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To Hon David Parker, Minister for the Environment CC Hon Nanaia Mahuta, Associate Minister for the Environment CC Hon Eugenie Sage, Associate Minister for the Environment			Tracking #: 2018-B-04498
Security Level	Unclassified	Number of Attachments 2	1. Matters for consideration as part of 2018 resource management legislation amendments 2. Combined list of suggested changes to the RMA
Date Submitted:	27 April 2018	Response needed by:	2 May 2018
MfE Priority:	Non-Urgent	Action Sought:	Direction and Decision

Proposed scope of a narrow Resource Management Act Amendment Bill 2018

Key Messages

1. Over successive briefings, we have provided advice on strategic choices for you to make to improve the Resource Management Act 1991 (RMA) operation. This briefing provides a recommended set of amendments to the RMA as a first step which could be progressed through a narrowly scoped Bill to be progressed in 2018, as requested by you on 5 April 2018.
2. We understand that your objectives to progress a near term narrow Bill are to reduce complexity, increase certainty, and restore meaningful public participation under the Resource Management Act 1991 (RMA) and associated resource management legislation.
3. We used criteria to assess the suitability of various amendments, including those proposed by a range of stakeholders. These criteria identify suitable amendments as requiring a well-defined problem, are achieved with a statutory fix, have a simple solution, and can be implemented cost effectively. Based on that assessment, we have identified 15 amendments we consider are suitable for inclusion within the scope of a narrow Bill. These are outlined in in Appendix 1.
4. There is a wider set of potential amendments that could best be considered as part of a comprehensive reform. These are provided in Appendix 2. This list provides a frame to organise further possible amendments that are identified.
5. We are meeting with you on 3 May to seek your direction on the proposals in this briefing.

Recommendations

6. We recommend that you:

   a. **Note** that this briefing is one of a series on developing an integrated resource management work programme for 2018-19.

   Yes/No

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b. **Confirm** the objectives for a narrowly scoped 2018 bill are to reduce complexity, increase certainty and restore meaningful public participation.

Yes/No

c. **Agree** to the scope of a narrow Bill as per the 15 amendments suggested in Appendix 1.

Yes/No

d. **Agree** that officials undertake limited consultation with selected Councils to finalise policy proposals for some of these amendments.

Yes/No

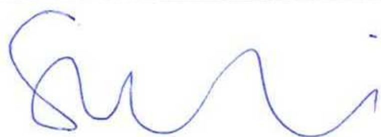
e. **Note** that there are a wide range of potential amendments that do not meet the criteria for a narrow Bill, which can be integrated in more significant reform to the resource management and planning system.

Noted

f. **Discuss** the advice outlined by this briefing this advice with officials at the meeting scheduled on 3 May 2018.

Yes/No

Signature



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Proposed scope of a narrow Resource Management Act Amendment Bill 2018

Supporting material

Context

1. The RMA is not functioning as well as it could. Over successive briefings, we have provided advice on strategic choices for you to make to improve its operation.
2. As a first step, you would like to develop a narrow Bill to address a small set of issues with the current legislation. This briefing provides further advice on the scope of a narrow Bill as requested at a meeting with officials on 5 April 2018. While the timing of the Bill is dependent on its agreed scope, a narrow Bill can be introduced later this year.
3. We have also provided advice on making more significant changes that will take longer to develop, consult on and implement (2018-B-04343 refers). These deeper changes will complement the objectives of the narrow Bill, while also building off existing work to improve freshwater, urban and climate outcomes. This work will also be informed by ongoing reform processes being developed by external stakeholders such as the Resource Reform NZ collation[1].
4. You have previously agreed the core components of a work programme to inform longer-term reform options that the Ministry is now developing (2018-B-04174 refers). In addition, we have received numerous suggestions from external stakeholders of improvements that can be made to the resource management and planning system. Both our work and the suggestions of others can be grouped into the following themes:
   - Better legislative alignment
   - Restoring and enhancing public participation
   - Ensuring the quality of decision making
   - Issuing clear national direction
   - Greater use of innovative tools and frameworks.
5. We will continue progressing and refining options for more significant reform in parallel with developing the narrow Bill. This RMA-specific advice will form part of a more comprehensive report back across the integrated resource management work programme in early 2019.

Analysis and Advice

Purpose and objectives of a narrow Resource Management Amendment Bill 2018

6. We understand you would like any changes made to the RMA to seek to achieve both a more efficient development process and more effective environmental management.

[1] The coalition consists of EDS, EMA, INZ, the Property Council and Business NZ.

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7. To fulfil this purpose, we recommend the following objectives for a narrow Bill:
   - reducing complexity
   - increasing certainty
   - restoring meaningful public participation.
8. We have used these objectives to guide our advice on the scope of a narrow Bill.

