

Office of the Minister for the Environment

Chair

Cabinet Strategy Committee

## Setting the direction for phase two of the resource management reforms

### Proposal

1. This paper seeks agreement for the scope and timing of Phase Two of the government's resource management reforms, and seeks endorsement for the overall direction of the programme.

### Executive summary

2. Resource management reform is to be undertaken in two phases. Phase One of the reform delivered legislation into the House to reduce costs and improve the timeliness of Resource Management Act 1991(RMA) processes. Phase Two involves a complex array of inter-related issues and requires careful analysis. A lengthier timeframe will ensure Ministers and officials have adequate time to consider the complexity of the issues, any legislative changes required and structural arrangements required for an Environment Protection Authority (EPA).
3. I propose that the primary objective of Phase Two of the resource management reforms is to achieve least cost delivery of good environmental outcomes. This will include:
  - providing greater central government direction on resource management
  - improving economic efficiency of implementation without compromising underlying environmental integrity
  - avoiding duplication of processes under the RMA and other statutes
  - providing for efficient and improved participation of Māori in resource management processes.
4. I propose that Phase Two comprise several discrete but connected work streams under the banner of 'resource management reform'. These include:
  - RM IIa – addressing barriers to sustainable and cost-effective aquaculture development
  - RM IIb – alignment of consenting processes under the RMA and the Building Act 2004
  - RM IIc – alignment of consenting processes under the RMA and the Conservation Act 1987
  - RM IIe – developing further the scope, functions and structure of the EPA

- RM II<sub>F</sub> – alignment of consenting processes under the RMA and the Forests Act 1949 and Forests Amendment Act 1993
- RM II<sub>G</sub> – investigating generic issues in the RMA that were too complex to be dealt with in Phase One
- RM II<sub>H</sub> – alignment of consenting processes under the RMA and the Historic Places Act 1993
- RM II<sub>I</sub> – improving infrastructure provisions, including the application of the Public Works Act 1981
- RM II<sub>U</sub> – exploring better approaches to urban planning
- RM II<sub>W</sub> – establishing a fairer and more efficient water management system.

## Background

5. The government's approach towards environmental governance, as set out in the National Party manifesto, includes:
  - resource use must be based on sustainability
  - economic growth and improving the environment can and must go hand in hand
  - good science is essential to quality environmental decision-making
  - People respond best to change when engaged and given incentives
  - New Zealanders have a unique birthright to access and to enjoy our special places.
6. One of our environmental policy commitments is to expand the existing Environmental Risk Management Authority (ERMA) into an EPA with increased responsibilities including:
  - the national regulatory functions of the RMA, including "priority consenting"
  - the development of national regulatory tools such as National Environmental Standards under the RMA
  - its existing functions under the Hazardous Substances and New Organisms Act 1996 (HSNO).
7. The government has taken the first steps to deliver on this policy. Cabinet recently approved amendments to the RMA arising from Phase One of a two-stage reform of the Act [Cab Min (09) 3/7 refers]. The primary intention was to reduce costs and improve the timeliness of RMA processes. It was also designed to streamline consenting processes for priority projects, better manage anti-competitive behaviour under the RMA and create a transitional EPA (operating within the Ministry for the Environment).
8. It has always been my intention that the reform of the RMA would comprise two phases. The second phase needs to follow a slower timeframe to ensure Ministers have adequate time to consider options and implications and to enable a greater degree of consultation on issues that are likely to be complex and contentious.
9. Cabinet noted that Phase Two of the resource management reform will cover:
  - improving infrastructure provisions
  - consideration of better freshwater management

- exploring approaches to better urban planning
- sustainable and cost effective aquaculture planning and development
- addressing the establishment, role and functions of the new EPA [Cab Min (09) 3/7 refers].

### **Objectives of Phase Two**

10. I propose that the over-riding objective of Phase Two of the resource management reforms is to achieve least cost delivery of good environmental outcomes. This will include:
- providing greater central government direction on resource management
  - improving economic efficiency of implementation without compromising underlying environmental integrity
  - avoiding duplication of processes under the RMA and other statutes
  - providing for efficient and improved participation of Māori in resource management processes.

