

# New Zealand Government

» A DISCUSSION DOCUMENT



## Improving our resource management system

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# Foreword

New Zealand is fortunate with its natural and physical resources. However, there are opportunities to manage our resources more effectively and efficiently to deliver both economic and environmental benefits for future generations.



As our primary environmental statute, the Resource Management Act covers environmental protection, natural resource management and our urban planning regime. This Government has made significant improvements to the way the resource management system works. But I believe there are still opportunities to significantly improve the planning aspects of the system.

I believe that we can and should make changes that will improve how communities plan for both built and natural resources in the future – delivering strong environmental outcomes as well as providing for the housing, businesses, economic activity and infrastructure we need as our communities grow and change.

Although we have made great strides in terms of streamlining and simplifying planning and consent processes for nationally significant projects and improved council performance for consent processing timeframes, there are still areas for improvement.

The costs, uncertainties and delays of the current resource management system are affecting New Zealand jobs, infrastructure and productivity, and they place an unfair burden on communities.

They are causing frustrations for those wanting to progress development. It is also leaving communities with uncertainty and drawn out battles for years on end, bringing with it significant costs.

Good resource management should contribute to our future environmental and economic prosperity. The proposals in this document are designed to achieve that.

I encourage you to read this document and to make a submission. Resource management is a priority for this Government, and we are seeking your feedback as these important decisions are made.

A handwritten signature in blue ink, which appears to read 'Amy Adams'. The signature is fluid and cursive, with a large loop at the end.

Hon Amy Adams  
Minister for the Environment



## Executive summary

Effective resource management is critically important to New Zealand's economic, environmental, cultural and social well-being. Resource management decisions need to ensure our natural and built resources are used and protected in a way that meets our needs now and into the future.

The Government continues to hear concerns that resource management processes are cumbersome, costly and time-consuming, and that the system is uncertain, difficult to predict and highly litigious. The system seems to be difficult for many to understand and use, and is discouraging investment and innovation. The outcomes delivered under the RMA are failing to meet New Zealanders' expectations.

New Zealand can do a much better job of managing its natural and physical resources and planning for the needs of its communities.

Proposals in this discussion document target areas that offer the best opportunities for improving the resource management system. They are designed to make the system easier to use, increase its certainty and predictability, and reduce unnecessary duplication and cost. At the same time, these proposals are designed to deliver the environmental outcomes New Zealanders want, clarify and support the role of locally elected representatives, improve council performance and support meaningful iwi/Māori participation.

### Greater national consistency and guidance

As a general principle, central government should provide clear direction for matters that are nationally important, where decisions involve nationally significant issues, or where consistency outweighs the value of local specificity. Local government should play a key role in

decision-making where there are local circumstances that demand a more site- or community-specific approach, where the costs and benefits are localised or where the local authority is best placed to make the decision. The courts, especially the Environment Court, have an important role to play in interpreting and applying policy, and safeguarding the rigour of planning and consenting processes and the quality of outcomes. The judiciary should not be placed in the position of having to determine values or policy – this role should be played by publicly accountable, elected representatives.

These proposals would amend Part 2 of the RMA by updating the matters identified as being nationally important. Mechanisms for providing national direction to councils would also be amended to improve their clarity and effectiveness. These changes would increase certainty for councils and the public on matters that are important across New Zealand (ie, from a national perspective) and how to take them into account in resource management decisions at a local level. Central government would provide clear direction on important contemporary matters such as housing affordability and natural hazards. The intent would be to improve the clarity and predictability of the system and reduce costly re-litigation of national matters at a local level.

### **Fewer and better resource management plans**

These proposals would combine all the planning instruments in a defined area into an easy-to-use format that would provide applicants with a ‘one-stop-shop’ for the planning rules that affect their properties and activities. Under this approach, a national template would remove unnecessary inconsistency in current rules and improve the ease of understanding and usability of plans. Planning would be future focused, making provision for important matters such as housing affordability, infrastructure development and urban growth management, and would be developed using a process designed to facilitate better public participation in the early stages of plan development.

District and regional councils would be able to choose, where appropriate, to group together and jointly prepare a single integrated plan for each district or area. Changes would be made to appeal provisions to encourage effective participation in the development of plan content while retaining the role of the courts as a safeguard for procedural rigour, natural justice and the quality of outcomes.

The proposal includes an option of adopting a more collaborative process for the development of the single plan. This would encourage communities and businesses to actively engage early in the process, result in better integration of regional and district policies and rules, reduce reliance on litigation and ultimately reduce the time and cost associated with developing and using resource management plans.

### **More efficient and effective consenting**

Under the current system, consenting requirements are often out of proportion – especially for those activities that have reasonably minor effects. The proposals in this discussion document would introduce a simple 10-working-day time limit for processing straight-forward, non-notified consents accompanied by a proposed national requirement for some types of application to be processed as non-notified. A new process is proposed to allow an “approved exemption” from consent requirements for technical or minor rule breaches. Additional proposals are to limit affected parties’ opposition to the specific effects that projects will have on them, amend the scope of potential submissions and appeals on consents, introduce the potential for an alternative crown body to undertake consent processing functions in areas

facing particular growth management pressures, and provide consenting authorities additional tools to guard against land banking.

The proposals would also improve the transparency around consent processing fees, introduce memorandum accounting for resource consent activities, place some sensible constraints on the scope of conditions councils are able to place on consents and reduce the costs associated with the Environmental Protection Authority's nationally significant proposals process.

### **Better natural hazard management**

Taking lessons from Canterbury, this document includes proposals aimed at providing greater national consistency and guidance to improve the way that natural hazards are planned for and managed. Under the proposals, provisions would be made to ensure the risks of all natural hazards can be appropriately considered in resource consent decisions. These proposals would improve the resilience of communities and businesses to natural hazards and reduce the costs to communities of natural hazard events.

### **Effective and meaningful iwi/Māori participation**

The discussion document includes proposals aimed at clarifying the role of iwi/Māori in plan-making processes and enabling more effective iwi/Māori participation in the resource management system more generally. These proposals would encourage councils and iwi/Māori to proactively seek local solutions early in resource management processes, which would help reduce the time, costs and uncertainty of the *status quo*, and reduce the risk of litigation.

### **Working with councils to improve practice**

These proposals would provide more effective guidance on the development of best practice and would require councils to publically report on their service performance in relation to the resource management accountabilities. Under the proposals, a standard approach across local authorities would enable more effective benchmarking of performance between councils.

### **The package**

The package of proposals in this discussion document would, if implemented, result in an easier to use, more predictable system with less duplication and cost, and that more effectively safeguards environmental, social and cultural outcomes. In short, the sustainable management purpose of the RMA would be met in a more effective and efficient manner.

The Government seeks your views on the proposals in this discussion document and in particular how they would impact you. The Government would also like to hear from you whether there are alternative proposals you think would better improve the resource management system.



# Chapter 1: Improving resource management

## 1.1 Purpose of this discussion document

The way New Zealand manages its natural and physical resources has significant implications for its current and future social, cultural and environmental health and well-being. New Zealand needs to do a much better job in the way it manages these resources.

Many of New Zealand's most important resource management decisions are made under the Resource Management Act 1991 (RMA). While the RMA often gets to the right outcome in terms of environmental protection, its processes can be long, cumbersome and inefficient. Important planning decisions can be readily challenged through the courts and are often made consent by consent rather than through proactive plans developed by communities, with major value judgments made upfront by elected representatives. It is of particular concern that the RMA has failed to provide the kind of clarity or predictability that is necessary to foster investment certainty, and appears to be discouraging both strategic planning and innovation.

The Government has received a great deal of information and advice on the resource management system from independent technical advisory groups, stakeholder groups, research providers, surveys of the public and business, and from monitoring of local government's implementation of the RMA. These sources all suggest there are many opportunities to improve resource management in New Zealand.

This is why the Government has embarked on a programme of reform. The first stage was completed in 2009 and included streamlining and simplifying the RMA, sharpening how

councils process resource consents and setting up a system that allows nationally significant consent applications to be dealt with more quickly.

The second stage is looking for further improvements to the RMA to improve our resource management system more broadly. This includes changes to how fresh water is managed and used, changes to the way we plan for and manage the effects of natural hazards, and changes to the way we manage our urban areas and physical resources.

Driving these changes is the Government's goal of an environmentally-responsible and productive economy that improves the well-being of New Zealanders and provides for their needs into the future. New Zealand's cities, towns and rural communities need to grow in a well-managed way that better supports this ambition.

This document discusses some critical roadblocks to more effective resource management and proposes some solutions. Submissions are being sought on whether the most important problems have been identified; whether the proposed changes would deliver more effective, efficient and environmentally-responsible resource management (or whether, in your view, better alternatives exist); and whether there may be unintended consequences.

Your input will influence the changes that are made to improve how resources are managed in New Zealand now and into the future.

Your feedback is welcomed on the questions at the end of each chapter, along with any other information you want to submit. Submissions are due by **5.00pm on Tuesday 2 April 2013**, and information on how to provide feedback is in chapter 4.

#### **Integrated with engagement on freshwater reform**

The Government intends to concurrently put forward ideas to reform freshwater management while considering wider proposals to improve resource management.

Meetings and hui will be held throughout the country during March 2013 to present the proposals. Because many people have an interest in both reform packages, the intention is that, where possible, they will both be discussed on the same day, to reduce people's travel requirements and time commitments.

Information on the time and location of meetings and hui throughout New Zealand is available on the Ministry for the Environment's website, [www.mfe.govt.nz](http://www.mfe.govt.nz).

A government paper will shortly be released which describes the proposed freshwater reform, and will, once released, be available on the Ministry for the Environment's website.

## **1.2 Managing resources well is vital for New Zealand's success**

The term 'resource management' in this document covers two main types of resources – natural and built.

Natural resources include drinking water, fresh air and productive soils. New Zealand's social, cultural and economic prospects are entwined with the health and sustenance of New Zealand's natural resources. Wild natural features and landscapes also define New Zealand's

national identity. Some natural resources are renewable, such as wind, and some are not, such as minerals.

Built resources are infrastructure that delivers power, water, telecommunications and transport within and between towns and cities. It is the buildings New Zealanders live and work in, the roads that are driven on and the drains that manage stormwater. Built resources are fundamental to the well-being, health and prosperity of communities and the economy.

New Zealand benefits from these natural and built resources in three main ways:

- by using and developing them – eg, extracting fresh water for irrigation; developing integrated urban areas and transport systems that stimulate economic growth; generating electricity by harnessing energy from the wind; quarrying gravel to build roads
- by protecting them for future use – eg, setting limits on the number and types of fish recreational anglers can catch; protecting air quality in urban environments
- by protecting them outright – eg, creating national parks and no-take marine reserves; preserving historic sites and infrastructure corridors.

To continue to receive those benefits long term, there is a need to choose wisely between these options. Wise choices depend on the quality of resource management laws, processes, information and tools.

The goal is to maximise the benefits to New Zealand of using and protecting New Zealand's resources now and well into the future.

►► New Zealand's social, cultural and economic prospects are entwined with the health and sustenance of New Zealand's natural resources. ◀◀



### 1.2.1 Challenges faced on the path to effective resource management

In deciding where and how to use, sustain or protect a resource, decision-makers have to find a path between the different social, cultural, economic and environmental values New Zealanders hold. As some resources become scarce decisions need to be made as to whether these should be used or protected – and the scarcer the resource, the more important the decision.

Who should make these decisions also needs to be determined; whether a decision should be made locally, regionally or nationally; or whether a final decision should be made by elected representatives or the courts.

Resource management often involves competing views on if, and how, resources should be used or protected and differences between local, regional and national perspectives.

Whether it be land-use decisions, urban design rules or access to water resources, making resource management decisions that reconcile these different values can be difficult. It matters who makes the decisions, the process they use and whose views are taken into account. It also matters how long it takes to get a decision, and how much it costs to do so.

### 1.3 New Zealand's current approach to resource management

The Resource Management Act 1991 (RMA or the Act) is New Zealand's main legislation for governing how the land, air and water in New Zealand's natural and built environments should be managed. The Act's purpose is:

“...to promote the sustainable management of natural and physical resources”.

Under the RMA, sustainable management means:

“... managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while–

- (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.”

It encourages us to plan now and for the future with consideration to all our societal needs (including, housing, jobs, recreation and quality of life) and the impact on future generations.

When introduced in 1991, the RMA replaced more than 20 major statutes and 50 other laws related to the environment – a collection of uncoordinated approaches, with many conflicts, gaps and overlaps.

While the RMA aimed to create a more coordinated and comprehensive approach, the Government is hearing that, in practice, every step of the current resource management system has become overly complex and unclear. There is a concern the focus under the RMA has shifted too far towards avoiding effects on the environment and that too little emphasis is being placed on using planning to deliver positive outcomes – this is a particular concern in urban areas. The integrated package of proposals presented here intends to streamline and improve decision-making at every level and also to enhance the effectiveness of the RMA as a planning statute.

#### 1.3.1 How the resource management system operates now

As figure 1 shows, the RMA system is hierarchical and very decentralised. A majority of decisions are made by local government which includes regional councils, city and district councils and unitary authorities that act as both a regional and district/city council. Decisions are designed to be made within a framework that flows from the national level to regional policy statements and plans, and on to district plans and rules.

Regional and district policies and plans are one of the RMA's most important features. Councils must prepare plans to let their communities know what they can do as of right, and what activities require consents. Increasingly what can be done as of right is reduced and more and more activities will require consent.

- *Regional policy statements* set the basic direction for environmental management in a region.
- *Regional plans* tend to concentrate on particular parts of the environment, like the coast, soil, a river or the air. They set out how discharges or activities will be managed to stop those parts of the environment being degraded or polluted.
- *District plans* are about the use and development of land and contaminated land. They set out the policies and rules a council will use to manage how the land is used.
- *Unitary authorities* are responsible for both regional and district plans.

Collectively, these plans determine objectives and policies for resources in districts and regions and whether a resource consent is required for an activity, what degree of discretion the local authority has with respect to consent applications and the nature of information that applicants are required to provide. Decisions to approve or decline an application and the nature of any conditions placed on an applicant are generally made by the council and can be appealed to the Environment Court.

▶▶ Councils must prepare plans to let their communities know what they can do as of right, and what activities require consents. ◀◀



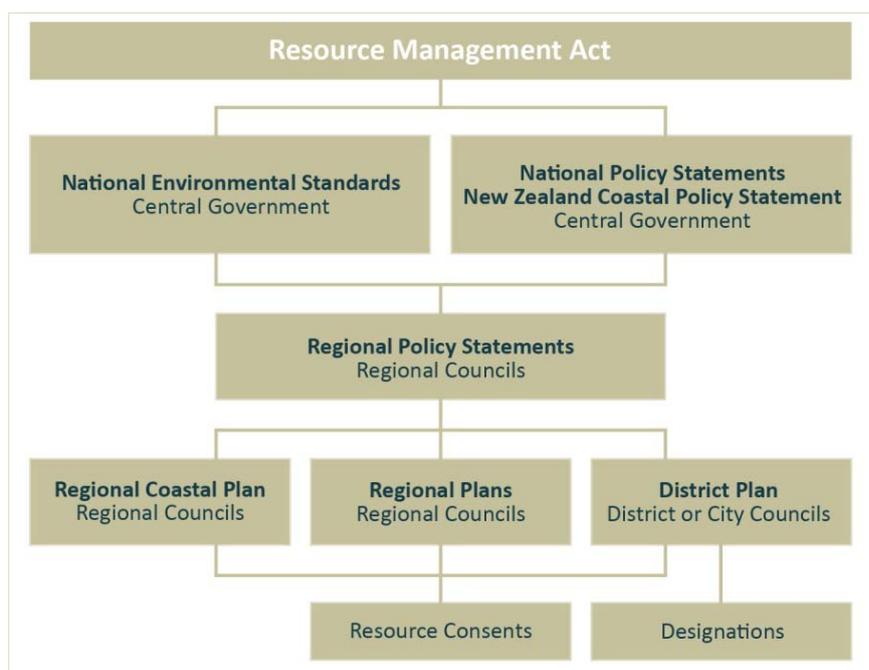
When central government wants to give local authorities guidance on environmental issues that are of national significance, it is able to do so through national policy statements and national environmental standards. Under the RMA's hierarchy, regional policy statements and plans need to give effect to national policy; district plans need to give effect to national policy and regional policy and must not be inconsistent with regional plans. All plan rules must comply with national standards. Decisions about resource consents are guided by regional and district plans.