Proposed scope of a narrow Bill

9. In addition to our own policy development and stewardship of the RMA, we have received amendment suggestions from a variety of persons and organisations.[2]
10. We developed the following criteria to assess all suggested amendments for suitability for inclusion in a narrow Bill:

Criteria for analysis
Problem well-defined – the scope and scale of the issue is reasonably known with minimal further policy development and consultation required
Statutory fix required – problem is created by the legislation and is not better addressed through national direction, regulation or guidance
Simple solution – correcting the issue is anticipated to require relatively straightforward amendments with minimal consequential changes
Cost effective – generally easy for councils to implement and not requiring major changes to existing systems and processes

11. Using these criteria, we have identified 15 amendments as potentially suitable for inclusion in a narrow Bill. These amendments will improve public participation through releasing limitations on notification and appeals for subdivision and residential activity, improve certainty by clarifying particular resource consent processes and tools for compliance, monitoring and enforcement, and reduce complexity by removing certain regulation making powers. These amendments are detailed in the table at Appendix 1.
12. Many of the suggested amendments that do not meet the criteria may still have merit. However, we recommend that these options be considered more comprehensively as part of the integrated resource management work programme in 2019.

Progressing the next stage of more significant reform

13. The long list of suggested amendments that we consider fall outside the scope of a narrow Bill are included in Appendix 2. We have also grouped these items according to five high level themes:
   - Legislative alignment across the resource management and planning system
   - Public participation
   - Quality of decision making
   - National direction

[2] Including Sir Geoffrey Palmer, a recent consultation document prepared by Berry Simons and EDS (February 2018), Coalition Action Network, Andrew Riddell, Ellis Gould, Dunedin City Council, Environment Canterbury, and Local Government New Zealand.

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- Tools and frameworks

14. While many of the items listed in Appendix 2 have merit, more policy work is needed to define the problem or identify appropriate solutions. Solutions are likely to be wide ranging and raise potential implications for the fundamentals of our resource management system. Some of these suggestions are more controversial and/or complex, and may require significant consultation with a wide range of stakeholders to understand views and practical implications on the ground.

15. There are a handful of proposals which do not meet the criteria for a narrow Bill. However, as these are small parts of more complex issues, we recommend that they be addressed as part of a more comprehensive review. This items include:

    - changes to amend or remove the Collaborative Planning Process, or to allow Combined Plans in part, would be more efficiently and effectively considered as part of a wider assessment of plan-making processes.
    - changes to the title of the Principal Environment Judge would be more efficiently and effectively considered as part of a wider assessment of the role of the Courts.
    - changes to Designations such as introducing timeframes for processing Notices of Requirement, would be more efficiently and effectively considered as part of a wider assessment of Designation processes.

16. We will continue to add to and maintain the list of suggestions in Appendix 2 to inform the next stage of reform. Early signalling of the two-staged approach and high level themes with external stakeholders may also help manage the scope of a narrow Bill.

Consultation and Collaboration

17. We have not yet consulted external stakeholders on the scope of a narrow Bill.

18. In order to test our assumptions (particularly around complexity and implementation costs) we propose to undertake limited consultation with a selection of councils.

19. We have also started discussions with the Ministry of Justice to ensure any proposals to strengthen enforcement under the RMA are aligned with similar provisions across government.

20. We have also contacted PCO to provide an estimate of the time required to draft a narrow Bill, and will confirm this once we have your direction on the scope of amendments.

Timing

21. Based on past experience, the following is a best estimate of a fast process, providing the earliest possible timeframes and steps to be followed for progressing any subsequent Bill:

    - Limited engagement, Cabinet paper and RIS development – May/June 2018
    - Cabinet Environment Committee Policy approval – 20 June or 4 July 2018
    - Drafting instructions and PCO drafting (8 weeks) – July/August 2018
    - LEG approval to introduce – August/September 2018
    - Introduction to the House – September 2018
    - Passage through the House – estimated to take four to nine months.

22. Any change in scope may affect our ability to meet this time line.

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Risks and mitigations

23. The scope of the Bill will have a direct impact on how long it will take to develop and be introduced into the House. Widening the scope increases the risk that a Bill will not be able to be introduced in 2018, and increases the length of time needed to progress through the House. Delay increases the risk of overlapping with a process for undertaking more significant reform to the system in 2019.

24. Our advice on the scope of a narrow Bill includes assumptions that simple drafting solutions can be identified, and implementation costs will be low. Targeted engagement can help test these assumptions and any changes may need to be reassessed to ensure the Bill's objectives continue to be met.

25. Any amendment to the RMA is likely to attract significant interest, and anticipated requests to increase the scope. This risk can be partially offset by using clear objectives, and sending early signals about the direction of the next stage of more significant reform.

26. Progression of a RMA amendment bill will require resourcing and time on the Government's legislative programme. There is a risk this may influence the progress on your priority urban, freshwater, and climate work, as Ministry resources are diverted.

Legal issues

27. No legal issues have been identified with the issues raised in the briefing.

Financial, regulatory and legislative implications

28. Any proposal to amend the RMA has resourcing implications for central government in terms of:

    - Policy development
    - Support to legislation through the House
    - Support to implementation.

29. No budget has been allocated for this bill, and these costs will be absorbed within the Ministry's existing baseline.

30. RMA amendments create transaction costs, particularly for local government and practitioners, as they interpret and apply the changes to their existing practice. No quantification of likely costs has yet been undertaken in respect of the recommended amendments to the RMA contained in this document. However, considering the extent that the proposals are narrowly defined and the criteria for identification of matters for amendment, it is expected that there will be relatively low transaction and implementation costs for end-users.