### **Components of Phase Two**

11. In addition to those matters already agreed to in Phase Two by Cabinet, there is also the opportunity to address other issues which could help to achieve the objectives outlined in paragraph 10. These include:
- alignment of processes under the RMA with processes under other legislation where there is overlap
  - possible further amendments to the RMA to deal with complex issues that could not be dealt with in Phase One
12. Phase Two comprises a set of discrete, but inter-related work streams. Set out below is a summary of each of the work streams I propose. These are set out also in Annex 1.

#### *Addressing barriers to sustainable and cost-effective aquaculture development (RM IIA)*

13. This is a major policy review of the way aquaculture is managed. In particular, it focuses on what changes are needed to improve the effectiveness and efficiency of the regulatory regime for aquaculture, including allocation. An aquaculture forum comprising representatives from central government, local government, industry and iwi is overseeing independent work that has been commissioned as part of the review. The Minister of Fisheries and I will provide advice on these matters to the Cabinet Economic Growth and Infrastructure Committee in xxxx 2009. My intention is that an Aquaculture Reform Bill be introduced in xxxx 2009.
14. The work is being jointly led by the Ministry for the Environment (MfE) and the Ministry of Fisheries with involvement of the Department of Conservation, Te Puni Kōkiri and the Department of Internal Affairs.

*Alignment of processes under the RMA and the Building Act 2004 (RM IIB)*

15. This work will investigate the potential of a joint process for building consents under the Building Act and resource consents under the RMA, particularly for small-scale projects. The work will need to align with the review of the Building Act that is being undertaken as part of the regulatory review.
16. This work will be jointly led by MfE and the Department of Building and Housing. A report on the scope of the work will be made to Cabinet Economic Growth and Infrastructure Committee in xxxx 2009.

*Alignment of processes under the RMA and the Conservation Act 1987 (RM IIC)*

17. This work will investigate the feasibility of a joint consenting process for concessions under the Conservation Act and resource consents under the RMA for projects on conservation land. This work will need to align with a review of concessions being undertaken by the Department of Conservation.
18. This work will be jointly led by the Department of Conservation and MfE. A report on the scope of the work will be made to Cabinet Economic Growth and Infrastructure Committee in August 2009.

*Developing further the scope, functions and structure of the EPA (RM IIE)*

19. This work area will focus on the further development of the EPA. One option is for a separate agency that expands the current functions of ERMA (including functions and powers under HSNO) with other regulatory resource management functions. These include:
  - responsibilities for the administration and processing of national priority projects (as proposed under the Resource Management (Simplifying and Streamlining) Bill)
  - development of National Environmental Standards under the Resource Management Act
  - administration of the Exclusive Economic Zone legislation (to be introduced into the House later this year subject to Cabinet approval).
20. A more limited option would be for the EPA to assume only the roles above that are currently undertaken by MfE, while more expansive options might include compliance and enforcement functions and/or some of the regulatory functions currently undertaken by other government departments.
21. Before making final decisions on the structure, scope and functions of the EPA, we need to consider:
  - the need for the government to control over-all policy direction in relation to environmental regulation
  - the extent to which current implementation of regulation at a local level would benefit from centralisation
  - the extent to which functions and powers need to be under Ministerial control
  - the potential breadth of functions and powers that could be included in the EPA.
22. Proposals for the EPA need to demonstrate that benefits outweigh costs. I consider that analysis of potential options needs to be undertaken by officials for

us to clearly understand the implications and estimated costs and benefits of proposals.

23. This work is being led by MfE with the involvement of the State Services Commission and Treasury. Other departments may be involved depending on the scope of the EPA that is decided.
24. I propose to report to Cabinet Economic Growth and Infrastructure Committee by the end of xxxx 2009 with evaluations on various options as well as providing more detail about a work programme. My aim is to have legislation in the House in xxxx.

*Alignment of processes under the RMA, the Forests Act 1949 and the Forests Amendment Act 1993 (RM IIF)*

25. This work will investigate the potential of a joint approval process for land subject to a registered Sustainable Forestry Management Plan under forestry legislation and resource consents required by a local authority.
26. This work will be jointly led by MfE and the Ministry of Forestry. A report on the scope of the work will be made to Cabinet Economic Growth and Infrastructure Committee in xxxx 2009.