As a general principle, central government should play a key role in decisions or should provide very clear direction for matters that are nationally important, where decisions reconcile nationally significant values, or where consistency outweighs the value of local specificity.

Local government should play a key role in decision-making where there are local circumstances that demand a more site- or community-specific approach, where the costs and benefits are localised or where the local authority is best placed to make the decision.

The courts, especially the Environment Court, have an important role to play in interpreting and applying policy, and safeguarding the rigour of planning and consenting processes and the quality of outcomes. The judiciary should not be placed in the position of having to determine values or policy – this role should be played by publicly accountable, elected representatives.

**Figure 1: Key elements of the Resource Management Act**



### 1.3.2 The main groups in the RMA

The RMA is primarily implemented by local government – 11 regional councils, 11 city and 50 district councils, and 6 unitary authorities.

Other key players are the:

- Environmental Protection Authority (EPA), which deals with nationally significant proposals instead of local councils
- Ministry for the Environment, which develops national guidance, processes and tools, gives advice to the Government on environmental issues and helps the Minister for the Environment monitor how councils are implementing the RMA
- Department of Conservation and its Minister, who have a particular role in how the coastal environment is managed
- Environment Court, which plays an important role in safeguarding the quality of processes and decisions, and in ensuring that natural justice is preserved.

## 1.4 Reforms to date

When the Government came into office in 2008 it began a significant programme of resource management reform. Major improvements to streamline and simplify the resource management system have already been delivered, including establishing the EPA and a national consenting regime. Penalties for non-compliance and for delays in consent processing by councils have been increased. Disincentives for anti-competitive behaviours have been created. New national policies and/or standards are in place for freshwater management, renewable energy, electricity transmission and soil contaminants. Changes to the resource management system have also been required as part of establishing the Auckland Council and reforming the aquaculture regime.

The Government is now focused on tackling more complex challenges, some of which are addressed in the 2012 Resource Management Reform Bill, currently being considered by Select Committee. This would give Auckland Council a one-off streamlined process to create a high-quality unified system of plans for the Auckland region. It would provide a six-month limit for councils to process medium-sized consents, allow major regional projects to be consented directly through the Environment Court and support better national environment reporting.

Other challenges are being met through the review of New Zealand's freshwater management system. A government paper sets out provisional proposals in respect of freshwater reform and is scheduled to be released for public input shortly.

However, to address the core issues with New Zealand's resource management system a more systemic review and programme of reform is needed.

►► Despite the changes already made, New Zealanders tell us they want more action to make resource management simpler, less costly and more effective. ◀◀



### 1.4.1 A reboot for the resource management system

Despite the changes already made, New Zealanders tell us they want more action to make resource management simpler, less costly and more effective. They want the RMA to deliver better outcomes – environmentally and economically.

In *Kiwis Count*, the quarterly survey run by the State Services Commission to find out New Zealanders' perceptions and experiences of 42 public services, satisfaction with resource management is consistently among the lowest of all public services. In the September 2012 survey, service quality related to national environmental issues and the RMA was ranked the lowest.<sup>1</sup>

A 2003 study by the Ministry of Economic Development,<sup>2</sup> on small and medium-sized businesses' perceptions of 11 areas of legislation that affect them, found the RMA ranked among the worst three – negatively affecting business dynamics across eight of nine factors. The study found the RMA has a negative impact on the value or speed with which industry can grow export earnings, is ambiguous to interpret or apply and leads to legal expenses. While this study is some years old, its findings are supported by ongoing feedback from business. New data on the impact of the RMA is anticipated in mid-2013, from Statistics New Zealand.

<sup>1</sup> State Services Commission. 2012. *Kiwis Count – New Zealanders' satisfaction with the public services*. Quarterly Update 2. <http://www.ssc.govt.nz/kiwis-count-update-nov12>. Wellington: State Services Commission.

<sup>2</sup> Ministry of Economic Development. 2003. *The Impact of Business Compliance: Perceptions of New Zealand Firms*. Wellington.

The rest of this chapter summarises the outstanding issues and opportunities that have been identified, and why. Chapter 2 sets out how this work relates to other government initiatives under way. Chapter 3 is where you will find the detail about each of the proposed reforms, why it is considered necessary, what is being planned and what it is expected to achieve.

Your feedback on the issues and the proposals will help inform decisions on how to further improve resource management in New Zealand.

## 1.4.2 Outstanding issues and opportunities

In unpicking the current system of resource management decision-making, underlying efficiency and effectiveness-related problems become apparent. These problems are by their nature interlinked – and it is their combined, rather than individual, impact that is of most concern. There is also no single driver behind these problems. The underlying problems include:

- inefficient duplication of effort in developing plans, and unnecessary variation and complexity in planning documentation creating problems for engagement, understanding and compliance
- a lack of clear, up-to-date national guidance on matters of national importance leaving such issues to be resolved at local levels coupled with a highly devolved decision-making system that has led to tension between national and local objectives and the development of inconsistent approaches to these matters across the country
- insufficient attention being paid to meeting future needs as opposed to mitigating impacts
- an over-reliance on consents and Environment Court appeals in attempting to resolve fundamental tensions over resource uses/values that would be better addressed at the plan stage
- high costs of securing and complying with decisions, particularly consent decisions that are not commensurate with actual impacts
- a lack of predictability in decision-making – in both plans and consents – particularly affecting those needing decisions
- inflexibility in the application and enforcement of RMA processes leading to disproportionate costs and requirements, particularly for small projects.

Resource management decisions are often made in a context of uncertain information and changing or conflicting values. It is unlikely there will be a single correct solution to any particular resource management question, but the framework these decisions are made under needs to be as clear, robust, transparent and usable as possible.

The above factors create an environment where objectives can be unclear and where final decisions are often difficult to predict in terms of outcome, timing and/or cost. The combined result is a system that is difficult to navigate, less certain and more costly than it needs to be for those involved.

Five key issues and opportunities have been identified that illustrate these underlying problems and contribute to a resource management system that does not deliver its purpose of promoting sustainable management in an effective or efficient manner.

Case studies have been used to illustrate particular points relevant to the issues being discussed. The information used is publicly available and is not intended as a legal summary. Specific matters raised in the case studies are not in scope of this discussion. The case studies are simply to illustrate a point about the operation to the RMA system, and are not intended to place blame on any parties involved.

## Issues

### *Complexity and cost of the current planning system*

This Government is consistently told that New Zealand's current resource management system is costly, inefficient and slow to respond to changing circumstances. A key reason is its complexity.

Collectively, New Zealand's 78 local authorities have more than 170 resource management planning documents covering 2272 different zones, management areas or policy overlays.<sup>3</sup> By comparison, Scotland, with 5.2 million people, has just 37 comparable planning documents. The sheer number of plans and the breadth of their content makes it overly complicated for New Zealanders to engage, understand and comply.

Plan-making is also expensive and time-consuming for local authorities. While plans will always require money and time to develop, under the current system it costs too much, takes too long and is unnecessarily complex.

The average cost to local authorities to produce their first RMA plans (known as 'first generation' plans) was \$1.9 million per plan<sup>4</sup> (or \$2.4 million in today's dollars). The cost of preparing RMA plans for larger councils and those facing growth pressures can be more significant. For example, the Queenstown Lakes District Plan cost more than \$15 million (spread over 10 years) once all legal appeals were resolved.<sup>5</sup> These figures are just the council's costs, and do not include those borne by submitters or the economic impacts of the delays.

Time is also an issue. A 2008 survey<sup>6</sup> found first generation plans took an average of 8.2 years to finalise and become 'operative', and an average of 5.6 years to move a plan from 'notification' through to being fully operative.

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<sup>3</sup> Ministry for the Environment. Unpublished. *Improving Resource Management*.

<sup>4</sup> Boffa Miskell and Hill Young Cooper. 2004. *Improving Processes for Making Plans and Policy Statements under the Resource Management Act*. Prepared for the Ministry for the Environment. Wellington.

<sup>5</sup> Queenstown Property. 2003. Queenstown Lake to Finally get its District Plan [News item]

<sup>6</sup> Brown and Pemberton Planning Group Ltd. 2008. *Analysis of timeframes for the development of policy statements and plans under the Resource Management Act*. Prepared for the Ministry for the Environment. Wellington.

## CASE STUDY

### Nearly a decade to get a plan operative in the Far North

In mid-2000, the Far North District Council released its proposed district plan for public feedback following several years of development to get it to that stage.

It took three years, following public submissions, hearings and further consideration for the council to be able to issue its decisions.

However, in 2003, 95 appeals were lodged with the Environment Court, covering over 800 separate matters. It took another three years to resolve all but one of these appeals.

The district plan was finally declared substantially operative in 2007, but the one site-specific issue remained unresolved until mid-2009. As a result, the plan did not become fully operative until late that year, nearly a decade after it was notified.

## CASE STUDY

### Complexity, delays and unnecessary expense

Part IV (Rivers and Lakes) of the Tasman Resource Management Plan did not become operative until February 2011, almost 20 years after the RMA came into force. The district relied on transitional arrangements – including the requirement for resource consents for any activity in the beds of rivers and lakes (including their banks).

The absence of permitted activities, even for minor works, meant large numbers of small projects technically required resource consent – such as planting native species on stream banks, or placing small culverts in minor streams. As a result, projects were delayed and/or expensive, or simply done without authorisation.

Changing plans also takes too long. For example, the 2010/11 RMA survey of local authorities, carried out by the Ministry for the Environment found 119 plan variations in progress<sup>7</sup> (ie, not yet finalised), and an average completion time of 3.75 years.

Adding to the complexity is a lack of consistency in the wording councils use in their plans. For example, a 2008 study of the district plans prepared by the eight largest territorial authorities showed 123 different terms were defined, with more than 450 variations of those definitions.<sup>8</sup> Different definitions used in different plans for the same district or region can lead to uncertainty and misunderstandings at all stages of the resource consent process – for councils, applicants and submitters.

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<sup>7</sup> Ministry for the Environment. 2011. *Resource Management Act: Survey of Local Authorities 2010/2011*. Wellington: Ministry for the Environment.

<sup>8</sup> Raw data associated with: Harrison Grierson. Unpublished. Development of Standard Definitions for Common District Plan Terms. Prepared for the Ministry for the Environment.

Differences between districts or regions can also be a problem. One example is variations in the definition of 'ground level', used as the reference point for a range of height-related rules in plans, such as building height.

For a small business working in multiple districts, such as a home builder, these different definitions can be confusing and cause inadvertent breaches of plan rules. In the home builder's case, the business may suffer costs and delays if a resource consent is needed to approve the minor breach, or the building has to be redesigned to fit within the rules.

►► For a small business working in multiple districts, such as a home builder, these different definitions can be confusing and cause inadvertent breaches of plan rules. ◀◀



## CASE STUDY

### 'Ground level' can mean different things ...

**In the Wairarapa District Plan:** "Ground level – the natural level of the ground; or the finished ground level approved at the time of subdivision or development."

**In the Horowhenua District Plan:** "Ground level means the natural level of the ground; or the finished level of the ground when all engineering and development works that are *required by council* in the course of any subdivision or development have been completed."

**In the Lower Hutt District Plan:** "For the purposes of calculating maximum height, ground level shall be deemed to be the natural level of the ground or the finished level of the ground as a result of an approved subdivision, and shall not include earthworks which have resulted or will result from work undertaken as part of the construction of the building or site..."

### *Resource management system that does not reflect up-to-date values*

This Government has received advice that today's values and priorities are not well enough reflected in the RMA. That means they are not adequately picked up in the resource management system to guide planning and decision-making.

What should be considered important in decision-making is guided by the RMA's principles, found in sections 6 and 7. These specify "matters of national importance" that 'must be recognised', and "other matters" which decision-makers should 'regard' when making decisions. Section 6 deals mainly with environmental matters. Section 7 deals mainly with social, cultural and economic matters.

In 2011, a Principles Technical Advisory Group was established to see if the RMA's principles could be improved after 20 years of practice. It found:<sup>9</sup>

- the RMA's principles give greater weight to the sustainable management of natural and physical resources, than to social, cultural and economic matters. As well, some ambiguity in the wording of sections 6 and 7 makes it unclear whether and how to weight the matters within or between the sections.<sup>10</sup> One result is uncertainty for local decision-makers who may then turn to the courts to make final decisions
- sections 6 and 7 do not include nationally significant matters – such as natural hazards, urban design and related housing affordability issues – or investment in major infrastructure beyond renewable energy. Each of these is important to consider in present-day planning, and a national view is needed because their impacts cross regional and local boundaries.

The limited scope of matters identified as nationally important was also highlighted by two technical advisory groups set up in 2010 to look at New Zealand's urban and infrastructure resource management planning.<sup>11</sup> These groups recommended changes to sections 6 and 7 to reflect the importance of urban issues and providing infrastructure.

Most submissions on the Government's 2011 discussion document, *Building Competitive Cities*,<sup>12</sup> agreed the RMA inadequately recognises the urban environment and infrastructure. Many submissions also supported the need for greater national guidance on priorities and matters of national importance.<sup>13</sup> This included submissions from councils, which suggests there is demand for national guidance to increase clarity about planning processes. Councils also asked for more clarity on central government's expectations of local government.<sup>14</sup>

►► Compared to New Zealand, a number of other countries have greater central government involvement in planning. ◀◀



<sup>9</sup> Principles Technical Advisory Group. 2012. *Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group*. Wellington: Ministry for the Environment.

<sup>10</sup> Principles Technical Advisory Group. 2012. *Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group*. Wellington: Ministry for the Environment.

<sup>11</sup> Urban Technical Advisory Group. 2010. *Report of the Minister for the Environment's Urban Technical Advisory Group*. Wellington: Ministry for the Environment; Infrastructure Technical Advisory Group. 2010. *Report of the Minister for the Environment's Infrastructure Technical Advisory Group*. Wellington: Ministry for the Environment.

<sup>12</sup> Ministry for the Environment. 2010. *Building competitive cities: Reform of the urban and infrastructure planning system*. Wellington: Ministry for the Environment.

<sup>13</sup> HillYoungCooper Ltd. 2011. *Building Competitive Cities Summary of Submissions – Final Report*. Wellington: HillYoungCooper Ltd.

<sup>14</sup> HillYoungCooper Ltd. 2011. *Building Competitive Cities Summary of Submissions – Final Report*. Wellington: HillYoungCooper Ltd.

In addition to the RMA principles in section 6 and 7, mechanisms are already available to provide national guidance on values and priorities. They include ministerial directives (sections 25A and 25B), national policy statements (NPSs) and national environment standards (NESs).

The main concerns are:

- developing national guidance and putting it into practice often involves lengthy, complex and costly processes. This limits the ability for those mechanisms to be used to respond to specific issues in a timely way. For example, it typically takes three to seven years to develop a NPS, and putting it into regional and district plans can take from three to 10 years
- there is no clear set of triggers to signal when national guidance should be developed
- even when national guidance is in place, regional and district plans across New Zealand can reflect it in different ways. The lack of consistency can lead to increased compliance costs and investment risks for stakeholders whose interests cross council boundaries.