Next Steps

31. We are meeting with you on 3 May to discuss this advice where we are seeking decisions from you on the scope of a narrow Bill.

32. Following your feedback, we will continue developing and refining the scope of a Bill with a view to seeking approval policy approval from the Cabinet Environment Committee in June/July.

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Appendices

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Appendix 1: Matters for consideration as part of 2018 resource management legislation amendments

Criteria:

1. **Problem well defined** – the scope and scale of the issue is reasonably known with minimal further policy development and consultation required
2. **Statutory fix required** – problem is created by the RMA and is not better addressed through national direction, regulation or guidance
3. **Simple solution** – correcting the issue is anticipated to require relatively straightforward amendments with minimal consequential changes
4. **Cost effective** – generally easy for councils to implement and not requiring major changes to existing systems and processes

#	Proposed change	Problem defined	Statutory change	Simple	Cost effective	Analysis and advice
National Direction						
1	Remove the Minister's ability under section 360D to make regulations that either prohibit or remove rules in council plans that duplicate or overlap with subject matter that is included in other legislation. Consequentially remove section 360E which sets out the consultation process required if making regulations under 360D.	✓	✓	✓	✓	Section 360D is a tool to reduce duplication or overlap between the RMA and other planning legislation. It's intent is to increase the efficiency and certainty of the planning system for example providing greater certainty that planning provisions developed through the Schedule 1 process will not be overridden. It is also intended to reduce unnecessary costs (such as additional consent requirements). However, there is the perception that section 360D equips the Minister with excessive powers to intervene in local planning decisions. Of the 230 submitters on this 2017 amendment, 209 were against or partially against section 360D. Since its enactment, stakeholders have written to you (for example, Sir Geoffrey Palmer and Berry Simons/Environmental Defence Society) requesting that this section be repealed. This means that making the regulations under this section could be controversial and subject to legal challenge. Removing section 360D would remove this direct Ministerial tool which may not be consistent with your work-program on aligning resource management legislation. The intent of 360D cannot easily be achieved using other tools in the RMA. Removing section 360D would not present any consequential issues as there are no regulations in place and there is no planned policy work to make regulations under this section. Its removal would also contribute to making the RMA less complex. If section 360D is removed, section 360E would also need to be removed. Section 360E sets out the consultation process required if making regulations under 360D.
2	Remove the Minister's ability under 360G to make regulations that prescribe activities as fast-track (meaning non-notified consents must be processed in 10, instead of 20 working days) and their ability to prescribe the information that an application for a fast-track resource consent must include.	✓	✓	✓	✓	The intent of the fast-track provisions is to provide more proportionality in the consenting system for more straight-forward activities. However, there is the perception that section 360G equips the Minister with excessive powers to intervene in local planning decisions. Of the submitters on this amendment in 2017, 23 were in opposition, while 4 were in support. Since its enactment, stakeholders (for example Berry Simons/Environmental Defence Society) have written to you to request that wide reaching Ministerial powers be removed. This means the regulations could be controversial if made and subject to legal challenge. Prior to the 2017 amendment, local authorities (such as Auckland and Wellington) were offering 'fast-track' services for types of consents where they felt this was appropriate as a matter of good practice. This means removing 360G would allow individual local authorities to continue to determine which activities should be 'fast-tracked' as a matter of practice, based on their local circumstances. Its removal would also contribute to making the RMA less complex. The exercise of the regulation-making power is constrained to activities of a scale and complexity that are unlikely to warrant a local authority taking more than ten working days to process. In practice this could mean the regulations are only applicable to smaller scale activities. However, the ability to require that a resource consent is processed in ten working days is not provided elsewhere in the RMA, and could be used in housing or urban related situations.