*Addressing generic matters under the RMA (RM IIG)*

27. This work will investigate a range of generic RMA issues that have been identified by the Technical Advisory Group for Phase One of the RMA reforms, officials and others. These issues were generally too complex to be dealt with in Phase One of the reforms, but offer further improvements in process.
28. This work will be led by MfE with the involvement of Treasury, the Department of Conservation, Te Puni Kōkiri and the Ministries of Agriculture and Forestry, Fisheries, Economic Development and Culture and Heritage.
29. I will report back to the Cabinet Economic Growth and Infrastructure Committee in xxxx 2009 with further advice on which of the suggestions should be progressed.

*Alignment of processes under the Resource Management Act and the Historic Places Act 1993 (RM IIH)*

30. This work will investigate the potential for increasing alignment and streamlining processes in situations where archaeological authorities are required under the Historic Places Act and resource consents are also required under the RMA. The work needs to align with a proposed review of the Historic Places Act.
31. This work will be jointly led by MfE and the Ministry of Culture and Heritage with the involvement also of the Department of Conservation. A report on the scope of the work will be made to Cabinet Economic Growth and Infrastructure Committee in xxxx 2009.

*Improving infrastructure provisions and application of the Public Works Act 1981 (RM III)*

32. This work will comprise several components including:
  - a review of the role of designations in facilitating infrastructure development and an examination of options for reviewing and streamlining the designation mechanism

- an investigation of alternatives to designations for planning for and managing the effects of activities on network infrastructure
  - an investigation of whether compensation under the Public Works Act 1981 needs to be shorter but more generous to landowners
  - streamlining and integrating processes under the Public Works Act and other legislation.
33. This work will need to align to the broader work being undertaken by Treasury on infrastructure, including the establishment of the infrastructure unit and the development of an Infrastructure Bill.
34. The work will be jointly led by MfE and Land Information New Zealand with the involvement of Treasury. A report on the scope of the work will be made to Cabinet Economic Growth and Infrastructure Committee in xxxx 2009.

*Exploring better approaches to urban planning (RM IIu)*

35. This work area will investigate new approaches to the planning and design of urban environments. It will examine ways of achieving better co-ordination between local authorities, government agencies and the private sector in the planning and design of our cities.
36. The work will look at the effectiveness and efficiency of options and tools (including a national policy statement and metropolitan urban limits) to manage urban growth and achieve better urban planning and design outcomes. It will also examine the relationship between land supply and housing affordability.
37. The work needs to align with other departmental work streams. In particular, it needs to align with the work of the newly established Infrastructure Unit and the development of an Infrastructure Bill; work being undertaken by the Department of Internal Affairs to better co-ordinate and integrate urban development/redevelopment projects; and work by the Department of Building and Housing on urban intensification.
38. The Report of the Royal Commission on Auckland raises issues including the complexity of current planning instruments, inconsistencies between existing local authorities and lack of integration. This work stream may help to address some of those issues or to support future government initiatives.
39. As a component of this work area Cabinet will be considering a report back on the scope of a possible national policy statement on urban design in May 2009 [Cab Min xxxx refers].
40. MfE will investigate, with the Department of Building and Housing, the Ministry of Economic Development, the Department of Internal Affairs and the Infrastructure Unit located in Treasury, current approaches to managing urban growth, including the relationship between land supply and housing affordability. I intend to report back to EGI in xxxx 2009 on the scope of future work.

*Establishing a fairer and more efficient water management system (RM IIw)*

41. This work proposes a new direction for water management in New Zealand, and sets out some of the choices we face and the implications of those choices. Ongoing work on freshwater will occur throughout the present Parliamentary term and possibly beyond. I am proposing to set up a collaborative process to address

water quality issues and inefficient allocation, consistent with our pre-election policy commitments.