In a 2012 Productivity Commission survey of local authorities,<sup>15</sup> 70 per cent of respondents found that lack of direction from central government was a barrier to some degree, while 36 per cent considered the lack of direction to be significant. As part of its survey, the Productivity Commission also interviewed 1500 businesses and 44 per cent who had dealings with multiple councils agreed that regulations were inconsistently applied.<sup>16</sup>

Compared to New Zealand, a number of other countries have greater central government involvement in planning. In the Australian states of Tasmania and Victoria the state-level minister has final say over plans, and most states have template plans and strong statutory guidance.

In Ontario, Canada many upper-tier municipalities are the approval authority for lower-tier official plans and amendments. In all other cases, the minister is the approval authority. All decisions affecting land-use planning matters must be consistent with the provincial policy statement which provides strong, clear policy direction on land-use planning to promote strong communities, a clean and healthy environment and a strong economy.

Scottish ministers must approve strategic development plans before they come into force in Scotland's four main city regions. While ministers do not approve local development plans, plans are normally only adopted following an examination in public conducted by a person appointed by Scottish ministers. The Scottish planning policy, a statement of Scottish government policy on nationally important land-use matters, must be taken into account in strategic and local development planning.

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<sup>15</sup> Productivity Commission. 2012. *Towards better local regulation: Data compendium*. Wellington: New Zealand Productivity Commission.

<sup>16</sup> Additionally, businesses in certain sectors faced greater inconsistency – finance and insurance (84 per cent); communication services (74 per cent); and construction (72 per cent). Note that this is about regulation in general, rather than specific to the RMA.

## CASE STUDY

### **Wellington's outstanding landscapes pose an outstanding planning hurdle**

The RMA identifies “outstanding natural features and landscapes” as matters of national importance, which means councils must recognise and provide for them in their plans. However, inadequate guidance from central government on how to reconcile competing values means this has been difficult for many councils.

Twenty-two years after the RMA was introduced, Greater Wellington Regional Council has not been able to identify which of Wellington region's outstanding natural features and landscapes will be protected.

The Council first sought to include a list in its 1994 proposed regional policy statement. Significant opposition put a stop to that work and the council instead committed to preparing a regional plan to cover these features and landscapes.

In 1997, it notified its proposed Regional Landscape Plan, but this proposal also faced stiff opposition and the plan was withdrawn the following year. Instead, the Council decided to prepare non-statutory guidelines. Again, work stopped in 2000 following opposition at public workshops.

In 2005, Council staff again identified the need for better landscape management. Five years later they introduced guidance on how to make landscape character assessments. However, this guidance does not list actual landscapes to be protected – 22 years later, it is still a work in progress.

### *Tensions between different community values not resolved upfront*

A 2008 survey of 90 per cent of local authorities showed all first generation RMA plans were appealed to the Environment Court. Between 2006 and 2011 there were, on average, 304 plan appeals each year.<sup>17</sup> The current structure of the appeal pathways may be encouraging stakeholders to disengage in earlier steps of the process, missing the opportunity to navigate an agreed path through contentious policy and planning issues.

There also appears to be an overreliance on retaining council discretion at the consent stage as opposed to putting clear requirements in plans. The draft Productivity Commission report into local government performance concluded that of 14,000 consents decided in the 2010/2011 reporting year less than 1 per cent were declined.<sup>18</sup> While there are likely to be multiple reasons for this – including the number of consents granted only after additional conditions were applied – a key underlying question is whether all these consents were actually necessary.

In the Government's view, this is not effective resource management. First, decision-making at the individual project level risks missing or underestimating the implications of decisions about important issues or values. This can make it harder to deal with the cumulative effects of many activities. Second, the lack of big picture clarity about what is important creates uncertainty for

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<sup>17</sup> The Environment Court Registrar's Annual reports 2006–2011.

<sup>18</sup> Productivity Commission. 2012. *Towards better local regulation: Draft report*. Wellington: New Zealand Productivity Commission.

both applicants and communities about what might happen, how long decisions will take and what the costs will be. This uncertainty is even more unhelpful when dealing with resources that are limited, such as fresh water. Third, it places significant discretion with the council staff responsible for processing individual consents and recommending decisions.

## CASE STUDY

### **Inconsistency within plan proves costly for Meridian Energy**

In 2006, Meridian Energy successfully sought consents to build a \$2 billion wind farm in the Lammermoor Range in Central Otago. However, the Central Otago District Council's initial decisions to grant the Project Hayes application were appealed to the Environment Court.

In 2009, the Environment Court agreed with objectors, determining that Project Hayes was inappropriate as it was in an outstanding natural landscape under consideration as part of a plan change. It therefore allowed the appeals and cancelled the consents. In its decision, the Environment Court criticised the Council's district plan for its inconsistent policies regarding landscape and the identification of outstanding natural landscapes.

Had the Council's plan been more consistent in how it addressed the issue, Meridian may have had more certainty that its project would not be approved and could have decided not to proceed well before spending an estimated \$8.9 million on the project. Others involved – the Council, submitters, the Environment Court – may also have been spared time, costs and conflict.

### *Insufficiently proactive and integrated planning for future needs eg, housing*

The sustained well-being and prosperity of New Zealanders depends on high-quality resource management plans that appropriately navigate between protection and use of natural and physical resources to provide greater certainty and predictability.

Yet the Productivity Commission, in its draft report<sup>19</sup> on local government, questioned the lack of overall coordination of planning, and the lack of consistency in planning for economic growth among councils.

» Real house prices almost doubled between 2001 and 2007 and price increases remain far out of step with corresponding rises in incomes. «



<sup>19</sup> Productivity Commission. 2012. *Towards better local regulation: Draft report*. Wellington: New Zealand Productivity Commission.

The RMA currently requires councils to achieve integrated management, but focuses largely on managing the negative effects of resource use. Less attention is paid to encouraging and managing positive effects – that is, planning ahead to improve long-term resource management outcomes for the environment and also the economy and business growth. Change is needed to enable councils to make appropriate decisions based on the positive and negative impacts of resource use.

New Zealand's housing needs are a good example. About 85 per cent of New Zealanders now live in urban centres, particularly Auckland. Urbanisation has significant implications for land supply, housing supply and affordability, and infrastructure. It is generating an ever-increasing demand for investment and resources from central and local government and the private sector.

The RMA and local government are central to how urban growth is planned for and accommodated. For example, district plans manage land use and subdivisions. But research from the OECD (2011<sup>20</sup>) and Motu (2006<sup>21</sup>) show that New Zealand's housing supply has limited responsiveness to demand.<sup>22</sup> When compared with other countries with similar land supply, these studies show New Zealand performs worse than most. The less responsive land supply is to demand, the greater the pressure on land prices.

Indeed, real house prices in New Zealand almost doubled between 2001 and 2007 and price increases remain far out of step with corresponding rises in incomes. While there are a number of likely reasons for this, land supply seems to be a key one.

Predicting housing demand is difficult, but the available projections suggest that 20,000–23,000 new units of housing are required across the country per year over the next five years to keep pace with demographic and other changes in the market. However, average building consent volumes over the past three years show the current level of new housing construction is less than 15,000 units per year.<sup>23</sup>

The most acute problems are meeting demand in Auckland, where 75 per cent of growth is expected in the next 30 years, and in Canterbury which lost over 16,000 houses as a result of the earthquakes.

The areas of greatest demand for housing, and consequently where there is the greatest pressure on house prices and rents, are the established suburbs close to jobs, transport and amenities. While there is greenfield land available on the urban periphery, this does not suit everyone's needs and preferences. In its report on housing affordability, the Productivity Commission highlighted housing supply needs to be provided across a range of locations, including existing urban areas. However, these are also the places where land ready for development is most scarce, and where the planning system struggles the most in dealing with the different interests. This leads to costs, delays, uncertainty and poor outcomes.

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<sup>20</sup> Dan Andrews, Aida Caldera Sanchez and Asa Johansson. 2011. *Housing Market and Structural Policies in OECD Countries*, OECD. Aida Caldera Sanchez and Asa Johansson (2011); *The Price Responsiveness of Housing Supply in OECD Countries*, OECD.

<sup>21</sup> Arthur Grimes and Andrew Aitkin. 2006. *Housing Supply and Price Adjustment*, Motu.

<sup>22</sup> Arthur Grimes and Andrew Aitkin. 2006. *Housing Supply and Price Adjustment*, Motu.

<sup>23</sup> Department of Building and Housing. 2011. *Briefing to the Minister for Building and Construction*.

There is no doubt these issues are likely to be contentious amongst communities but that doesn't change the need for them to be tackled head on rather than deferred to consent by consent consideration.

▶▶ While many councils provide helpful information on how to secure consents, many consent requirements can prove complex and costly. ◀◀



## CASE STUDY

### **Inconsistency between plans creates tension and costs**

Milford, a seaside suburb on Auckland's North Shore, has high amenity values, high house prices and is in high demand as a place to live. It should be simple. Milford has been identified as a growth centre for Auckland in numerous strategic and statutory documents, including the Auckland Plan and the Regional Policy Statement – the latter includes a commitment to 2000 new dwellings. However, planning provisions under the current (ex-North Shore City Council) district plan limit the realistic opportunities for development to only 700–750 dwellings.

The issues this raises are playing out in the Milford Centre Project, a three-stage intensification of the current shopping mall site. Stage 2 involved development of 15 two-storey townhouses and was granted resource consent after a 1.5-year process. However, stage 3, which involves 250 new residential units in three buildings, requires a plan change.

The plan change application was lodged more than four years ago. However, there were significant tensions between the aspirations of the property owner to maximise the return on investment, and the interests of nearby residents. The application was rejected by the Environment Court in February 2013 with the Court finding the plan change didn't meet the purpose and principles of the RMA.

### *Lack of a consistent service culture*

While many councils provide helpful information on how to secure consents, many consent requirements can prove complex and costly. Consent conditions and processes can also vary considerably between councils which reduces certainty for the applicant.

The draft Productivity Commission report into the performance of local government highlights many of these issues and cites examples of poor RMA service performance. This patchy performance can be due to:

- a lack of capacity or inadequate resourcing
- different understandings of what constitutes good or bad performance

- a reluctance to acknowledge uncertainty and information gaps, or manage such gaps.

This situation can lead to different conditions being applied to resource consents without justifiable cause, and large variation in costs and timeframes for consent processing.

### *Learning the lessons of Christchurch: managing for hazards*

One of the biggest opportunities to improve New Zealand's resource management system came from what can be learnt from the Canterbury earthquakes, and how those lessons can be used to improve the management of natural hazards. Natural hazards cannot be prevented, but properly planning for and managing their risks can help build more hazard-resilient communities.

The Canterbury earthquakes provided us with an example of how to do better to manage natural hazards in line with the sustainable management purpose of the Act. Given that New Zealand is subject to numerous natural hazards (eg, flooding, coastal erosion, earthquake, volcanic and geothermal activity, drought and tsunami) it is necessary to ensure resource use and development is managed to provide for well-being and health and safety now and into the future.

Sections 30 and 31 of the RMA require councils to avoid or mitigate natural hazards, but this is not prioritised in Part 2 of the Act. Local authorities manage natural hazards by considering risks when they make decisions on resource management plans and consents, and by providing information to communities.

In addition, section 106 of the RMA allows councils to refuse or to place conditions on applications to subdivide land in certain circumstances. The scope of section 106 is, however, quite narrow. It does not cover the potential effects of all natural hazards, nor refer to natural hazards which are very unlikely but would have extremely significant impacts if they occurred, and it only applies to subdivision consents.

The Canterbury Earthquakes Royal Commission of Inquiry<sup>24</sup> found local and central government could both do more to better manage the risks of natural hazards. The Royal Commission made a series of recommendations on how to do so, including:

- extending the section 6 and 7 principles of the RMA to include a matter relating to earthquakes and liquefaction
- developing new tools and improving existing tools to provide consistent and timely central government guidance to councils on earthquakes and liquefaction
- making changes to consent requirements so that earthquakes and liquefaction are properly considered in decision-making.

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<sup>24</sup> Canterbury Earthquakes Royal Commission. 2012. *Final Report Volume 7, Roles and Responsibilities*.

►► Problems remain that mean the sustainable management purpose of the RMA is not being achieved in an effective or efficient manner. ◀◀



## 1.5 Conclusion

This chapter has explained New Zealand's resource management system and its importance in maximising the benefits to New Zealand of using and protecting resources now and into the future.

Much work has been done on resource management to date. However, problems remain that mean the sustainable management purpose of the RMA is not being achieved in an effective or efficient manner.

Six key areas have been identified that illustrate how the system is too costly and time-consuming for both councils and the public. Collectively, they illustrate the system as a whole is unpredictable, with much unnecessary duplication. It is a system that is not easy for users to navigate.

### QUESTION FOR CHAPTER 1:

- Has this chapter correctly described the key issues and opportunities with New Zealand's resource management system?



## Chapter 2:

# Links to other proposed reforms and initiatives

The Government is undertaking a broad programme of reform aimed at achieving its overall objectives, including improving business growth to create jobs, housing affordability, and making sure rules and regulations for resource management are efficient. Central to this is a range of proposed reforms across the wider resource management system, some of which are included in this discussion document.

### 2.1 Improving resource management

An important element of improving resource management is the **Resource Reform Management Bill 2012**, introduced in December 2012. The Bill, currently before Select Committee, is proposing reforms that would improve the resource management system by:

- streamlining the process to create Auckland's first unitary plan
- implementing a six-month limit for councils to process consents for medium-sized projects, and further improving the consenting regime as a whole
- making the process that enables applications to bypass council decision-making and be directly referred to the Environment Court – known as 'direct referral' – more readily available for major regional projects

- improving the evaluations of objectives, policies and rules in achieving the overall sustainable management purpose of the RMA, carried out under section 32 of the RMA. This proposal would complement a further reform to section 32 that is outlined in this document
- improving national-level environment reporting.

## 2.2 Improving freshwater management

There are strong links between the proposals in this document and the Government's proposed freshwater reforms, particularly around improving national guidance and planning processes.

This work on the wider resource management system and the freshwater-specific reforms are going on in parallel. Certain proposals in this discussion document have been informed by the recommendations of the Land and Water Forum.

Any decisions made on the freshwater reform proposals and those for wider resource management will continue to be coordinated to ensure a consistent approach in how New Zealand's natural and built resources are managed.

The Government is engaging on both proposed packages of reform during March 2013. Information on where and when meetings and hui are being held around New Zealand will be available on the Ministry for the Environment's website.

## 2.3 Improving environmental reporting

Work is under way to improve the quality and quantity of information that shows how the resource management system is performing in relation to achieving economic and environmental outcomes. This includes continuous improvement to indicators on the state of the natural environment. Work to develop broader economic, social and cultural indicators is under way, leveraging the OECD's *Green Growth Indicator Framework* and the New Zealand Treasury's *Living Standards Framework*.

The resulting ecological, economic, social and cultural indicators will, together with information about how the RMA is being implemented (eg, costs and timeframes), provide a comprehensive picture of how the resource management system is performing. It will enable the identification of where the system is working well and where it is not, and will enable the setting of performance standards for government in order to drive better resource management outcomes. Components of this work are discussed further in section 3.6.

It is important there is public confidence in the impartiality, quality and coverage of New Zealand's resource management performance indicators, with the Government currently exploring options to provide independent quality assurance of these.

►► The Building Natural Resources work includes a suite of more than 50 actions, including potential changes to the way natural resources are managed and used. ◀◀



## 2.4 Enabling economic growth

The **Business Growth Agenda** is a programme of work that is supporting New Zealand businesses to grow, in order to create jobs and improve New Zealanders' standard of living. It is delivering innovative initiatives and policy reforms that would help create a more productive and competitive economy.