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						Removing section 360G would not present any consequential issues and there is currently no policy work planned to make regulations under this section, and there are currently no regulations in place.
3	Remove the Minister's ability under 360H to make regulations that preclude public notification for certain activities, or prescribe who may be considered an affected person in relation to limited notification.	✓	✓	✓	✓	The intent of section 360H is to enable the identification of simple and straightforward activities, or classes of activities that could be processed on a non-notified basis. The regulations would facilitate national consistency of notification decisions, thereby reducing risk-adverse behaviour by councils. It would also provide increased certainty for applicants and councils. However, there is the perception that section 360H equips the Minister with excessive powers to intervene in local planning decisions. Of the submitters on this amendment in 2017, 87.1% were opposed, and 7.7% supported. Since the enactment of RLAA, stakeholders (for example Berry Simons/EDS) have written to you requesting that wide reaching Ministerial powers be removed. This means that making the regulations could be controversial if made and subject to legal challenge. Repealing 360H would reinforce the devolution of resource consent notification to local authorities, and contribute to making the RMA less complex. It is also worth noting that in the 2015/2016 national monitoring system year 1.9% of consents were limited notified and 1.4% publically notified. In practice, it would be difficult to meet the constraints on the regulation-making power, as the Minister has to be satisfied under section 360H(2) that the likely effects of the activity would not warrant public or limited notification, or preclude parties that could be adversely affected. There are also other existing tools in the RMA available to the Minister which provide avenues to achieve a similar outcome, for example the National Planning Standards or a National Environmental Standard. However, we consider the regulations are likely to provide the fastest means of implementing a restriction on notification. The regulation could be used in a housing/urban context, for example it could be considered in the urban development authority work. However, in practice, due to the constraints on the regulation this could mean they are only applicable to smaller scale activities. The existing preclusion on notification for fast-track activities is important for local authorities to be able to process these consents in 10 working days. If the decision is made to remove 360H this could reduce the viability of 360G (fast-track regulations). Removing section 360H would not present any consequential issues are there is currently no policy work planned to make regulations under this section, and there are currently no regulations in place.
4	Amend the regulations for stock exclusion to enable stock to be excluded from drains under section 360(hn)	✓	✓	✓	✓	The intent of the regulations is to provide for stock exclusions from waterways to stop further degradation of water quality. The current drafting of the regulation provision does not capture drains, which undermines the policy intent. The fourth report of the Land and Water Forum, which was released in Nov 2015, recommended that stock exclusions requirements apply to drains (over 1m wide). MfE officials carried out consultation on a proposal that included stock exclusions from drains in May 2017 (Clean Water 2017). Industry groups feedback supports the inclusion of drains in the stock exclusion regulations. An amendment would expand the possible scope of stock exclusion regulations so that it could include requirement to keep stock out of drains. This would assist in stopping further degradation of freshwater. We are providing you with further advice on the appropriate regulatory tool for stock exclusion in late May or early June
Quality of Decision-Making						
5	Amend section 11 to reverse the subdivision presumption from a restricted to a permitted activity.	✓	✓	✓	✓	The 2017 amendments to the RMA changed the presumption of subdivision from a restricted activity to a permitted activity. The intent of this was to align the presumption with that of land use activities, and streamline consenting processes by reducing the need for subdivision consent. The 2017 change to the presumption was generally considered to have a minimal benefit and unnecessary by many submitters as local authorities could already provide for subdivision as a permitted activity. Some local authorities had concerns about the

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						tension between the presumption change and section106, which allows local authority to refuse subdivision in certain circumstances such as significant risk from natural hazards. Stakeholders, including Berry Simons and EDS consider that subdivision should be presumed restricted to ensure that environmental limits can be managed strategically and as an integrated whole. Due to the 2017 amendment, local authorities may consider it necessary to change their plans to reflect this new presumption. However, we are not aware of any plan changes to give effect to this amendment. Any reversal of this presumption will likely be easy, and not costly for local authorities. Amending the presumption back to the pre-2017 amendment status will contribute to increasing certainty in the system, by providing continuity in how rules in plans are made in relation to subdivision. It will also send the signal that subdivision in particular areas, such as those with versatile soils or high natural hazard risk is not encouraged, and that any subdivision in these areas should be considered carefully during the consenting process. The change of the presumption for subdivision to a restricted activity could, however, be a perceived conflict with the Government's wider objectives to deliver affordable housing, and cutting red tape.
6	Allow applicants to suspend the processing of their non-notified consents	✓	✓	✓	✓	The RMA currently does not allow applicants to put **non-notified** resource consents on hold (but does allow this for notified resource consents). This has led to consent processing frustrations for councils and applicants. Applicants often need time to address unforeseen, associated, but not necessarily RMA related issues with their proposal. Currently, the only process available under the RMA for non-notified consent applicants in these circumstances, is to withdraw their application and then re-lodge it when they are ready. This is considered to be inefficient, and causes additional delays. The ability for applicants to put notified resource consents on hold was originally established through the 2013 amendments to the RMA, as a suite of reforms focussing on the processing of consents for medium-sized projects. A number of submitters on the 2013 Bill requested that this provision should be extended to apply to non-notified resource consent applications. However this was out of scope of the Bill. A number of consent authorities have subsequently expressed their frustration about this misalignment to the Ministry (informally) and it has led to the establishment of a variety of processes by local authorities to circumvent the issue. Amending the RMA to allow applicants to suspend the processing of their non-notified consents would codify current practice, and improve the efficiency of the process. This could be achieved by amending sections 91A – 91C. The appropriate time period allowed for this suspension needs to be determined through targeted consultation with practitioners within local authorities.
Public Participation						
7	Repeal the public notification preclusions relating to residential activities and subdivision of land and repeal the definition of 'residential activity'.	✓	✓	✓		The intent of the preclusions on public notification were to streamline housing related developments. However, there is a perception that the preclusions will result in reduced access to justice for those affected by proposed developments. There is also the concern that the quality of decision making will be reduced if decision makers do not benefit from the input of submitters. Of the 117 submitters on these preclusions in the 2017 Bill, 87 were in opposition with 19 in support/conditional support. There was a widespread view amongst a majority of submitters that the constraints being placed on public notification were too great. Some submitters, including business and industry submitters, supported the intent of the amendments but were concerned about the potential for the constrained process leading to greater reverse sensitivity effects for industry and infrastructure. For example, if residential activities are being proposed near to existing hazardous facilities. Since these preclusions came into effect, we have received feedback from local authorities that the associated definition of 'residential activity', which was inserted as part of the 2017 amendments, is uncertain and potentially litigious. An amendment to section 95A (repealing s95A(5)(b)(ii) and s95A(6)) would restore public notification as an option for resource consents for ***residential activities and subdivision of land***. This would remove the uncertainty for local authorities of applying the

