environment is responsible for monitoring the implementation and effectiveness of the RMA under sections 24(f)(g) and (ga) of the Act. These functions are fulfilled by the Ministry for the Environment on the Minister's behalf.

341. The Ministry also has broader mandate under the Environment Act 1986 to monitor the operation and effectiveness of a broad range of environmental Acts and to advise the Minister on all aspects of environmental administration. RMA monitoring should therefore be designed to fit within this broader context to explore key linkages, impacts and outcomes across New Zealand's key environmental Acts.

The National Monitoring System is our main source of data

342. The Ministry's main source of data for monitoring the implementation of the RMA is the new National Monitoring System (NMS),[9] which is intended to provide a comprehensive and coordinated national framework to monitor the RMA.

343. The intention is for the NMS, alongside other initiatives, to help gradually shift towards more sophisticated measurement of qualitative outcomes rather than the standard 'check box' measures.

MFE is developing a monitoring and evaluation framework for the Bill

344. In the 2015 RIS, the Ministry indicated that it would be developing a monitoring and evaluation frameworks for the reforms. Work is currently underway to finalise the prioritisation of the proposals for monitoring and evaluation and to begin development of more detailed monitoring and evaluation plans for the priority proposals.

345. Detailed consideration of the success indicators for each proposal or group of proposals will be undertaken. Data is likely to come primarily from the NMS. The Ministry has recently introduced a programme of engagement with councils which ensures Ministry officials are in contact with every council at least quarterly. This direct engagement will assist the Ministry to gather supplementary qualitative data where required for a comprehensive evaluation of the proposal. More detailed studies will also be carried out where necessary.

[9] Further information on the National Monitoring System is available at https://www.mfe.govt.nz/rma/rma-monitoring/about-national-monitoring-system