The Building Natural Resources work within the Business Growth Agenda includes a suite of more than 50 actions, including potential changes to improve the way natural resources are managed and used. For more information on the Business Growth Agenda, including a progress report on the Building Natural Resources work, visit <http://www.mbie.govt.nz/what-we-do/business-growth-agenda>

## 2.5 Improving local government

The **Better Local Government programme** is part of the Government's broader economic growth strategy. It is focused on building a more competitive and productive economy and delivering better public services. The Better Local Government programme seeks to improve the efficiency and effectiveness of local government in New Zealand by focusing local authorities on doing things that only they can do, and doing these well.

Phase one of the programme ended in December last year, when the Local Government Act 2012 Amendment Act passed. The second phase is under way and has close links with the proposed resource management reforms – particularly work on streamlining consultation, planning and financial reporting under the Local Government Act 2002, and work on the purchase, provision and maintenance of local government infrastructure. A discussion paper seeking feedback on the development contributions system under the Local Government Act was publicly released in February 2013. The closing date for submissions is 15 March 2013.

For more on the Better Local Government programme visit <http://www.dia.govt.nz/better-local-government>

## 2.6 Improving housing affordability

House prices more than doubled last decade making it more difficult for families to afford their own home, distorting investments away from the productive sector and adding undesirable pressures on monetary policy. The Government's work programme is covering a number of key areas in order to reduce the costs and complexities that create barriers to residential development. Reducing current RMA delays and costs and increasing land supply are key aspects of the work, and would be delivered by some of the options presented in this

discussion document. How the proposals in this document contribute to this priority is discussed in section 3.7.

## 2.7 Modernising heritage management

The **Heritage New Zealand Pouhere Taonga Bill** will replace and modernise the Historic Places Act 1993 to improve the policies and rules that currently apply to archaeological heritage. It includes changes to archaeological processes to better align these with the RMA. For more information, visit <http://www.mch.govt.nz/what-we-do/our-projects/current/review-historic-places-act-1993>

## 2.8 Dealing with earthquake-prone buildings

The Government is also consulting on proposed changes to put in place a consistent national approach to **earthquake-prone buildings**. This follows from a review of earthquake-prone building policy and the recommendations of the Canterbury Earthquakes Royal Commission of Inquiry. The proposed changes would have implications for demolition or strengthening works that require a resource consent. Further information may be found at <http://www.dbh.govt.nz/consultingon-epbp>

Consultation on the proposals is due to close on 8 March 2013.

Further work to consider the Canterbury Earthquakes Royal Commission of Inquiry's recommendations more broadly is under way, and may result in further amendments to the RMA.



## Chapter 3:

# The proposed reform package

New Zealand needs a resource management system that achieves the sustainable management purpose of the RMA in an efficient and effective manner taking into account all our environmental, economic, social and cultural needs.

The RMA sets up a planning system that has become complex and costly and an approach to decision-making that does not effectively reflect contemporary values or resolve tensions between different community values upfront. It has led to an approach that does not provide for sufficient proactive and coordinated planning, consistent service culture or adequate natural hazard planning. This Government is hearing that the sustainable management purpose of the Act is not being achieved in an efficient and effective way.

The overall objective for these proposed resource management reforms is to increase ease of use, certainty and predictability of the system while reducing costs and protecting the quality of resource management outcomes. In addition it is necessary to ensure decisions are consistent with the purpose of the Act and that value-based decisions are appropriately made at the right stage by elected and publicly accountable representatives.

Resource management processes and decisions need to cover a broad scope of situations and issues at different scales. Decisions can often take time to play out, and the effect of changes to the framework can sometimes take time to be felt. No individual proposal will address all the issues with the RMA and the Government is seeking comment on a targeted but integrated package of reforms that focuses on areas that offer the best opportunities for improvement.

The package presented here for comment would refine the resource management in New Zealand so that:

- central government makes clearer decisions about national issues and how the system should run
- regional and local government make fewer and better plans, with planning processes that are well-informed, identify the big questions and resolve the key tensions upfront to provide certainty for all parties
- clear rules determine what can be done so that fewer resource consents are needed, and can be processed more quickly where they are needed
- iwi/Māori are enabled to engage more effectively in resource management processes
- local councils are motivated to perform in a ‘customer-centric’ way with appropriate checks and balances in place
- the regulatory environment (including national tools and rules in plans, and the resource consent process) is clearer and more predictable
- natural hazards are better managed over time.

The proposed package has six key elements, or sets of policy proposals (figure 2), that tackle the issues and opportunities identified in chapter 1 to meet the objectives of resource management reform. Table 2 at the end of this chapter (page 75) links the issues from chapter 1 with the specific policy proposals, to show where and how the expected improvements would be made.

**Figure 2: The six elements of the proposed resource management system reform package**



The remainder of this chapter describes in more detail what sits within each of the Government’s six sets of policy proposals. Some proposals include several separate but related elements. For each element within the policy proposals, this discussion document provides:

- an explanation of the context
- the proposed approach
- expected outcomes.

While no one proposal would resolve all issues, the package as a whole is intended to bring about substantial improvements to resource management in New Zealand.

This chapter ends with a high-level assessment of the costs of the proposed reforms, the impact they are expected to have, and a possible timeframe to put them in place.

### 3.1 Proposal 1: Greater national consistency and guidance

The resource management system does not fully reflect contemporary values and there is a need for stronger national guidance and tools that promote greater national consistency and enable nationally significant issues to be better addressed in resource management planning and decision-making.

This section outlines proposals to:

- 3.1.1 Change the principles contained in sections 6 and 7 of the RMA
- 3.1.2 Improve the way central government responds to issues of national importance and promote greater national direction and consistency where needed
- 3.1.3 Clarify and extend central government powers to direct plan changes
- 3.1.4 Make NPSs and NESs more efficient and effective.



#### 3.1.1 Changes to the principles contained in sections 6 and 7 of the RMA

##### Context

Sections 6 and 7 of the RMA specify “matters of national importance” and “other matters” that provide guidance for decision-makers on the interpretation of the sustainable management purpose of the RMA (contained in section 5). The content and structure of sections 6 and 7 is important because all plans, resource consents and decisions under the Act must be consistent with these principles.

When the RMA was drafted, it was intended the environmental matters in section 6 would be given greater weight in decision-making than the range of environmental, social, cultural, and economic matters in section 7. This was seen as the best method of reflecting the need to use resources in a way that safeguarded the life-supporting capacity of ecosystems and allowed for the needs of future generations.

►► It is proposed the current sections 6 and 7 be replaced with a single combined section that lists the matters that decision-makers would be required to *‘recognise and provide for’*. ◀◀



However, after 20 years of RMA practice, there is concern that the predominance of environmental matters in section 6, and the hierarchy between sections 6 and 7, may result in an under-weighting of the positive effects (or net benefits) of certain economic and social activities. A related concern is whether these matters actually reflect contemporary issues.

The Government commissioned the RMA Principles Technical Advisory Group (TAG) in 2011 to review the Act’s principles after 20 years of practice, and to consider whether sections 6 and 7 could be improved to:

- give greater attention to managing natural hazards
- reflect the recommendations from the urban and infrastructure technical advisory groups
- respond to new challenges in resource management theory and practice
- promote consistency of decision-making through clear drafting of the principles.

### *Key findings of the TAG in relation to sections 6 and 7*

The TAG’s June 2012 report highlighted the courts have exercised an “overall broad judgement” in their consideration of the matters in sections 6 and 7.<sup>25</sup> In other words, while the courts have taken into account the nominal priority of the sections (ie, section 6 as more important than section 7), they have adopted a flexible approach by considering the issues in light of their degree of relevance for the particular matter being decided.

The TAG also noted the current sections 6 and 7 do not reflect the broad scope of issues inherent in sustainable management, such as urban development.

The TAG recommended:

- combining all matters in these sections into one set of “principles”
- removing the directive wording used (eg, “preserve”, “protect”)
- adding matters about the built environment (including the availability of land for urban development), significant infrastructure and managing the risks of natural hazards

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<sup>25</sup> This “overall broad judgement” approach has been identified by the courts in considering applications for resource use under Part 2 of the RMA. In this approach all matters are considered in view of their overall impact on whether the purpose of the RMA (section 5) is achieved, in a way that allows the comparison of conflicting considerations, their scale and degree, and their relative significance or proportion in the final outcome. See *North Shore City Council v Auckland Regional Council* [1997] NZRMA 59.

- removing some matters the TAG determined could be adequately provided for by more general matters
- standardising the phrasing of matters and changing the definitions that support some matters
- a new section 7 requiring decision-makers to adopt a number of methods the TAG considers represent RMA best practice
- a number of other changes in relation to natural hazard management.

The Government received feedback on the TAG’s proposals from a number of stakeholders.

## Proposed approach

It is proposed the current sections 6 and 7 be combined into a single section that lists the matters that decision-makers would be required to “*recognise and provide for*”. A single list would remove the current hierarchy between sections 6 and 7, supporting more balanced decision-making.

The TAG’s recommendation for a new section 7, setting out principles to guide decision-makers on how to manage resources sustainably, is proposed.

It is proposed the list of principles read as follows:

## 6 Principles

(1) In making the overall broad judgment to achieve the purpose of this Act, all persons exercising functions and powers under it in relation to managing the use, development and protection of natural and physical resources shall recognise and provide for the following matters:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;
- (b) the protection of specified outstanding natural features and landscapes from inappropriate subdivision, use and development;
- (c) the protection of specified areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- (d) the value of public access to and along, the coastal marine area, wetlands, lakes and rivers;
- (e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, taonga species and other taonga including kaitiakitanga;
- (f) the protection of protected customary rights;
- (g) the benefits of the efficient use and development of natural and physical resources;
- (h) the importance and value of historic heritage;

- (i) the impacts of climate change;
  - (j) the benefits of efficient energy use and renewable energy generation;
  - (k) the effective functioning of the built environment including the availability of land for urban expansion, use and development;
  - (l) the risk and impacts of natural hazards;
  - (m) the efficient provision of infrastructure;
  - (n) areas of significant aquatic habitats, including trout and salmon;
- (2) For the avoidance of doubt section 6(1) above has no internal hierarchy.

**Existing matters proposed for deletion:**

- 7(aa) the ethic of stewardship
- 7(c) the maintenance and enhancement of amenity values
- 7(d) intrinsic values of ecosystems
- 7(f) maintenance and enhancement of the quality of the environment
- 7(g) any finite characteristics of natural and physical resources.

The matters above are proposed to be deleted because they are already effectively encompassed in section 5 of the Act. For example, the TAG suggested deleting “finite characteristics of natural resources” as this is already covered by sections 5(2) “managing ... natural and physical resources” and 5(2)(a) “sustaining the potential of natural and physical resources ... to meet the reasonably foreseeable needs of future generations”.

In contrast with the TAG advice, however, it is intended directional wording in relation to individual matters (eg, the concepts of “protect” and “preserve”) generally be retained.

The proposed approach would not alter the wording or interpretation of sections 5 (Purpose) and 8 (Treaty of Waitangi). Promoting the sustainable management of natural and physical resources would remain the overriding purpose of the RMA.

## **7 Methods**

All persons performing functions and exercising powers under this Act must:

- (1) Use best endeavours to ensure timely, efficient and cost-effective resource management processes;
- (2) In the case of policy statements and plans:
  - (a) include only those matters within the scope of this Act;
  - (b) use concise and plain language; and

- (c) avoid repetition;
- (3) Have regard to any voluntary form of environmental compensation, off-setting or similar measure which is not encompassed by section 5(2)(c);
- (4) Promote collaboration between local authorities on common resource management issues; and
- (5) Achieve an appropriate balance between public and private interests in the use of land.

### Expected outcomes

These changes would reinforce that decision-makers must have regard to a balance of environmental, social, economic and cultural values and priorities for resource management. They would also ensure the list of matters contained in the Act better reflect today's values and priorities and ensure decision-makers are mindful of relevant considerations in carrying out their functions. The changes proposed are consistent with the current purpose of the Act and the overall broad judgement approach taken by the courts. Decisions would thus better reflect the mix of national and local values and priorities regarding resource use and protection. These changes would involve some costs and may increase uncertainty in the short term, as they would require the review of plans and render some existing case law obsolete, providing interpretation challenges until new case law emerges.

▶▶ The changes proposed are consistent with the current purpose of the Act and the overall broad judgement approach taken by the courts. ◀◀



### 3.1.2 Improving the way central government responds to issues of national importance and promotes greater national direction and consistency

#### Context

For the Government to effectively tackle the nationally significant resource management issues of the day, such as future land supply for housing and natural hazard management, it needs regulatory tools that can deliver a fast and effective response. That response may need to be applied consistently nationwide or need to address issues arising in particular regions.

A number of national tools already exist under the RMA – such as national policy statements (NPSs), national environmental standards (NESs), the power to ‘call in’ plan changes or consents to a board of inquiry, and the power to direct a council to prepare a change to an operative or notified plan. These national tools vary in what they can achieve, and it is not always clear when these tools might be used and when they are appropriate.

## Proposed approach

Guidelines would be developed with criteria to clarify when and how each national tool or combination of tools would be used. Criteria might relate to the national significance and importance of the issue, its urgency, the relative importance of public participation, and/or the willingness and ability of council(s) to address the issue.

For illustrative purposes, the criteria might indicate the use of NPSs as appropriate when an issue is nationally significant and important, but not urgent, and when a high degree of consultation is required. When an issue is nationally significant and the benefits of dealing with the issue nationally outweigh the benefits of local decision-making, more directive national instruments might be more appropriate (eg, see *3.1.3 – Clarifying and extending central government powers to direct plan changes*).

Amendments could also be made to streamline the process for addressing urgent issues. For example, central government may identify an urgent need for a region to have additional rules to manage the risks from a natural hazard. In these circumstances, it may be appropriate to permit a streamlined process that allows central government to consult on a proposed rule for a limited period and then advise a final decision (without requiring the council to follow the current Schedule 1 process to insert the rule into a plan).

Setting rules and policies through plans that are written to a national standardised template could be another way of providing clearer direction. More details on this are in the discussion of *Proposal 2: Fewer resource management plans*.

## Expected outcomes

Improved clarity regarding what circumstances and how different tools would apply would provide greater certainty to the infrastructure, business and development sectors as well as councils on how and when central government intervention would occur. This would also encourage councils to give effect to national priorities by signalling if and when further intervention is likely to occur.

### 3.1.3 Clarifying and extending central government powers to direct plan changes

#### Context

Effective resource management requires a range of tools to enable central government to play a more active role in RMA decision-making, ensure national policies are effectively delivered at regional and local levels, and adequately address regionally significant issues.

The RMA (ie, section 25A) provides for the Minister to require that plans be made, changed or varied but does not allow for the outcome or plan content to be specified. Further, the section 25A power has not been used as it is unclear what process should be followed and at what point ministerial intervention is appropriate.

#### Proposed approach

There would be a stepped process for central government to direct plan changes, with criteria in the RMA on the circumstances in which this process could be used.

Specifically, the process and scope of the powers for the Minister to direct plan changes in the RMA could be amended to provide for:

- the Minister to identify an issue or outcome they want addressed in a council plan and invite the relevant authority to set out how it has addressed the matter in its planning
- the Minister to direct a plan change, including the ability to specify the matters the authority must consider when developing the plan change and/or the outcomes to be achieved through the plan change
- the Minister to directly amend an existing operative plan, if following one or both of the above steps the Minister considered the local authority had not adequately addressed the issue or outcome in its plans. Such a power would be similar to regulation-making powers and would enable the Minister to make amendments to existing operative plans. Statutory criteria would limit its use to address more urgent issues that are nationally or regionally significant.