42. This work stream is being led by MfE and the Ministry of Agriculture and Forestry with the involvement of Treasury, the Department of Conservation, Te Puni Kōkiri and the Ministry of Economic Development.
43. The Minister for Agriculture and I will be reporting back to Cabinet in May 2009 on this. I intend that the collaborative process will involve public consultation and report back to the government with recommendations by xxxx 2010.

### **Ensuring consistency with other major government work streams**

44. We need to ensure that these Phase Two work streams will be coordinated with other major work being undertaken, either as part of the government's review of policy areas, ongoing work programmes or as new initiatives. These include:
  - other elements of the Regulatory Review Programme
  - establishment of the infrastructure unit within Treasury and the development of an Infrastructure Bill
  - the Treaty Settlement process, particularly co-management aspects
  - the review of the Foreshore and Seabed Act 2004
  - the outcome of the emissions trading review
  - legislation to regulate environmental effects of activities in the Exclusive Economic Zone (scheduled for xxxx 2009)
  - enhancing local government transparency, accountability and fiscal responsibility and any outcomes from the Royal Commission on Auckland governance
  - the review of concessions administered by Department of Conservation
  - the potential review of the Historic Places Act 1993
  - initiatives emerging from the Jobs Summit.
45. The xxxx report backs will include terms of reference for work streams as required by Cabinet under the Regulatory Review [Cab Min xxxx refers].

### **Governance and consultation**

46. There is a need to maintain an overview of progress on these work streams. This is because of the strategic importance of the decisions that will be made and because the decisions will have impacts in a number of portfolios. In order for Cabinet to be able to maintain an overview of the work streams under Phase Two I propose to report xxxx to EGI Cabinet Committee, with the first report backs by xxxx 2009 and xxxx 2010.
47. I intend to consider the role that the Technical Advisory Group established for Phase One of the RMA reforms might have for Phase Two and whether there may be advantages in establishing additional advisory groups for some of the more specialised work streams. I will report back to Cabinet in xxxx 2009 with my recommendations.

## Consultation

48. The following departments have been consulted on this paper: Ministry of Agriculture and Forestry, Ministry of Transport, State Services Commission, the Treasury, Department of Conservation, Te Puni Kōkiri, Department of Internal Affairs, Ministry of Justice, Ministry of Research, Science and Technology, Ministry of Fisheries, Ministry of Economic Development, Land Information New Zealand, Department of Building and Housing, and the Ministry of Culture and Heritage.
49. The Department of the Prime Minister and Cabinet was informed.

## Financial implications

50. The financial implications of each proposal outlined in this paper will individually be reported back to the Economic Growth and Infrastructure Committee.

## Human rights

51. The proposals contained in this Cabinet paper do not appear to be inconsistent with the New Zealand Bill of Rights Act 1990, or the Human Rights Act 1993. A final view as to whether the proposals will be consistent with these Acts will be possible once final decisions have been made on the recommendations put forward in the various report backs outlined in this paper and when the legislation has been drafted.

## Legislative implications

52. I envisage there will be legislative implications arising from the work streams in this paper. I have already made bids in the 2009 legislative programme for an aquaculture reform Bill, and a Bill for establishing an EPA.

## Regulatory impact analysis

53. These proposals set a direction for formulating specific proposals that will be put to Cabinet at a later date. Regulatory Impact Statements will be prepared when policy proposals are presented for approval.

## Publicity

54. As with the Phase One Cabinet paper, I expect there will be significant interest in Phase Two. I intend to release this paper, subject to any appropriate withholdings, at an appropriate time.

## Recommendations

55. I recommend that the Committee:
  1. **agree** that the primary objective of Phase Two of the resource management reforms is to achieve least cost delivery of good environmental outcomes including:
    - 1.1. providing greater central government direction on resource management
    - 1.2. improving economic efficiency of implementation without compromising underlying environmental integrity