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						definition of 'residential activity' and return to the previous effects-based test for determining notification for these activities. This would better align with the basis on which the particular activity status was determined in the plan-making process. We do not recommend removing the preclusions on public notification in relation to controlled activities (including fast-track), and boundary activities as the preclusions are fundamental to the operation of the fast track and boundary activity processes. By their definition they are very minor or localised, and affected persons would remain eligible to be involved in the process. We recommend consulting with local authorities to understand the potential cost for implementation to ensure these criteria for the Bill can be met.
8	Repeal the preclusions on the right to appeal decisions or conditions of consent relating to the subdivision of land and residential activities (unless that residential activity or subdivision is a non-complying activity).	✓	✓	✓	✓	The intent of these limitations on appeal rights was to streamline housing related development. These preclusions are aligned to the section 95A preclusions on public notification. Of the 80 submissions received on the preclusions to the rights of appeals in the 2017 amendments, 58 were against or partially against, and 20 were in support or partial support. Supporters of the 2017 amendment stated that the preclusion provides greater certainty, reduces barriers to housing development, and encourages public input at the plan-making stage rather than at the resource consent stage. However, submitters noted that council decision-making is not infallible and that decision-makers do not always get it right, including issuing consents with unreasonable conditions. Repealing these preclusions would reinstate public participation rights for residential activities and subdivision of land. It would also enable applicants/consent holders to appeal consent decisions and on conditions of their consent which is the only avenue for consent holders, and would better align with the participatory nature of the RMA. For the reasons above, we recommend repealing section 120(1A) which precludes the right to appeal decisions or conditions of consents relating to the subdivision of land and residential activities.
9	Repeal the restriction on appeals which limit appeals on resource consents to those matters raised in a submission.	✓	✓	✓	✓	Under section 120(1B), a person who has made a submission on an resource consent application can only appeal in relation to a matter raised in their submission. The intent of the limitation is to streamline housing related consents and to incentivise submitters to put their best case to council. However, during a hearing for a resource consent, new information can become available, or the proposal can change. Currently, submitters cannot appeal based on this information and submitters or the applicant cannot appeal on subsequent conditions. This raises issues of fairness. A number of submitters to the 2017 amendment opposed the section 120 (1B) limitation. We note that there has been a declining trend in Environment Court appeal numbers against decisions on resource consents, from a high of 893 appeals in 2001/02 to 113 appeals in 2014/15. Therefore, there is no compelling statistical basis that the limitation on appeal rights is necessary. We consider that repealing s120(1B) would restore access to justice for those affected by proposed developments particularly when decisions are made based on new information/evidence that was not apparent when submissions were first lodged (e.g. at a hearing stage).
Tools and Frameworks						
10	Increase infringement fines and introduce an individual/company split under section 360(1)(bb).		✓	✓	✓	Current infringement notice values may be too low to provide a meaningful financial incentive to comply with the RMA. This is a problem identified by stakeholders including the Compliance and Enforcement Special Interest Group (CESIG, comprised of Regional and Unitary authorities), NGOs (including EDS) and territorial authorities. Infringement fines are an efficient and useful tool for punishing non-compliance and deterring potential future non-compliance. With a maximum of $1000, the current infringement fines are often insufficient to deter/punish offending, particularly for companies, where non-compliance may be in the companies' pecuniary interests. The next most significant enforcement tool is prosecutions, which are time-consuming and costly for councils to take.

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						At this stage we recommend increasing the maximum infringement fee to $2000 for "natural persons" and $4000 for "persons other than natural persons". This would reflect the fee relating to stock exclusion, which was introduced through the 2017 amendment. However, over the next fortnight we will continue to engage with the Ministry of Justice on what a suitable level of fine would be in order to ensure consistency with other legislation. Increasing the maximum infringement will provide a greater deterrent for companies and individuals, and more certainty in regard to compliance under the RMA.
11	Extend the statutory limitation period for filing charges (for prosecutions) under 338(4).		✓	✓	✓	The six month statutory limitation period for filing charges (for prosecutions) is very short and often results in local authorities being unable to take a prosecution. Extending the timeframe would give local authorities more time to consider whether a prosecution is appropriate in relation to a non-compliance. This would also reduce the number of cases where prosecutions are unable to be taken due to the limitation period being exceeded. Increasing the limitation period would also provide for greater consistency with other legislation (e.g. the EEZ Act, which has a 12 month statutory limitation period) . We have begun consultation with the Ministry of Justice on this amendment.
12	Extend timeframe for advising the local authority and applying for a resource consent for emergency works under section 330B (Emergency works under the Civil Defence Emergency Management Act 2002).	✓	✓	✓	✓	Section 330B states that the local authority must be advised within 7 days of emergency works under the Civil Defence Emergency Act 2002 being undertaken that would normally require a resource consent. An application for the activity must be made within 20 working days of advising the local authority. This is an unnecessarily short timeframe in the context of a large emergency. It is likely to add a source of stress for consent authorities and applicants in a time of extreme pressure, without generating a correspondingly significant resource management benefit. We recommend modelling an amendment on the timeframe proposed in the Canterbury Earthquake Order 2010 (20 working days to advise the consent authority, 60 working days for a resource consent to be lodged, after notifying the local authority).
Technical Amendments						
13	Allow consent authorities to 'stop the clock' and withhold a consent if a fee has not been paid.	✓	✓	✓	✓	Local authorities are currently unable to suspend the processing (or issuing) of a resource consent whilst waiting for the applicant to pay the appropriate fees. This leads to cost-recovery and statutory process timeframe issues for the local authority, and has led to various practices to circumvent it. This issue also applies to other types of types of RMA consents/permissions processes. In order to rectify this particular issue for the resource consent process, the following amendments are required: • Amend section 88 to require that a fee accompanies the application • Amend section 88B to stop the clock while the consent authority is awaiting fees • Amend section 115 to allow consent authorities to withhold the issuing of the resource consent until any additional fees/charges have been paid in full. For consistency, it would assist local authorities to be able to require up-front fees, and withhold consent if a fee has not been paid for other RMA consents/permissions. These include the following: • Certificates of compliance (s139) • Existing use certificates (s139A) • Extension of time (s125) • Outline Plan approvals (s176A) • Survey Plan approvals (s223) • Objections to decisions (s357A and s357C) • Deemed permitted activities (87BA and 87BB) These changes would also improve legislative consistency for local authorities and align with processes set under the Building Act.