### Expected outcomes

The proposal would provide greater clarity to councils and stakeholders on how and when central government would be able to direct plan changes. It would also enable the Government to target specific districts or regions where there are particular resource management issues, rather than requiring a national approach. The stepped process for use of the tool provides an opportunity for decision-making to first occur at the local level.



►► Existing NPS and NES mechanisms are limited in their ability to quickly and adaptively respond to specific issues. ◀◀

### 3.1.4 Making NPSs and NESs more efficient and effective

#### Context

NPSs and NESs provide direction and rules to not only protect people and the environment, but to also secure a consistent approach and decision-making process throughout the country.

Existing NPS and NES mechanisms are limited in their ability to quickly and adaptively respond to specific issues. Their development can be complex and time-consuming, and the tools themselves can be overly blunt. This limits the effectiveness of national direction and contributes to investment and regulatory uncertainty, because investors and local government are unsure when and in what circumstances central government might impose national policies and standards.

## Proposed approach

This proposal would amend the RMA to improve the flexibility of NPSs and NESs by:

- allowing for establishing a combined NPS and NES process so that guidance can be given on all components of a plan at one time
- clarifying that NPSs and NESs can be targeted to a specific region or locality – ie, issues can be of national significance even if they do not play out across the country
- further streamlining processes for developing NPSs and NESs.

This proposal would also develop a non-statutory agenda, approved by Cabinet, to indicate which matters the Government would consider for NPSs or NESs. The agenda would set out the order in which issues would be examined to see if a NPS or NES would be of benefit. This agenda would follow from application of the guidance in *4.1.2 Improving the way central government responds to issues of national importance*. The indicative agenda would be published and reviewed every three years to take account of changing priorities. This approach was strongly supported by submitters to the *Building Competitive Cities* discussion document.

## Expected outcomes

Local authorities, as well as the business and industry sectors, would be provided with greater clarity on national priorities and the future policies and rules they are likely to face. This would also enable local authorities to plan their internal processes and plan-making, and to promptly give effect to national tools. This would also enable industry sectors to plan ahead in timing their projects. Allowing parallel production of an NPS/NES would reduce implementation costs for councils and those affected by them.

### QUESTIONS FOR PROPOSAL 1: GREATER NATIONAL CONSISTENCY AND GUIDANCE

- Do you agree with the proposals in 3.1.1–3.1.4? Could they be improved? Are there any issues that you think have not been considered?
- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?
- Beyond the suggested additional matters in section 6 and 7, are there any matters of national importance that should be covered in Part 2 of the RMA?
- What matters should additional NPSs and NESs cover?

## 3.2 Proposal 2: Fewer resource management plans

The current planning system seems too complex and costly for councils and stakeholders alike, and does not seem to result in core tensions between different community values being resolved sufficiently upfront.

In response, this section outlines proposals to:

- 3.2.1 Require single resource management plans using a national template that would include standard terms and definitions

- 3.2.2 An obligation to plan positively for future needs including land supply
- 3.2.3 Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court
- 3.2.4 Empower faster resolution of Environment Court proceedings.



**3.2.1 A single resource management plan using a national template that would include standard terms and conditions**

**Context**

Plan-making in New Zealand is a responsibility shared by regional, local and unitary councils and the RMA requires the development of three separate documents in any district: a regional policy statement, regional coastal plan and district plan. In addition, most regions have numerous other regional plans (eg, for managing discharges).

Currently, users of the resource management system are often required to refer to multiple planning documents in order to identify planning provisions which apply to their property (eg, the relevant district plan, any regional plans and policy documents.) These plans are often difficult to navigate and use, and may not be well-integrated. For irregular users, it is often difficult to know which plan(s) or parts of plan(s) to refer to in the early stages of seeking a consent. Overall, the plan-making process under the *status quo* can lead to inconsistency between RMA planning documents.



» Users of planning information would benefit by being able to find all the provisions they need in one location. «

## **Proposed approach – single resource management plans using a national template**

The intention is that all councils would have a single plan in place within five years (per district or a broader area if agreed by the councils in that area) unless otherwise agreed, given variation in current planning review cycles. Once in place, the single plan would in effect consolidate the three or more existing planning documents into one. Regional and district councils would develop their plans as they currently do (using the existing RMA Schedule 1 process including current appeal provisions) and insert their sections into the new single plan template.

The single plan would have to be consistent with a new national planning template developed by central government following an appropriate process that sets out the structure and format of the single plan. This national template would include standardised terms and definitions, and could also include content for specific standardised zones, and rules for particular activities.

Any single plan would have to provide for arrangements agreed through Treaty settlements in achieving the Crown's obligations to iwi.

### **Expected outcomes**

Users of planning information would benefit by being able to find all the provisions they need in one location. This would reduce the need for users to consult multiple planning documents or reach incorrect conclusions by referring to the wrong document.

Requiring the use of a nationally consistent template for single resource management plans would improve the application of national direction to plans and create opportunities to achieve efficiency gains and economies of scale for processing resource consents.

Subject to any required content on zones and rules, councils would still be able to design appropriate policies and rules in line with community expectations and preferences: these policies and rules would simply be expressed in consistent terms and using a common structure.

## **3.2.2 An obligation to plan positively for future needs eg, land supply**

### **Context**

In practice, planning has tended to focus on managing the negative effects of development eg, traffic or air quality impacts, and to under-emphasise the consideration of how it might provide for the social, economic or cultural well-being of the community. The definition of 'effects' under the RMA includes both positive and negative effects.

Councils are required under the Local Government Act 2002 to develop 10-year plans to set out what activities and services they will provide, and how they will allocate funding for the well-being of the community. However, practice under the RMA has tended to lack a future focus of how it intends to manage resources to achieve outcomes. This has manifested particularly where there are changing dynamics and needs, for example, urban areas that have experienced rapid growth.

»» The aim would be to produce more internally coherent and better integrated plans that are more user-friendly. ««



The objective of these changes is to improve planning practice under the RMA, and encourage councils to plan more strategically and in a way that provides for the social, economic and cultural well-being of the community.

### **Proposed approach**

The proposal is to advance a range of legislative and non-legislative changes to encourage a more positive, future-focused approach to planning. Changes are proposed to sections 30 and 31 of the RMA to indicate that managing for positive effects is one of councils' core functions and to require councils to ensure there is adequate land supply to provide for at least 10 years of projected growth in demand for residential land in their plans.

Other proposals in this document would support this change in planning culture and provide tools to enable central and local government to work together more effectively on nationally important planning matters (eg, changes to sections 6 and 7 of the RMA discussed in 3.1.1, and changes to the Minister for the Environment's powers under section 25A of the RMA discussed in section 3.1.3). The new single plan process would be designed to reflect this future-focused emphasis.

Any legislative changes would be supported with guidance on how to better plan proactively.

### **Expected outcome**

This proposal would empower more future-focused and proactive RMA planning by councils, and improve long-term resource management outcomes for the environment and the economy.

## **3.2.3 Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court**

### **Context**

Currently, the reconciliation between regional policy statements and regional plans, and district plans largely occurs after these plans have been developed separately. This is often the focus of negotiation and litigation. Despite earlier amendments to the RMA to improve this process, for instance by requiring district plans to 'give effect' to regional policy statements, there can still be a weak relationship between regional and district plan provisions. Aspects of this reconciliation often need to be resolved by the Environment Court. The result of this is:

- a complex and cluttered planning environment for users to navigate
- inconsistent decision-making and uncertainty
- outcomes on the ground that do not reflect what communities want.

### **Proposed approach**

District and regional councils could choose, where appropriate, to group together and jointly prepare a single integrated plan for each district or larger area. A streamlined plan development process with limited rights of appeal would be made available to the councils if the proposed grouping met the following criteria:

- (i) one set of rules per area
- (ii) enables effective catchment management (eg, water, land)
- (iii) brings material efficiency/cost gains.

The single plan could include a set of measures to ensure different sets of decision-making and accountability (regional and local) are reconciled as part of a cohesive and streamlined plan development process.

This would not, however, redistribute responsibility and accountability for resource management decisions between regional and local councils. Regional and district councils would continue to retain separate functions under the RMA which would mean the regional council content of the plan would need to be signed off by the regional council(s) and the district council content signed off by the district council(s).

Any single plan would have to provide for arrangements agreed through Treaty settlements in achieving the Crown's obligations to iwi.

The aim would be to produce more internally coherent and better integrated plans that are more user-friendly. This means the process to develop, implement, monitor and review plans must be capable of supporting multiple decision-makers to work together.

### *Key features of new plan-making process*

- 1 **Plan partnership agreement:** The respective councils would agree a plan partnership agreement to bind the parties to collaborate on the development, implementation, monitoring and review of the plan. The emphasis of the single resource management plan would be on making hard decisions through the plan development process, so that differences in outlook, priority and intention would be dealt with before the plan was finalised, rather than in appeals or consents. The partnership agreement would form the basis for the relationship between the relevant councils by conferring on them the duty to plan positively, maximise coordination and consistency of plan provisions and processes (including where freshwater elements of plans were developed through an alternative collaborative process), resolve disputes and cross-boundary issues, identify triggers for escalation, and implement, monitor and review the plan.
- 2 **Pre-notification engagement and collaboration:** There would be a greater emphasis on pre-notification engagement and collaboration through:

- the reconciliation of regional and district issues, objectives and policies together into a required draft joint policy statement
  - regions and districts working with their communities to produce regional and district rules which would give effect to the joint policy statement
  - the joint policy statement and regional and district rules being combined together for notification in a single plan.
- 3 **Independent hearings panel:** The use of an independent hearings panel to oversee the formal consultation and submissions process, mediate and resolve issues on behalf of the constituent councils and make recommendations on submissions to councils. The panel would provide the community and stakeholders with confidence in the robustness and transparency of the process. It could also be charged with assessing the extent to which rules and provisions were consistent with objectives and policies and the national planning template.

The independent hearings panel would comprise qualified commissioners with a mix of knowledge and experience relating to the subject matter of the plan. At least one member would be required to understand tikanga Māori and the perspectives of local iwi, and the council would consult with local iwi when deciding this appointment.

- 4 **Narrowed appeals to the Environment Court:** The ability to appeal council decisions on components of plans to the Environment Court would be limited to where the council deviates from the recommendation of the independent hearings panel. The right to appeal to the High Court on points of law would be available where the council accepted the hearings panel's decision.

The scope of the Environment Court's consideration of an appeal would also be narrowed. The Court currently undertakes appeals '*de novo*' (ie, approaching the case afresh). This would instead become appeal by way of 'rehearing'. The Environment Court would consider the original decision made by council and could rehear evidence, when this was appropriate. There may be limitations on new evidence being presented and heard by the Environment Court, particularly where it was able to be produced during the hearings panel process. Most appeals in New Zealand follow this process.

### Expected outcomes

A joint and streamlined process for single plans would aim to reconcile regional objectives and policies more easily with regional and district plans than happens currently. This would impose upfront costs to councils in developing the new plans in this new, and far more integrated, manner but aim to lower longer-term costs in plan development and review once these new plans are in place. It would encourage communities and businesses to actively engage in the planning process without demanding unreasonable commitments of time and costs.

## 3.2.4 Empowering faster resolution of Environment Court proceedings

### Context

The Court process has often been relied on to resolve complex and substantial issues instead of this happening effectively when plans are prepared. Where particularly complex issues may not be able to be dealt with in the plan preparation process, the Environment Court should be enabled to resolve these as effectively and efficiently as possible. The Environment Court has introduced a case management system and has an ongoing programme of operational

▶▶ A streamlined process would encourage communities and businesses to actively engage in the planning process without demanding unreasonable commitments of time and costs. ◀◀



improvements to resolve appeals as efficiently as possible. Improvements being considered include further practice guidance to clarify what is considered to be a reasonable amount of time to resolve cases, reviewing the use of mediation in the appeal process, and moving to an electronic case management system. Several further opportunities for operational improvements would require law change.

### **Proposed approach**

Changes are proposed to:

- increase the Environment Court's existing power to enforce agreed timeframes – for example the time period for exchanging evidence
- strengthen existing provisions to require parties to undertake alternative dispute resolution
- make any law changes required to deliver the full potential benefits of electronic case management.

### **Expected outcomes**

These measures appear relatively low cost and low risk. They would play an important role in ensuring matters that need to be considered are, and as quickly and efficiently as possible.

#### **QUESTIONS FOR PROPOSAL 2: FEWER RESOURCE MANAGEMENT PLANS**

- Do you agree with the proposals in 3.2.1–3.2.4? Could they be improved? Are there any issues that you think have not been considered?
- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?
- Do you agree with our assessment that better quality plans and plan-making processes would significantly reduce costs and delays, including those associated with consenting and appeals?
- Who should be responsible for making final decisions on resource management plans?

### 3.3 Proposal 3: More efficient and effective consenting

It seems tensions between different values are not being resolved upfront in the current resource management system. This leads to too many decisions needing a consent which increases costs, time and uncertainty for users as well as leaving too many value-based decisions with unelected council staff.

To address these issues the following is proposed:

- 3.3.1 A new 10-working-day time limit for straight-forward, non-notified consents
- 3.3.2 A new process to allow for an “approved exemption” for technical or minor rule breaches
- 3.3.3 Specifying that some applications should be processed on a non-notified basis
- 3.3.4 Limiting the scope of conditions that can be put on consents
- 3.3.5 Limiting the scope of participation in consent submissions and in appeals
- 3.3.6 Changing appeals from *de novo* to merit by way of rehearing
- 3.3.7 Improving the transparency of consent processing fees
- 3.3.8 Memorandum accounts for resource consent activities
- 3.3.9 Allowing a specified Crown-established body to process some types of consent
- 3.3.10 Providing consenting authorities tools to prevent land banking
- 3.3.11 Reducing the costs of the EPA nationally significant proposals process.



▶▶ Between 2007/08 and 2010/11, the proportion of resource consents processed on time increased from 69 per cent to 95 per cent. ◀◀



### 3.3.1 A new 10-working-day time limit for straight-forward, non-notified consents

#### Context

The vast majority of resource consent applications made every year (94 per cent in 2010/11)<sup>26</sup> are processed as ‘non-notified’, meaning their impact on the environment has been deemed to be minor and they do not require any kind of notification.

The process that councils follow to assess these non-notified resource consents and reach decisions has remained largely the same since the RMA’s inception in 1991. So too has the 20-working-day timeframe councils have to complete their assessment and reach a decision.

In 2010, the Government introduced regulations to improve council compliance with the existing processing timeframe. Councils are now required to give applicants a discount if they take longer than the time limits set in the RMA. Between 2007/08 and 2010/11, the proportion of resource consents processed on time increased from 69 per cent to 95 per cent.

While compliance with the process and timeframes has now significantly improved, the existing process still takes a one-size fits-all approach to non-notified applications. This category includes a wide range of activity types, with significantly different levels of complexity and it is unclear whether the requirements and timeframes specified by the RMA are appropriate for all of these.

#### Proposed approach

Under this approach, the RMA would be changed to create a shorter 10-working-day processing timeframe for those non-notified resource consents that are the most straight-forward. The process steps for a consent decision in 10 days would be prescribed in the RMA, while the criteria for applications to be considered for this process could be listed in regulations. The obligations on councils in processing such consents would be reduced commensurately.

Activity types that could be considered for a 10-day process could include non-notified controlled and restricted-discretionary activities which have very few rule breaches, including:

- simple bulk and location breaches to residential zone rules, especially where plans anticipate a future increase in housing density

<sup>26</sup> Ministry for the Environment. 2011. Resource Management Act: Survey of Local Authorities 2010/2011. Wellington: Ministry for the Environment.

- small-scale, infill or unit title subdivisions in residential zones that anticipate such development, where the application demonstrates the necessary servicing is available (eg, stormwater, wastewater, water supply and roading infrastructure all have capacity)
- district land-use activities which are anticipated by plans, do not alter the character of neighbourhoods but still need to be assessed against district plans before they can proceed.