- 1.3. avoiding duplication of processes under the Resource Management Act and other statutes
- 1.4. achieving efficient and improved participation of Māori in resource management processes
2. **agree** that Phase Two of the resource management reforms comprises elements of work that will:
  - 2.1. RM IIA - Aquaculture: review the way aquaculture is managed and, in particular, what changes are needed to provisions for allocating space for aquaculture in the coastal marine area
  - 2.2. RM IIB - Interface with the Building Act: review consenting processes under the Resource Management Act 1991 and the Building Act 2004 with a view to reducing duplications
  - 2.3. RM IIc - Interface with the Conservation Act: review processes for consents under the Resource Management Act 1991 and concessions under the Conservation Act 1987 on conservation land with a view to reducing duplications
  - 2.4. RM IIE - Environmental Protection Authority: develop the scope, functions and structure of the Environmental Protection Authority
  - 2.5. RM IIF – Interface with the Forestry Act: review processes for consents under the Resource Management Act 1991 and approvals for land subject to Sustainable Forestry Management Plan approvals under the Forests Act 1949 and the Forests Amendment Act 1993 with a view to reducing duplications
  - 2.6. RM IIG - Generic process improvements: scope generic issues that have been identified by the Technical Advisory Group and others during Phase One of the reforms as being too complex to deal with in Phase One
  - 2.7. RM IIH - Historic places / archaeological consents: review processes for consents under the Resource Management Act 1991 and for archaeological authorities under the Historic Places Act 1993 with a view to increasing alignment and reducing any duplication
  - 2.8. RM IIi - Infrastructure / public works: review the role of designations and compensation and examine other effective ways for planning for and managing the effects on network infrastructure
  - 2.9. RM IIu - urban planning: investigate new approaches to the planning and design of urban environments including ways of achieving better co-ordination between local authorities, government agencies and the private sector and examine the effectiveness and efficiency of options to manage urban growth and achieve better urban planning and design outcomes
  - 2.10. RM IIw - Water: consider a fairer and more efficient water management system that addresses water quality issues and inefficient allocation
3. **note** that options for the functions and powers of the Environmental Protection authority will need to consider:

- 3.1. the need for the government to control over-all policy direction in relation to environmental regulation
- 3.2. the extent to which current implementation of regulation at a local level would benefit from centralisation
- 3.3. the extent to which functions and powers need to be under direct Ministerial control
- 3.4. the potential breadth of functions and powers that could be included in the EPA
4. **note** that Cabinet has already invited reports back to the Economic Growth and Infrastructure Committee on the following matters within the scope of Phase Two:
  - 4.1. May 2009: Minister for the Environment to report back on the scope of a national policy statement on urban design [Cab Min xxxx refers]
  - 4.2. June 2009: Minister of Fisheries and the Minister for the Environment to report back on addressing barriers to sustainable and cost-effective aquaculture development [Cab Min xxxx refers]
5. **invite** the Minister for the Environment and the Minister of Agriculture to report back to the Cabinet Environment Growth and Infrastructure Committee in May 2009 with a detailed work programme for freshwater management issues, including collaborative processes
6. **invite** the Minister for the Environment to report back to the Cabinet Environment Growth and Infrastructure Committee in xxxx 2009 with evaluations of the costs and benefits of options for the Environmental Protection Authority
7. **invite** the Minister for the Environment to report back to the Cabinet Environment Growth and Infrastructure Committee in xxxx 2009 with recommendations on the scope and timetable for the remaining elements of Phase Two of resource management reform:
  - 7.1. infrastructure-related provisions, such as the role of designations and compensation under the Public Works Act
  - 7.2. current approaches to urban growth, including the relationship between land supply and housing affordability
  - 7.3. resolving interface issues with other statutes including the Building Act 2004, the Conservation Act 1987, the Forests Act 1949 and the Forests Amendment Act 1993 and the Historic Places Act 1993.
  - 7.4. potential further amendments to the Resource Management Act 1991 to achieve the objective set out in recommendation 1
  - 7.5. consideration of the role that a Technical Advisory Group or Groups might play for Phase Two
8. **note** that co-ordination between the work streams in Phase Two is important to ensure consistency and avoid the need for multiple pieces of legislation
9. **note** that the Phase Two work streams overlap with other major policy areas, ongoing work programmes or new initiatives and that these will affect the timing of deliverables in Phase Two

10. **note** that the xxxx report backs will include terms of reference for the work streams as required by Cabinet under the regulatory review programme [Cab Min xxxx refers]
11. **invite** the Minister for the Environment to provide the Cabinet Economic Growth and Infrastructure Committee with reports by xxxx on the progress of Phase Two