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						As previous amendments to improve this have not fixed the problem (eg the RM (Discount on Administrative Charges) Regulations 2010), it is recommended that we undertake limited consultation with targeted councils to ensure these changes can be implemented effectively.
14	Add clarity by explicitly referring to deemed permitted boundary and marginal or temporary activities in sections 9-11.	✓	✓	✓	✓	Sections 9-15 of the RMA currently requires activities which contravene a rule in a plan to be authorised by a resource consent. These sections do not refer to deemed permitted activities (see sections 87BA and 87BB), which was a drafting oversight during the 2017 amendments. Amending section 9-15 to include reference to a deemed permitted marginal or temporary activity (section 87BB), and a deemed permitted boundary activity (section 87BA) will provide more legal certainty for these two types of permissions under the RMA.
15	Enable resource consents to be reviewed by a local authority as a group				✓	Environment Canterbury has proposed an amendment to the RMA to enable consents to be reviewed as a group. They consider the RMA process for reviewing consents is inefficient, creates equity concerns, and reduces the effectiveness of the resource management plan. This suggested amendment is intended to accelerate the delivery of freshwater outcomes. However, given the complexity of the matter, further policy work and consultation is required.

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Appendix 2: Further suggested changes outside the scope of a narrow Bill

	Description of suggested change	Origin of suggested change	Comment
Legislative alignment			
1	Integration across legislation to address urban issues: Integrate transport and infrastructure decisions within the RMA, adress the urgent need to deal with urban development better, integrate RMA with Local Government Act, and reform Local Government.	Sir Geoffrey Palmer	Further policy work is needed to define scale and scope of the problem. There is currently work being undertaken (i.e. UGA) addressing some of the issues raised.
2	Reinstate local authorities' functions relating to the control of hazardous substances.	Berry Simons / EDS	These sections were removed through the 2017 amendment as it was a duplication of Hazardous Substances and New Organisms Act 1996 and the Health and Safety at Work Act 2015. Local authorities can still control these matters. This was an effective amendment, and control of hazardous substances provisions should not be reinstated. Guidance will deal with the matter more effectively
3	Building Act: Assess the reliance on Building Act to control building in areas where natural hazard risks have changed following a major natural hazard event.	MfE	This is too complex for the narrow bill. Most importantly, the proposal has implications on other current work programmes and other legislation.
4	Biodiversity: Define the terms "offset" and "compensate" in (a) a biodiversity context and (b) in other circumstances.	Berry Simons / EDS	This is too complex for the narrow bill and has implications on other current work programmes. The Ministry currenty has an active work program with the Biodiversity Collaborative Group.
5	EEZ Act/marine/aquaculture interaction and interface with RMA and other legislation regulations: consider if Mean High Water Spring (MWHS) is a suitable method to identify the boundary for the landward limit under the RMA and EEZ.	MfE	Further policy work is needed to define the scale and scope of problem, and consider options. This is potentially complex and requires further consultation.
6	Urban Development Authority proposal: ensure that any resulting Bill contains appropriate rights to submit and be heard and appropriate rights of appeal (or direct referral to the Environment Court).	Berry Simons / EDS	This is being considered as part of a wider MBIE led work program.
7	Increase the time frame for interested party comments on concession applications under Conservation Act 1987 from 20 to 30 working days.	Berry Simons / EDS	This amendment was introduced in the 2017 amendment to align with the process in the RMA, and there is no reason to amend this section at the moment, as it provides alignment between the two legislations.
8	Require publicly notifiable section 20 applications under the EEZ to be heard by the Environment Court rather than a Board of Inquiry.	Berry Simons / EDS	The EEZ public participation process was purposefully established differently to the RMA. Any changes would require more policy development.
9	Climate change effects need to be considered under the RMA.	Coalition Action Network	There is a significant MfE work programme on climate change at the moment.There is no active work in introducing climate change matters into the RMA at the moment.
10	Effectively implement NZ's international climate change obligations.	Geoffrey Palmer	
11	Reinsert requirement for consents to consider impacts on climate change.	Berry Simons/EDS	
National Direction			
12	Remove the ability for a national environmental standard ("NES") to provide that a plan rule can be more lenient than an NES standard (amend section 44A).	Berry Simons / EDS	The current NES provision provides flexibility for local variation where appropriate. This provision enables implementation of the current NPS-FM. Further policy work and targeted consultation would be required to understand whether a problem exists.
13	Require that rules and standards in an NES must give effect to any relevant national policy statement (amend section 43A).	Berry Simons / EDS	There is no primacy specified between NES and NPS as they are designed to achieve different things and influence planning decisions (plans and consents) differently. Therefore, further policy work would be required to define scale and scope of the problem.
14	Models for water management: Institute a centralised formal model approval process.	LGNZ	This needs to be further clarified and is potentially not a statutory matter. This may also be complex and have links to other work programmes. Therefore, further policy work and targeted consultation is required.
15	Amend the RMA so plan rules do not have immediate legal effect for aquaculture matters as it is more effective that the community can debate on the proposed rules, before they take effect, in the plan making process.	MfE	Further policy work would be needed to define scale and scope of the problem.
16	Rename "National Planning Standards" as the "National Planning Template".	Berry Simons/EDS	We consider the current name reflects the purpose of the National Planning Standards.
17	Remove the scope and strength of national planning standards. For example, their ability to specify objectives and policies.	Berry Simons/EDS	The draft National Planning Standards include some content provisions where this is considered necessary to achieve meaningful consistency and the purpose of the National Planning Standards.
18	Remove the ability for Minister of Aquaculture to make regulations to amend regional plans in relation to aquaculture activities. Repeal sections 360A to 360C.	Berry Simons / EDS	This is complex and would require policy work and targeted consultation
19	Regulations relating to content/conditions wate and discharge permits: Remove the Ministers power to prescribe the content (including conditions) of water permits and discharge permits (Repeal section 360(da)).	Berry Simons / EDS	This is complex and would require more policy work and targeted consultation.
Public Participation			