Applications for the activities listed in regulations would also need to meet certain quality criteria before being considered for the 10-day process. These could include:

- clear and complete application documents where no further information will be needed for the council to reach a decision
- any necessary written approvals are provided with the lodged application
- agreement that the application meets all the criteria in the RMA, regulations and the plan is reached in a pre-application meeting between the applicant and council staff.

This would mean applications could be handled faster and more efficiently than under the current 20-working-day process, according to a fixed 10-working-day timeframe. These applications may also be able to be processed at a fixed cost to applicants, and so would give applicants absolute certainty around the cost and timeframe for decisions to be reached on consent applications.

### Expected outcomes

Speeding up processing for non-notified consents that authorise less complex projects could have a number of favourable outcomes. Benefits would include removing unexpected time delays for developments that breach district plan rules in only minor ways, and reducing the costs and time involved in preparing consent applications for small projects.

» Thresholds for deeming an activity to be eligible for an approved exemption could be defined in the RMA or in regulations. «



### 3.3.2 A new process to allow an “approved exemption” for technical or minor rule breaches

#### Context

Some resource consents are required because of breaches to plan rules that are very minor and of a technical nature. These are cases where environmental effects are essentially little different from those associated with permitted activities. Neighbours or other parties will not be affected and the plan’s objectives and policies will not be compromised. In such cases the consent decision approves an activity that was very nearly permitted – yet the applicant must

proceed through the normal resource consent application process. They may be faced with costs that are not proportionate to the project, and delays that seem unnecessary given the technical nature of the rule breach.

A new process is proposed where very minor rule breaches could be granted an exemption from the current resource consent requirements, subject to the council having access to the information it needs to make a quick decision.

### **Proposed approach**

The proposed approach would allow an activity to be ‘deemed permitted’ by giving councils a small degree of tolerance to decide on a case-by-case basis that a full resource consent is **not** needed. Situations allowing the grant of such an exemption could include:

- the rule breach is very minor, minor and technical, or similar (ie, “very nearly permitted”)
- any neighbours unaffected or affected to a very minor degree
- the environment is affected to a very minor degree or less
- plan objectives and policies are not compromised by granting an exemption
- no other consent permissions are required
- there is no need for any technical conditions to control effects.

Thresholds for deeming an activity to be eligible for an approved exemption could be defined in the RMA or in regulations.

### **Expected outcomes**

This would allow some activities to be given rapid and cheap approval to proceed, while still giving councils power to require a full consent application given anything other than a minor rule breach.

## **3.3.3 Specifying that some applications should be processed as non-notified**

### **Context**

The RMA allows plans and national environmental standards to stipulate that some applications, for particular activities, will be treated on a non-notified basis. This provision could be used more to avoid notification or limited notification, especially for applications which are broadly consistent with the plan or which seek to authorise activities that are anticipated by plans’ policies and objectives and to increase consistency of treatment of activities across a district. Examples might include the subdivision of residentially-zoned land where the proposal falls within certain tolerances.

### **Proposed approach**

In their current form, sections 95A(3)(a) and 95B(2) allow non-notification where a plan or national environmental standard require this. These provisions could be made further-reaching by allowing non-notification on the basis of other forms of regulations. This would mean that – rather than leaving councils to stipulate the activities which will not be notified – regulations could direct non-notification as a nationwide standard for some activity types.

These activities could include those subject to the 10-day resource consent process, such as small-scale residential subdivisions, infill housing where plans anticipate increasing housing densities, house extensions or minor alterations. See table 1 opposite.

### **Expected outcomes**

The avoidance of costs and delays associated with notification would allow quicker processing and decision-making on consent applications associated with national priorities (eg, housing supply and housing affordability). When combined with the 10-day process outlined above, some developments that fit certain criteria and are anticipated in a zone would be able to receive a quicker, cheaper assessment and rapid approval.

### **3.3.4 Limiting the scope of consent conditions**

#### **Context**

Councils can impose conditions when granting resource consent, for example requiring vegetation restoration around a new factory. The more restricted the proposed activity is under the plan, the wider the scope of the conditions the council can put on it. The RMA puts broad limits on the types of conditions that can be placed on consents but the extent of these conditions has been a source of confusion and litigation between the council and applicants.

Councils' powers to impose conditions on resource consents are partly limited by section 87A and by the status of the activity according to the relevant plan rule. For controlled and restricted-discretionary activities, the scope of conditions is limited by the relevant plan rules. These rules give councils and applicants clarity on the scope and content of likely consent conditions. However, for discretionary and non-complying activities, which collectively make up more than 60 per cent of applications (2010/11 data), the content of conditions is not limited by section 87A. Section 108 also provides suggestions on the content of conditions for all applications and states that a resource consent may be granted on any condition the consent authority thinks appropriate.

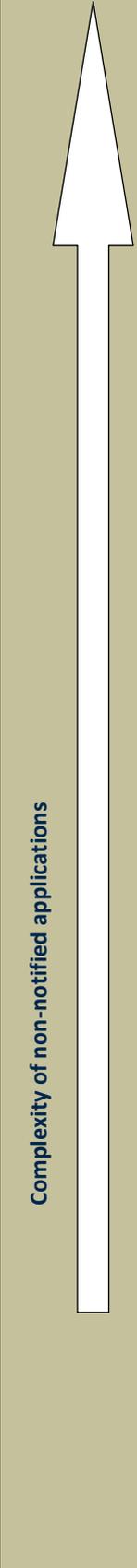
Therefore, on the one hand the RMA says conditions must be limited in scope, yet on the other says that conditions may cover any matter.

In addition, case law explicitly limits the scope of consent conditions for all types of consents. The principles of the Newbury Test have long been established in New Zealand resource management practice and mean that:

- conditions must be for resource management purposes
- they must be related to the authorised development
- they must be reasonable (they should not be so unreasonable that a reasonable planning authority duly appreciating its statutory duties could not have approved them).

Altogether, the RMA's provisions and case law provide a mixed bag of constraints on conditions, where the scope of what may or may not be a valid, acceptable or expected consent condition may not always be clear.

**Table 1: Range of consent applications that would be non-notified**

	<b>Proposed consent pathway</b>	<b>Characteristics of proposal</b>	<b>Example project</b>	<b>Status quo</b>
 <p>Complexity of non-notified applications</p>	<p>Non-notified – 20 working days</p> <p>Requiring certain activities to be non-notified</p>	<p>Non-notified application that is not necessarily straight-forward</p> <p>Several rule breaches</p> <p>Complex assessment needed against plan objectives and policies</p> <p>Assessment needed against national environmental standards</p> <p>May require written approvals for non-notification</p> <p>May require further information before decisions can be made</p>	<p>A 20-lot residential subdivision on residentially zoned land, requiring earthworks and stormwater attenuation.</p>	<p>Non-notified</p> <p>20 working days</p>
	<p>Non-notified – 10 working days</p> <p>A new, faster process for assessing consent applications where, if the application can be shown to meet the necessary tests, the applicant can be guaranteed a decision on their application within 10 working days. The application may also have a guaranteed fee</p>	<p>Straight-forward, non-notified consent application</p> <p>Very few rule breaches</p> <p>Application is high quality, clear, and requires no further information</p> <p>The activity is listed in regulations or in the plan as being eligible for the 10-day process</p> <p>Pre-application meeting with council staff has taken place</p>	<p>A house extension over site coverage and height</p> <p>A residential infill subdivision creating three new sections, where traffic, stormwater and wastewater infrastructure all have capacity (both are required to be non-notified under new regulations and sections 95A and 95B)</p>	<p>Non-notified</p> <p>20 working days</p>
	<p>Approved exemption – 1 working day (the activity is “deemed permitted”)</p> <p>A fast approval process where the project’s rule breach is given an exemption from the need for a resource consent, because the breach is so minor. Once the council has seen all the necessary information, a decision on the exemption is made within 1 working day</p>	<p>A single, minor and technical rule breach</p> <p>There will be no discernible environmental effect</p> <p>There are no affected parties</p> <p>There is no need for technical conditions on a consent</p> <p>The council has enough information to make a very quick decision</p> <p>The activity is of a type listed in regulations or in the plan as being eligible for an exemption from the need for consent</p>	<p>An out-of-sight satellite dish on a heritage building</p> <p>A residential site coverage exceedance by half a square metre</p> <p>A minor building height breach caused by air conditioning units</p>	<p>Non-notified</p> <p>20 working days</p>

## Proposed approach

This proposal would revise and strengthen the RMA provisions that set the types of conditions which can be put on the different classes of consents.

The scope of consent conditions could more effectively be limited by requiring resource consent conditions to be directly connected to the reason a consent is needed. This could involve a requirement that a condition only be imposed where it directly relates to:

- the provision of the plan which has been breached (where appropriate), or
- the adverse environmental effects of the proposed activity, or
- content volunteered/agreed to by the applicant.

## Expected outcome

Revising and strengthening the RMA to provide clear direction on the scope of provisions would provide councils and applicants with clearer guidance on the boundaries for resource management consent conditions.



►► These notified consents can have submissions and appeals lodged by anyone, in support or in opposition. ◀◀

### 3.3.5 Limiting the scope of participation in consent submissions and in appeals

#### Context

Some resource consent applications are ‘notified’ because of the scale of their environmental effects or the extent to which they affect people. These notified consents can have submissions and appeals lodged by anyone, in support or in opposition. Submissions can be about any matters related to the resource consent, including matters that did not require notification. Commissioners can direct the evidence and submissions presented verbally at hearings be limited to particular matters, but they cannot direct or limit the content of the initial written submission.

The wide scope of possible submissions and subsequent appeals is a source of considerable uncertainty for applicants. Depending on what is raised by submitters, applicants must sometimes address a wider range of issues than the district or regional plan took into account, and they may have to address a wider range of issues than other similar applicants.

Appeals can even be brought against decisions on matters that were not the reasons the applicant needed a resource consent in the first place, nor the reason why the consent was notified. An example is where an apartment block needs consent because it is over a maximum

height specified in the plan, but parties make submissions and subsequently appeal the decision because of their issues with car-parking arrangements or landscaping. This could happen even if parking or landscaping were not the reasons why the application needed a consent.

Investors need as much certainty as possible that the consent decision is *the* decision. There is also a need to ensure parties maintain rights to make submissions when they are affected or have evidence that is genuinely relevant to the application's effects – for example, where they are genuinely and personally affected by a development that was not foreseen by the zoning or council rules.

From a council perspective the wide scope of possible appeals to the Environment Court can undermine their initial decision-making. Applicants can use the appeal process to try and renegotiate issues the council thought were settled at the consent hearing.

Limited notified status can occur because of affected parties' reluctance to provide their approval to the project. Consent applicants usually ask any affected parties (often neighbours) to provide their approval. In many cases, genuine concerns about adverse effects mean neighbours may refuse to provide their approval. However, approval can also be refused on any grounds – including for reasons unrelated to the application. This approach of asking for approval can prevent or delay developments whose effects on neighbours are minimal or permitted in plans.

### **Proposed approach**

Amendments to the consenting process could be introduced to limit the scope of submissions and third party appeals to only the reasons the application was notified and the effects related to those reasons. This would require the council to identify clearly why the application is being notified and to identify specific effects that meet the notification tests in the Act.

Taking the apartment block example used earlier, this would mean the council's consent decision could be appealed only on matters arising directly from the building's height and described in the council's assessment before notification. Other matters that did not contribute to the decision to notify, such as the building colour, car-parking provisions or landscaping, would not be subject to submissions and would be out of scope for any subsequent third party appeal.

Amendments could also be made to the process of obtaining written approval from neighbours who are affected by particular aspects of developments. Where a neighbour does not give written approval, prior to making a decision, councils could invite comment on the proposal by a particular date and limit that comment to only those aspects of the development that would affect the neighbour, leaving other matters out of scope and avoiding the potential for them to be used as grounds for objection.

### **Expected outcomes**

The proposed changes would allow consent hearings to be more focused, with less re-litigation. They would provide for quicker and cheaper consent hearings to reach decisions on notified consents. In the event that consent decisions were appealed, they would enable them to be resolved more quickly and with less expense. Most importantly, applicants and submitters would have clarity and certainty on the scope of the submissions and any appeals

that might be received, which would help them make business and investment decisions while the consent application was under way.

For smaller applications with effects on small numbers of parties, limited notification would be restricted to instances where those parties raised genuine objections and would reduce the power of affected parties to object and delay proceedings on unrelated matters.

### **3.3.6 Changing consent appeals from *de novo* to appeals by way of rehearing**

Currently, appeals on both plan and consent decisions are heard by the Environment Court as '*de novo*' appeals (ie, the Court reconsiders the case afresh, though with some regard to the original decision). This document contains a proposal to, in certain circumstances, narrow the scope of Environment Court appeals on plans to an appeal by way of rehearing (see 3.2.3). This would mean the appeal would not be treated as a new hearing, but the Court would have some ability to choose to rehear certain evidence. Most appeals in New Zealand follow this type of appeal process and the Government is considering applying this similarly for consent decisions.

A key remaining area of timing uncertainty for consent applicants is where a decision is appealed. That part of the process often also constitutes a significant portion of overall time taken. Consent appeals could be narrowed as is proposed for plan appeals. The Government is particularly keen to hear feedback on the merits and risks of this.

When considering reform in this area it is clearly important to balance the rights of an applicant against the rights of other members of the community to participate in decision-making. It is also important to ensure the initial decision-making is high quality. The proposed approach to narrow the scope of appeals on plan-making is combined with new requirements in the earlier phases of the process, including a role for an independent hearings panel that ensures the initial plan-making decisions are robust. If consent appeals were to be similarly narrowed, the Government would need to be satisfied the rights of applicants and submitters would not be unreasonably affected.

In addition, applicants sometimes complain that council processing of subdivision and resource consents is unreasonably slow, information requests, conditions or costs continue to be overly onerous, and that the provisions of the RMA are being used in unintended ways. While many of the proposals in this discussion document will address aspects of this, decisions on resource consents could also be subject to independent oversight more feasibly accessed by small-scale applicants.

To this end consideration is being given to the development of a lower cost tribunal style resolution process for minor matters. The goal would be to have an efficient and transparent independent check on consenting authorities, and to reduce the time and cost of consenting processes for proposals with a relatively limited impact.

Consideration would need to be given to how the mechanism would be funded and administered, as well as the timeframes involved. It is likely any decisions on a lower cost resolution process for minor matters will be taken as part of future work, given the scale of changes required and the other proposals within this document aimed at improving the consent process.



» A key remaining area of timing uncertainty for consent applicants is where a decision is appealed. That part of the process often also constitutes a significant portion of overall time taken. «

### 3.3.7 Improving the transparency around consent processing fees

#### Context

The cost of applying for a resource consent, for the same or a similar activity, varies throughout the country. In addition, concerns have been raised that the cost of gaining resource consent under the RMA is unnecessarily high, and that applicants are unclear at the outset about what the total costs are expected to be.

Councils have the power to set administrative charges under section 36 of the Act and they provide fee schedules to help applicants understand how they will be charged. The fee schedules commonly outline minimum application/processing charges, but note that additional charges and disbursements in the granting or decline of the consent may be incurred and passed on to the applicant. For example, additional charges might result from council staff taking a greater amount of time processing a complex consent, or the council requiring the support of external specialists to assess an application.

There is concern the ability to impose additional charges means applicants do not know in advance the likely total cost of processing their application, and that the total cost could be much higher than anticipated. Some councils currently provide, or have considered providing, fixed charges for specific consent types. For example, Christchurch City Council offers fixed fees for non-notified consents in specific zones with specified types of non-compliance. Queenstown Lakes District Council consulted on a proposal to introduce guaranteed price resource consents in 2012.