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Hon Dr Nick Smith  
**Minister for the Environment**  
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## Annex 1 Summary of Phase Two Work Streams

Workstream	Subject matter	Description	Reporting details	Portfolio interests
RM IIA	Aquaculture development	Addressing barriers to sustainable and cost-effective aquaculture	<ul style="list-style-type: none"> <li>• xxxx</li> </ul>	<ul style="list-style-type: none"> <li>• Environment (joint lead)</li> <li>• Fisheries (joint lead)</li> <li>• Conservation</li> <li>• Māori Affairs</li> <li>• Internal Affairs</li> </ul>
RM IIB	Interface of Building Act and RMA	Aligning consenting processes under Building Act and RMA	<ul style="list-style-type: none"> <li>• xxxx</li> </ul>	<ul style="list-style-type: none"> <li>• Building and Housing (joint lead)</li> <li>• Environment (joint lead)</li> </ul>
RM IIC	Interface of Conservation Act and RMA	Aligning consenting process for concessions under the Conservation act and process for consents under RMA	<ul style="list-style-type: none"> <li>• xxxx</li> </ul>	<ul style="list-style-type: none"> <li>• Conservation (joint lead)</li> <li>• Environment (joint lead)</li> </ul>
RM IIE	Environmental Protection Authority	Developing further the scope, functions and structure of the EPA	<ul style="list-style-type: none"> <li>• xxxx</li> </ul>	<ul style="list-style-type: none"> <li>• Environment (lead)</li> <li>• Treasury</li> <li>• SSC</li> <li>• Others (depending on agreed scope)</li> </ul>
RM IIF	Interface of Forests Act and RMA	Aligning processes under the Resource Management Act and Forests Act for land subject to a Sustainable Forestry Management Plan	<ul style="list-style-type: none"> <li>• xxxx</li> </ul>	<ul style="list-style-type: none"> <li>• Forestry (joint lead)</li> <li>• Environment (joint lead)</li> </ul>
RM IIG	Generic RMA issues	Issues in RMA not dealt with in Phase One that may contribute to achievement of objective	<ul style="list-style-type: none"> <li>• xxxx</li> </ul>	<ul style="list-style-type: none"> <li>• Environment (lead)</li> <li>• Agriculture</li> <li>• Conservation</li> <li>• Fisheries</li> <li>• Infrastructure</li> <li>• Economic Development</li> <li>• Housing</li> <li>• Treasury</li> <li>• Māori Affairs</li> </ul>

<b>Workstream</b>	<b>Subject matter</b>	<b>Description</b>	<b>Reporting details</b>	<b>Portfolio interests</b>
RM IIH	Interface of Historic Places Act and RMA	Aligning processes under Historic Places Act for archaeological authorities and RMA	• xxxx	<ul style="list-style-type: none"> <li>• Culture and Heritage (joint lead)</li> <li>• Environment (joint lead)</li> <li>• Māori Affairs</li> <li>• Conservation</li> </ul>
RM IIi	Infrastructure / Public Works	Improving infrastructure provisions including reviewing designations and investigating compensation under Public Works Act	• xxxx	<ul style="list-style-type: none"> <li>• Lands and Information (joint lead)</li> <li>• Environment (joint lead)</li> <li>• Treasury</li> </ul>
RM IIU	Urban planning	Investigating effectiveness and efficiency of options for planning and design of urban environments	• xxxx	<ul style="list-style-type: none"> <li>• Environment (lead)</li> <li>• Building and Housing</li> <li>• Economic Development</li> <li>• Transport</li> <li>• Treasury</li> <li>• Local Government</li> </ul>
RM IIW	Water management	Establishing a fairer and more efficient water management system, including addressing water quality and inefficient allocation	• xxxx	<ul style="list-style-type: none"> <li>• Environment (joint lead)</li> <li>• Agriculture (joint lead)</li> <li>• Treasury</li> <li>• Economic Development</li> <li>• Māori Affairs</li> <li>• Conservation</li> </ul>