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20	Request for new regulation that sets the threshold investment amount for a proposal, above which the consent authority must grant the request for direct referral (Activate sections 87E(6A) and 360(1)(hm)).	Berry Simons / EDS	Further policy work would be required to define scale and scope of the problem.
21	Remove the ability for the consent authority to strike out a submission on the basis that it purports, but is not independent expert evidence (Repeal section 41D(1)(d)).	Berry Simons / EDS	Further policy work would be required to define scale and scope of the problem.
22	Review the Hearing Commissioners powers including the process for rejecting submissions; significantly limiting the time within which to be heard; directing evidence and legal submissions to be pre-circulated.	Andrew Riddell	Further policy work would be required to define scale and scope of the problem.
Quality of decision making			
23	There is an unreasonable timeframe within which to join an appeal.	Andrew Riddell	Further policy work would be required to define scale and scope of the problem.
24	Ensure the Environment Court has capacity to decide on environmental bottom lines.	Sir Geoffrey Palmer	Further policy work would be required to define scale and scope of the problem. Moreover, any policy work concerning the Environment Court should be undertaken with the Ministry of Justice.
25	Change the appeal lodgement and joining fees.	Andrew Riddell	Further policy work would be required to define scale and scope of the problem. Moreover, any policy work concerning the Environment Court should be undertaken with the Ministry of Justice.
26	Review the Environment Court direct referral timeframes.	Andrew Riddell	Further policy work would be required to define scale and scope of problem. Moreover, any policy work concerning the Environment Court should be undertaken with the Ministry of Justice. This matter should also be considered in a wider review.
27	Rename the "Principal Environment Judge" to "Chief Environment Judge". (Amend section 251 and consequential amendments).	Berry Simons / EDS	Further policy work would be required to define scale and scope of problem, and consider options. Moreover, any policy work concerning the Environment Court should be undertaken with the Ministry of Justice.
28	Provide the Environment Court with jurisdiction to hear challenges to notification decisions by way of a merits appeal (Amend sections 120 and / or 310).	Berry Simons / EDS	Further policy work would be required to define scale and scope of problem, and consider options. Moreover, any policy work concerning the Environment Court should be undertaken with the Ministry of Justice.
29	Require Boards of Inquiry for proposal of national significance (NSP) to be chaired by a current, former or retired Environment Court Judge, and reinstate the requirement for Boards of Inquiry to produce draft reports, and repeal (or extend) the 9 month time frame that applies to Boards of Inquiry	Berry Simons / EDS	Further policy work would be required to define scale and scope of the problem.
30	Confirm every person sitting on a hearing panel must be accredited, even if local authorities exercise those powers directly (Amend s39B)	MfE	Further policy work would be required to define scale and scope of the problem.
31	Remove the fast track process.	Sir Geoffrey Palmer	This is a recent change, and is potentially complex and costly on councils if removed. Further policy work is required before removing this provision.
32	Change the requirement for consideration of resource consent application from 'have regard' to 'implement' or 'give effect to'	Berry Simons / EDS	Further policy work would be required to define scale and scope of problem, and consider options.
33	Review the use of certificate of compliance. This is to enable a council to reject an application for an activity that may adversely affect water if a regional plan change relating to water is anticipated to be notified within a specified time period (say two years)	LGNZ	Further policy work would be required to define scale and scope of problem, and consider options.
34	Remove the requirement to address objectives and policies in a resource consent application.	HBC design	The proposal would require consequential changes to the RMA. We note that local authorities are currently pragmatic in their approach to implementing this information requirement. Many plan users have adjusted to this process since its introduction, and an understanding of the requirements has been established between local authorities and many regular plan users. We do not recommend the removal of this requirement without any further review of the effectiveness of the policy.
35	Review of ability to waive and extend time limits (s37 uses and functions), and discount regulations to ensure that they are meeting their goals	MfE	Further policy work would be required to define scale and scope of the problem. This is best to be considered as part of a wider review.
36	Remove deemed permitted boundary activities and deemed permitted marginal or temporary activities	Berry Simons / EDS	
37	Introduce a timeframe for the processing of notices of requirement for designations	Ellis Gould	The scale of matters raised require more comprehensive policy work, and would be best considered through a wider review. Further policy work would be required to define scale and scope of problem.
38	The designation and implementation provisions do not recognise the interactions between the different infrastructure networks. There are also limitations with lapse dates.	MfE	
39	Review requiring authority status test	MfE	
40	Notice of Requirement (NOR) s168A provisions of RMA has anomalies	MfE	