Fixed charges provide consent applicants with certainty. Where fixed charges are not offered, applicants could be provided with information that helps them to understand the total costs they may be expected to incur, particularly if the total cost of applying for resource consent is significantly higher than the upfront charge identified in a fee schedule.

#### Proposed approach

This approach would see the introduction of a new requirement for councils to set their own fixed charges for certain types of resource consents. For example, fixed charges could be based on the type of activity, zone, level of non-compliance and/or activity status. The fixed charge would guarantee the full and final processing costs associated with resource consent applications that fall under these criteria.

It is not proposed charges be capped at a certain level for all activities under this option. Councils would retain the ability to fix charges in accordance with the Act.

Where fixed charges are not required, councils would be required to estimate the additional charges to the applicant (including any third party costs that are passed on) in advance of the application being processed. Section 36(3A) of the Act already requires councils, upon request, to provide an estimate of any charge imposed where the fixed charge was inadequate to enable it to recover its actual and reasonable costs. This approach would remove the need for applicants to make a request for an estimate, instead making it mandatory for councils to provide estimates.

### **Expected outcomes**

Setting fixed fees and requiring estimates that cover the full application process would provide resource consent applicants with greater cost certainty prior to application. It would also promote greater consistency across councils by enabling cost benchmarking to be undertaken more easily. However, it might result in some cross-subsidisation of costs between cheaper and more expensive applications in return for providing this greater certainty.

## **3.3.8 Memorandum accounts for resource consent activities**

### **Context**

As outlined in 3.3.7, councils have the power to set administrative charges under section 36 of the Act to recover the costs of their functions under the RMA. Sub-section (4)(a) states that 'the sole purpose of a charge is to recover the reasonable costs incurred by the local authority in respect of the activity to which the charge relates'. The Local Government Act (2002) also contains a provision prohibiting local authorities from prescribing fees that recover more than the reasonable costs incurred by the local authority. Under the LGA, local authorities are required to provide a Funding Impact Statement (FIS), which lists all of the sources of funding (including resource consent charges), and the application of that funding. Currently, the FIS template does not require local authorities to break this down into separate activities, for example resource consents.

Local authorities have a statutory responsibility to assess and grant resource consents. They are the only providers of these services, except in a limited number of instances. Consent costs, even for similar types of consent, are variable across the country and this gives rise to concerns that some councils are not processing consents as efficiently as possible, are applying charges that generate additional revenue, or are cross-subsidising some resource consent activities with others.

Option 3.3.8 is designed to improve total cost certainty upfront for applicants. In addition, more could be done to increase transparency in setting charges.

### **Proposed approach**

All public entities have a responsibility to understand and monitor their costs to ensure they are operating efficiently.<sup>27</sup> Memorandum accounts are a way of disclosing the accumulated balance of revenue and expenses incurred in the provision of certain outputs – or services –

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<sup>27</sup> Office of the Auditor General. 2008, *Charging Fees for Public Sector Goods and Services: Good Practice Guide*

over a period. Without knowing these costs, councils will find it difficult to assess whether they are delivering value for money, and whether charges are being set in accordance with the requirements of the Act.

This proposal would introduce a new requirement in the Act for councils to publish memorandum accounts specifically for their consenting activities. The LGA requirement to prepare a FIS does not appear sufficient to deliver the detail required about consent revenue and expenses to achieve the outcomes sought by this option.

### Expected outcomes

Requiring memorandum accounts would increase transparency around charging and provide councils themselves with a greater understanding of how consent processing costs measure up against charges.

Memorandum accounts can help to:<sup>28</sup>

- bring transparency to charging (through publication and use as part of consultation on charges)
- discipline agencies not to over-recover or cross-subsidise
- provide a credible commitment that agencies will not inadvertently benefit from over-recovery
- avoid the use of erratic fee adjustments to manage a previous year's over- or under-recovery
- establish an even-handed regime allowing for both short-term surpluses and deficits, consistent with a long-run perspective.

► Land is sometimes advertised for sale on the basis of it being a land-banking opportunity. ◄◄



### 3.3.9 Allowing a specified Crown-established body to process some types of consent

#### Context

District, unitary and regional councils assess and decide most resource consent applications – those that go through the normal non-notified and notified resource consent processes with councils.

<sup>28</sup> The Treasury. 2002. *Guidelines for Setting Charges in the Public Sector*. Wellington.

Improvements made by the Government mean alternatives to the council-run process now exist for some types of applications. These are 'direct referrals' where applications are decided by the Environment Court, and the process for nationally significant proposals that are lodged with the EPA.

The current alternatives can be invoked either by the applicant, or by the Minister calling in the matter, and referring the proposal to a board of inquiry or the Environment Court.

At present, issues that go through the nationally significant proposals process tend to be major development and infrastructure projects such as roads and prisons. Housing developments which require a plan change and consent can take significant time. Housing developments in areas of identified concern, and the businesses and infrastructure required to support these, could have access to similar alternative processes that would help speed up the decision-making process.

### **Proposed approach**

Existing call-in powers provide the Minister with the ability to refer specific proposals of national significance to a board of inquiry or the Environment Court for a decision. It is proposed that either the call-in provisions be expanded, or new legislation be developed to enable the Minister to designate nationally important issues, such as the availability of land for housing, to be eligible for an alternative consenting process in specified areas or circumstances.

A dedicated board of inquiry, or Crown body, would process the consent applications within a three- to four-month timeframe. The role of the board of inquiry or Crown body would be reviewed after a set period to determine if it was still required.

### **Expected outcomes**

This proposal would ensure identified areas of national importance are processed through a thorough and timelier consenting process in areas of particular concern such as areas facing housing affordability pressures.

## **3.3.10 Providing consenting authorities tools to prevent land banking**

### **Context**

Subdivision consents lapse after five years if the consent holder has not made adequate progress in advancing the development (unless the consent specifies a different lapse period). This means once subdivision consent has been obtained the developer has five years to have their survey plan approved (under section 223 of the RMA) or otherwise demonstrate they have given effect to the consent. The survey plan shows the exact parameters of the subdivision, including location of roads and boundaries of sections. Following the section 223 stage, developers have three years to complete the works and formally deposit the survey plan (under section 224 of the RMA). This stage confirms the subdivision has been undertaken and all necessary infrastructure has been built according to the plans, and it enables land titles to be issued and sections to be sold and built on.

Currently, some developers and investors gain approval for a subdivision consent and survey plan with the intention of not developing the land for years, with the expectation that demand for sections will rise in the intervening period. This is one of several behaviours that can be

referred to as 'land banking' and can prevent land in high-demand locations from coming to market, which can contribute to inflation of section prices. When this land banking occurs, it can be eight or more years before infrastructure is put in place and sections sold, and longer for houses to then be built on the land. Land is sometimes advertised for sale on the basis of it being a land-banking opportunity.

### Proposed approach

It is proposed to enable consenting authorities to set conditions when approving section 223 survey plans to require that construction work must be completed (ie, infrastructure built and land be made ready for houses to be constructed) in a time less than the current default three years, or else the survey plan will lapse. This could be used by consent authorities, alongside their existing powers to set shorter lapse periods than five years, to encourage earlier development of subdivisions in high-demand areas.

### Expected outcomes

Tighter limits on the time between the granting of subdivision consents, approval of survey plans and the deposit of those plans would reduce the ability for developers and investors to land bank and instead encourage the release of appropriate land for residential housing development. This would help improve the supply of housing in some areas. It would not eliminate land banking completely; however, as it would not affect the availability of land which is zoned residential but where the owner has no immediate subdivision aspirations.

►► Some of the statutory requirements for processing proposals of national significance are unduly costly and could be simplified. ◀◀



### 3.3.11 Reducing the costs of the EPA nationally significant proposals process

#### Context

The RMA provides for proposals of national significance to be directed to a board of inquiry for a decision. Such proposals are large in scale, of high public interest and have national benefits. Roads of national significance, wind farms, geothermal developments and prison facilities have all gone through this process. Proposals of national significance can involve a large number of consent applications, notices of requirement and, in some cases, plan changes. The nationally significant proposals consent process can be costly (in excess of \$1–2 million). Some of the statutory requirements for processing proposals of national significance are unduly costly and could be simplified.

## Proposed approach

It is proposed to make the content of public notices for proposals of national significance more useful and relevant to the public and reduce the cost of public notices to applicants. The RMA would still require the direction and proposal to be notified but would provide for a summary of the Minister's reasons for making the direction and a description of the proposal, rather than require all of the reasons and matters to be listed in full. The EPA would make available the full set of reasons and matters on its website or in hard copy, on request, and may notify in a newspaper(s) circulating in the area likely to be directly affected by the proposals to which the notice relates.

It is also proposed that:

- boards of inquiry would be required to have regard to cost-effective processes and the advice of the EPA on administrative matters when determining their procedures (including hearing procedures, deciding the location of the hearing venue and commissioning advice) to reduce costs
- parties should be provided with documents electronically in the first instance, with hard copies made available on request
- given the existing limit on parties' comments, the draft decision stage could be deleted or alternatively the period for commenting on the draft decision could be reduced from 20 working days to 10 working days
- the RMA could clarify that the EPA can provide planning advice to a board of inquiry, if requested
- the RMA be amended to provide that any consent process can be stopped if associated charges for the process to date have not been paid in full. It is also proposed to give the EPA the power to recover the debt as a debt to the EPA. A similar provision is contained in the Exclusive Economic Zone legislation.

## Expected outcomes

Reducing the costs associated with the process for hearing and deciding proposals of national significance would ensure the board of inquiry process remains attractive for applicants and encourage greater use of these provisions. The nationally significant proposals consent pathway with the nine-month decision-making timeframe and limited appeal opportunities is a timely process for determining proposals with a high level of national benefit.

### QUESTIONS FOR PROPOSAL 3: MORE EFFICIENT AND EFFECTIVE CONSENTING

- Do you agree with the proposals in 3.3.1–3.3.11? Could they be improved? Are there any issues that you think have not been considered?
- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?

## 3.4 Proposal 4: Better natural hazard management

Natural hazards could be managed better than they are now to ensure resource use and development can provide for well-being and health and safety now and into the future.

It is proposed to address this issue by implementing:

### 3.4.1 Learning the lessons from Canterbury



### 3.4.1 Learning the lessons from Canterbury

#### Context

Recent events such as the North Island floods of 2004 and the Canterbury earthquakes of 2010 and 2011 confirm natural hazards are a reality for New Zealand communities. New Zealand is subject to numerous natural hazards including flooding, coastal erosion, earthquake, volcanic and geothermal activity, drought and tsunamis. The risks of natural hazards need to be managed effectively to ensure businesses and communities are resilient to their effects.

The RMA is one of several pieces of legislation that have an important role in managing the risks of natural hazards, such as the Building Act 2004 and Civil Defence and Emergency Management Act 2002.

The RMA requires councils to avoid or mitigate natural hazards (through sections 30 and 31). However, it does not make managing natural hazard risks a priority among the many other issues local authorities must consider.

When considering resource consent applications, the RMA does allow councils to refuse or place conditions on subdivision consents if permitting the consent might affect the integrity of the land.<sup>29</sup> However, this provision does not cover all natural hazards – for example lahar flow is not included. In addition, the provision depends on the likelihood of an event, rather than the potential impact it would have. This means councils cannot consider natural hazards that are unlikely to happen but which would have a huge impact if they did, such as earthquakes. There are no hazard-specific provisions regarding land-use consent decisions more broadly.

<sup>29</sup> Section 106.

►► Adding natural hazards to the principles of the RMA would lead to better consideration of natural hazards in planning and decision-making. ◀◀



The Canterbury Earthquakes Royal Commission of Inquiry recommended resource management planning and decision-making should give greater consideration to the potential effects of earthquakes and liquefaction. Among its recommendations are amendments to the RMA, including:

- adding a matter relating to earthquakes and liquefaction to the Act's principles
- developing new national tools and improving existing tools to provide consistent and timely central government guidance to councils on earthquakes and liquefaction
- making changes to consent requirements so that earthquakes and liquefaction are properly considered in decision-making.

The Royal Commission's recommendations broadly aligned with those of the Principles Technical Advisory Group,<sup>30</sup> discussed in 3.1.1. Other Royal Commission recommendations are being progressed through other channels, including reforms to the Building Act. These reforms may result in the need for further amendments to the RMA.

### **Proposed approach**

As discussed in 3.1: *Greater national consistency and guidance*, and in line with the recommendations of both the Royal Commission and Technical Advisory Group:

- natural hazards could be added as a matter in the principles of the RMA
- the Government proposes to amend section 106 of the RMA to ensure all natural hazards can be appropriately considered in both subdivision and other land-use consent decisions.

It is also proposed the full risk of natural hazards – both likelihood and the magnitude of the impacts – be taken into consideration in these decisions.

This would improve the effectiveness of consenting and improve resilience to natural hazards. The proposed amendment would not solely provide for the risks from a major earthquake; it would ensure the RMA promotes more integrated and consistent consideration of all natural hazard risks in resource consent decision-making.

The proposed effective tool for ministerial direction could also help planning for some natural hazards.

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<sup>30</sup> The Technical Advisory Group's report can be found at <http://www.mfe.govt.nz/rma/central/amendments/background-info-phase-ii-reforms/index.html#review>.

## Expected outcomes

Adding natural hazards to the principles of the RMA would lead to better consideration of natural hazards in planning and decision-making. Providing greater national guidance to councils would help improve planning for natural hazards, particularly information availability and sharing, clarity about the role of councils and alignment of resource management and civil defence and emergency management planning.

These changes would also ensure fewer resource consents are granted for development that is inappropriate due to the risks from natural hazards. This is anticipated to lead to fewer negative impacts on communities (such as costs and displacement of people) should a hazard event occur.

### QUESTIONS FOR PROPOSAL 4: BETTER NATURAL HAZARD MANAGEMENT

- Do you agree with the proposal in 3.4.1? How could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?

## 3.5 Proposal 5: Effective and meaningful iwi/Māori participation

Iwi/Māori values are not always effectively recognised in resource management processes and outcomes. More meaningful and effective participation for iwi/Māori early in the plan-making process can support better and more certain planning outcomes.

Proposals set out below provide this by:

### 3.5.1 Enabling more effective iwi/Māori participation in resource management planning





» If iwi/Māori interests and values were to be considered at the right stages of resource management planning processes, solutions could be sought upfront. «

### 3.5.1 Enabling more effective iwi/Māori participation in resource management planning

#### Context

There are many examples of iwi/Māori participating successfully in resource management processes. However, there appears to have been differing expectations and some confusion about the role of Māori in these processes. This has led to uncertainty, costs and delays while matters are debated in the courts. Some iwi have looked to Treaty of Waitangi settlements to ensure their interests are considered.

A number of improvements could be made to provide iwi/Māori with a clearer role in the resource management system. Proposals set out elsewhere in this document make the resource management system easier for iwi/Māori to participate in. There is also work underway as part of the Government's work on improving the freshwater management system which would impact on iwi/Māori participation in plan-making. Together these proposals work toward enabling more effective iwi/Māori participation in resource management planning.

If iwi/Māori interests and values were to be considered at the right stages of resource management planning processes, solutions could be sought upfront. This would lead to benefits for the resource management system overall.

#### Proposed approach

##### *Clarifying the role of iwi/Māori in plan-making processes*

Where a council does not have an arrangement in place with local iwi (as recorded under section 35A provisions) it would be required to establish an arrangement that gives the opportunity for iwi/Māori to directly provide comprehensive advice during the development of plans.

The arrangement would need to allow iwi to provide advice on proposed policy ahead of council decisions on submissions, with this advice having statutory weight under the RMA.