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41	Encourage councils to put coastal occupation charge regimes into their regional coastal plans by enabling them to use the special consultative process under LGA rather than plan change process to do this.	MfE	These matters are related to plan-making. You have indicated interests in amending the plan-making provisions in the RMA in the wider review. As the scale of matters raised require more comprehensive policy work and have links to other work programmes, these matters would be best considered through a wider review. Moreover, any policy work concerning the Environment Court should be undertaken with the Ministry of Justice.
42	Current difficulties in determining which rules in proposed plans are operative under section 86F	MFE/DCC submission to 2017 Amendment Act	
43	The 2017 amendment to the RMA introduced the ability to limited notify a plan change (cl 5A of Schedule 1). There is a potential issue with the way this interfaces with the requirement to consult on material that is to be incorporated by reference (Cl 34). The current practice differs from what is intended by the policy.	MfE	
44	Amend the limited notified plan change provisions by either: (a) Removing the ability for a proposed change or variation to a policy statement or plan to be limited notified; or (b) Providing appropriate safeguards as to the use of the limited notification procedure, by providing a definition of "directly affected" and set criteria for local authorities to use in applying that definition.	Berry Simons / EDS	
45	Think about using the model from Unitary Plan Hearings Process	Ellis Gould	
46	Changes suggested to plan amendments for non-material changes	Environment Canterbury	
47	Change the significantly shortened time frames for, and restrictions on, lodging further submissions	Andrew Riddell	
48	Allow for combined plans to be made for part of a plan (as well as for whole plans).	MfE	
49	Consider requiring councils to include issues raised in the pre-consultation stage as part of their plan/section 32 report at time of notification.	MfE	
50	Enable the SPP to provide an avenue for innovative consultation techniques and provide an avenue (e.g. around social media), and to include some appeals rights (similar to AUP) for any complete plans or large/significant plan changes.	MfE	
51	Remove the Collaborative Planning Process as an alternative plan making process.	Berry Simons / EDS Sir Geoffrey Palmer	
52	Remove the Streamlined Planning Process as an alternative plan making process.	Berry Simons / EDS	
53	Keep the Collaborative Planning Process in the RMA.	Environment Canterbury	
54	Assess the use and make up of hearing panels.	Sir John Hansen	
55	Amend the RMA to allow cost recovery for review of consent conditions that are required by NES. Currently, councils cannot charge for s128 consent reviews that are required by an NES.	MfE	Further policy work would be required to define scale and scope of problem.
Tools and Frameworks			
56	Remove the ability to insure against RMA fines	MfE	Further policy work would be required to define scale and scope of the problems. There are links to other work programmes means these matters should be considered as part of a wider review .
57	Insert: (a) A power to charge for monitoring all permitted activities; and (b) Criteria for determining when or who will be subject to the costs of permitted activity monitoring (Amend section 36).	Berry Simons / EDS	Further policy work is needed to define scale and scope of problems. There are links to other work programmes means these matters should be considered as part of a wider review .
58	Enable consents to be reviewed after a plan with new limits is made in a more cost effective manner.	LGNZ	Further policy work would be required to define scale and scope of problem.
Technical Amendments			
59	Consider definition of 'iwi authority' in the RMA.	MfE	Further policy work would be required to define scale and scope of problem.
60	Under clause 17(3), consider enabling digital signature instead of affixing the seal of proposed policy statements or plans.	MfE	Initial analysis identified technical complexities that need to be looked at in more depth. Discussions are being undertaken with Ministry of Justice. Further policy work is needed to define scale and scope of problem, and consider options.
61	Add a definition for "group of trees" into the RMA.	Berry Simons / EDS	This is potentially complex. Further policy work would be required to define scale and scope of the problem. This may be costly for local authorities to implement, and targeted consultation is required.

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