Only where councils and iwi do not have existing Treaty of Waitangi settlements, or other specified existing arrangements, that meet or exceed the specifications above would the requirement apply. In other words, existing arrangements would continue where they provide

this engagement clearly. For example, Greater Wellington Regional Council has voluntarily established Te Upoko Taiao as its natural resource management committee.

This document also includes a proposal that would require councils to develop single resource management plans (see section 3.2). Should an independent hearings panel or similar arrangement be appointed, at least one member would be required to understand tikanga Māori and the perspectives of local iwi, and the council would consult with local iwi when deciding this appointment. Any existing Treaty of Waitangi settlement arrangements would prevail over any process of iwi/Māori engagement in the development of a single plan.

### *Improving existing tools in the RMA*

Other changes would include the following.

- a) Providing consistent requirements for consultation with iwi on national environmental standards

The requirements to consult with Māori when developing NESs would be aligned with the existing requirements for developing national policy statements. This means that before preparing proposed NESs, the Minister for the Environment would seek and consider comments from the relevant iwi authorities.

- b) Improving the ease of use of existing tools for participation

The criteria for joint management agreements and transfers of resource management responsibilities under the RMA would be amended to make them easier to be used for enabling iwi participation. This would facilitate greater uptake of these under-used tools.

- c) Improving the awareness and accessibility of iwi management plans

An iwi management plan is a plan recognised by an iwi authority for the purposes of the RMA. Such plans can identify the values and goals of iwi in environmental management. Greater use of these plans would contribute to decisions that better reflect reconciled values. To make them easier to use, expectations on the structure, minimum content and lodgement process of iwi management plans (including their online availability) would be set out in legislation. Iwi management plans could also be linked to the relevant single resource management plan.

### **Expected outcomes**

These proposals would help achieve more effective and meaningful iwi/Māori participation in plan-making processes upfront and reduce downstream costs and tensions. This would contribute to a more effective resource management system overall.

#### **QUESTIONS FOR PROPOSAL 5: EFFECTIVE AND MEANINGFUL IWI/MĀORI PARTICIPATION**

- Do you agree with the proposal in 3.5.1? Could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?
- How flexible or prescriptive should the tools for iwi/Māori participation be?

### 3.6 Proposal 6: Working with councils to improve practice

Under the RMA, local authorities have devolved responsibility for the day-to-day management of resources as they are considered to have the best understanding of resource management issues in their areas. There is anecdotal evidence to suggest local authorities' ability to undertake their functions and responsibilities is variable and sometimes considered unsatisfactory.

It is proposed to address these issues by implementing:

#### 3.6.1 Improving accountability measures



#### 3.6.1 Improving accountability measures

##### Context

The Government is focused on improving the performance of local government and has undertaken a number of initiatives to ensure consistent high performance among local authorities. Government is currently developing, in consultation with councils, a set of non-financial performance measures for councils to use when reporting to their communities. The measures cover essential infrastructure: water supply, sewerage, stormwater drainage, roads and footpaths and flood protection. These performance measures are a requirement introduced in 2010 to the Local Government Act 2002. The measures would not dictate how councils should deliver these activities or set targets. Rather, they will provide an agreed way to measure the level of service provided by each council and make it easier to compare council services. The Productivity Commission is also conducting an inquiry into local government regulatory performance, which is due to report in May 2013.

The Ministry for the Environment already undertakes the biennial survey of local authorities and is working on a *national monitoring system* to improve the consistency and timeliness of information provided by local councils on the implementation of the RMA. The *national monitoring system* will include metrics on the costs, time, levels of engagement and good practices across a number of key RMA processes (eg, resource consents) and national tools (such as implementation and effectiveness of NPSs and NESs). The system is intended to replace the current biennial survey of local authorities.

The Minister for the Environment is able under the RMA to intervene in the event that a local authority is underperforming. Reform and/or clarification of these existing powers are proposed in this document at 3.1.2 and 3.1.3.

Despite these initiatives to improve council performance, there is still a lack of clarity on:

- the extent to which councils are required to publish performance information
- central government and community expectations of council performance in relation to the RMA
- how councils should report on these expectations to ensure the quality and rigour of specific functions and duties by councils under the RMA are adequate.



►► This system is likely to specify key performance indicators to provide greater clarity about what the Government and the community expects from councils in relation to the RMA. ◀◀

### Proposed approach

Central government needs to provide local authorities with greater clarity on what they are expected to achieve, how performance would be measured and what they are expected to report on.

It is proposed that improved direction on expectations be provided through an *expectations system* developed in collaboration with councils. This system is likely to specify key performance indicators to provide greater clarity about what the Government and the community expects from councils in relation to the RMA. Expectations might be related to a customer-centric approach to service delivery (eg, consenting, plan-making, enforcement) or environmental and economic outcomes (eg, water quality).

More detailed monitoring of service delivery is intended to be captured through the national monitoring system. Improved state of the environment reporting will provide better information on performance in relation to ecological, economic, social and cultural outcomes.

Together the *expectations system*, the *national monitoring system* and improved state of the environment reporting will enable a better understanding of how councils are performing, how the RMA is being put into practice, identification of good practice and/or whether corrective action is needed.

This system would align with the performance measures being developed through the Better Local Government work programme.

To ensure these accountability measures and expectations are transparent and systematic, some amendments to the RMA may be required including:

- requiring performance information collected to be made publicly available

- enabling the Government and community to set, in collaboration with councils, clear expectations (eg, an expectation could be a standardised ‘customer satisfaction survey’ related to how consenting is conducted and reported on, and the nature of information a council should collect)
- enabling the Minister to specify how expectations are reported (so that performance can be benchmarked across local authorities).

### Expected outcomes

Greater clarity on expectations in relation to the RMA would provide local authorities with better direction on the issues and service levels which matter and which they will be held accountable for. Cost efficiencies for local authorities would be expected to be gained through streamlining, standardising and improving the quality of performance management data collection and reporting. The proposals would also enable quicker identification of areas where corrective central government intervention may be needed. Overall, these proposals would incentivise councils to make improvements in the delivery of the RMA and help identify and drive best practice.

#### QUESTIONS FOR PROPOSAL 6: IMPROVING ACCOUNTABILITY MEASURES

- Do you agree with the proposal in 3.6.1? Could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?
- How flexible or prescriptive should reporting requirements be?

## 3.7 Addressing housing affordability

As discussed in chapter 1, housing affordability is a problem affecting many New Zealand families and communities, with the problem most acute in Auckland and Christchurch.

The package proposed to be consulted on for the 2013 Resource Management Reform Bill seeks to address systemic issues with the RMA and planning practice that have impacts on land supply for housing and associated with resource consent approval processes.

The three main areas in the proposed package that could have the largest positive impact are:

- Changes to improve planning through greater provision of national direction (including template plans and rules and changes to sections 6 and 7 of the RMA), a focus on proactive and future-focused planning including a requirement to provide adequate land supply for 10 years of growth in demand, and a requirement to put in place ‘single plans’ that would simplify engagement in planning, improve the usability of plans and improve the alignment of plan provisions.
- An effective intervention tool for issues identified as nationally important, enabling central government to direct a plan change or amendment to give effect to the desired outcomes where local authorities have failed (after adequate opportunity) or are finding it difficult to get in place the necessary planning policies and rules.
- A range of changes to consenting processes including a streamlined 10-day process for certain consents, limiting the scope of submissions and appeals on consents, changing the

type of appeal for consents, improving the transparency of consent fees and establishing an alternative Crown-established body to process consents in certain circumstances.

## 3.8 Implementing the proposed package of reforms

### 3.8.1 What the proposed package could cost

Because the proposals outlined in this discussion document are at a high level, it is not possible to provide detailed costing for the proposed package of reforms. However, it is clear that adopting the proposed package would lead to a change in how central and local government operate and require increased capability and new ways of working. These changes would lead to longer-term benefits but with change comes cost.

Central government would face upfront costs to develop template plans, regulations as well as both statutory and non-statutory guidance. There would be ongoing costs of developing further guidance, both statutory and non-statutory, to provide direction on nationally important matters. However, the reform package would make the process for developing these tools more efficient. This guidance would also reduce costs for local government as councils would not need to re-litigate issues at a local level.

The most significant cost for local government would be to develop new plans to reflect new features in the resource management system – such as the single resource management plan, the use of plan templates, and the redrafted principles of the RMA in sections 6 and 7. Councils would also face upfront costs in setting up systems to implement the proposed changes to consenting processes. However, due to the proposed improvements to the planning and consenting system, it is anticipated the cost of developing and implementing new plans would be less than for the first generation of RMA plans. Even if only some of the package was adopted, any substantial change to either the RMA's principles or the planning system would probably require new plans. Taken as a whole, the proposed reform programme would deliver coordinated and sizeable change in an efficient manner.

The short-term costs of implementing the proposed reform package are likely to be outweighed by the medium- and long-term savings delivered by shorter plan development processes, greater national guidance, improved proactive planning and fewer consents. The Government expects those cost savings to flow through to businesses, iwi/Māori and the general public. We are interested to hear your views on any other options for mitigating the costs associated with implementing these proposed reforms.

►► Even if only some of the package was adopted, any substantial change to either the RMA's principles or the planning system would probably require new plans.◀◀



### 3.8.2 Expected impact of the proposed package of reforms

The RMA is a complex piece of legislation that deals with complex issues and opportunities. Although there is certainly no one solution to these complex issues, this package of proposals is the next step in contributing to improving the system. It would lay the foundations for a system that is clearer, more robust, transparent and usable over time.

The policy proposals in this document form a package that would, as a whole, contribute to significantly improving the resource management system. If implemented, the proposed package would contribute to the more integrated management of water, land use, infrastructure and urban design issues.

The package would make it easier for the public and others to both engage in developing plans, and then understand and comply with them. It would contribute to tensions around competing values and activities being confronted and resolved early on, with re-litigation of issues reduced. After initial upfront costs for both central and local government, as discussed above, costs would decrease over time.

The package would lead to fewer activities requiring resource consents, contributing to improving costs and predictability of the system. For those that still require consent, the speed and cost of the approval processes would be in proportion to the activities' impacts.

The package would improve the management of natural hazards so that the impact of natural disasters would be less than without the changes. It would also help to enable iwi/Māori to be more effectively engaged in the system.

When new significant issues arise, the proposals would provide a strong foundation to enable timely and effective future changes.

### 3.8.3 Possible timeframes for the implementation of the resource management reforms

Resource management decisions are made by a number of different parties at different levels of governance – national, regional and local. Changes to the framework under which these decisions are made can take time to work through the system and the speed at which this happens can often be highly dependent on contextual factors. The following section provides general estimates of possible timeframes for the implementation of the proposals presented in this discussion document.

#### **Greater national consistency and guidance**

Changes to the principles of the RMA (sections 6 and 7) of the Act would be implemented through a 2013 Bill. Associated updating guidance material would take one to two years for central government to develop. The updated principles would have immediate effect in decisions and would be taken into account when developing new plans. Timing for this is discussed in the planning section below.

Developing criteria, including some amendments to relevant sections of the Act (such as sections 25A and 25B), for when and how to use mechanisms to provide national guidance on issues would be progressed in 2013.

Any legislative changes to improve NPS and NES mechanisms and to establish a combined NPS and NES process would be implemented through a 2013 Bill. Depending on the complexity of the issues these tools would likely take between one and four years each to develop, with implementation by councils taking a further one to three years.

### **Fewer resource management plans**

The requirement to develop a single resource management plan using a national template would be given effect to through a 2013 Bill. The intention is for councils to have developed a single plan using a national template within five years, encompassing the time it would take central government to develop the template and for councils to make the necessary changes. However, there may need to be some flexibility built into this target or an exemption process provided, given that plans are at different stages in their development cycle.

The 2013 Bill would strengthen provisions to require parties to undertake alternative dispute resolution and any changes required to deliver the full potential benefits of electronic case management. It would take up to two years to implement changes following the enactment of the 2013 Bill and there would be ongoing rolling improvements.

### **More efficient and effective consenting**

The 2013 Bill would give effect to changes to improve the consenting system. Some of these may require regulations which would likely take a year to be developed. These would have immediate effect.

### **Better natural hazards management**

Implementation for amendments to the principles of the RMA and national guidance tools have been discussed above. Changes to consent requirements to better consider natural hazards would be given effect to in the 2013 Bill.

### **Effective and meaningful iwi/Māori participation**

Provision for iwi/Māori to directly provide comprehensive advice to councils during plan-making would be provided for in the 2013 Bill and implemented as quickly as practicable. Providing consistent requirements for consultation with iwi/Māori on NESs would apply to any new proposed NES. Improving the ease of use of existing tools for participation would apply immediately but the implementation time would depend on the specific circumstances for the council and iwi/Māori. Legislative amendment to improve the awareness and accessibility of iwi management plans would apply immediately and supporting guidance would be developed alongside this.

### **Working with councils to improve practice**

Measures to improve local authorities' accountability around reporting on the RMA to central government would be implemented through existing powers and regulations. Regulations would be developed as required. These would each take about a year to develop.

»» The package proposed in this discussion document would lay the foundations for a more efficient and effective resource management system. ««



### 3.8.4 Consequential changes

The proposals outlined in this discussion document are being developed as a package of reforms. The resulting changes to the RMA may result in other consequential amendments to other parts of the Act. Other smaller amendments that would improve the resource management system may also be made, such as the ability to remove accreditation under the Making Good Decisions Programme. Any amendments will be available for comment during the Select Committee stage of the 2013 RMA Bill process.

### 3.8.5 Future steps

Your responses to this package of proposals will inform the development of policy options. Decisions are expected to be made in mid-2013 and lead to the passage of a resource management Bill by the end of 2013.

The package proposed in this discussion document would lay the foundations for a more efficient and effective resource management system. It would provide clearer accountability, expectations and enable prompt action on future issues.

It is important we take steps to quickly improve the resource management system, but there are some areas where more time is required before changes can be made with confidence. As a result, there are a number of areas not included in this current package which will likely be progressed at a later stage. These include potential reforms to the designation and requiring authority regime to ensure the regime delivers the infrastructure New Zealand requires, without unfairly impacting on individual communities and property owners. This includes potentially improving the land acquisition and compensation process under the Public Works Act 1981. Potential improvements in the way the RMA interacts with other pieces of legislation, such as the Local Government Act, Land Transport Management Act and Conservation Act, also require further consideration.

Beyond these areas of work, the proposals in this document would provide an improved starting point for further improvements to the resource management system over time. For example, practice that emerges under these proposals may highlight areas where further improvements can be made to resource consent processes. These could include more combined processing of consents, improving the process for considering resource consents on expiry and further developing a lower cost appeals process for resource consents.

Table 2 links the issues and opportunities from chapter 1 with the specific policy proposals in chapter 3, to show where and how expected improvements would be made. Several of the proposals would help address more than one issue, and therefore appear several times. While no one proposal would resolve all issues, this Government’s view is the package taken as a whole would bring about substantial improvements to resource management in New Zealand, including fewer costs over time, and better integration in how water, land use, infrastructure and urban design are managed.

**Table 2: Linking the policy proposals with the main issues from chapter 1 – how the proposed reform would deliver**

ISSUES	POLICY PROPOSALS TO IMPROVE RESOURCE MANAGEMENT IN NEW ZEALAND					
	Proposal 1: Greater national consistency and guidance	Proposal 2: Fewer resource management plans	Proposal 3: Effective and efficient consenting system	Proposal 4: Better natural hazard management	Proposal 5: Effective and meaningful Māori participation	Proposal 6: Working with councils to improve practice
1. Complexity and cost of the current planning system	<ul style="list-style-type: none"> <li>Improve the way central government responds to issues of national importance and promotes greater direction and national consistency where needed</li> <li>Clarify and extend central government powers to direct plan changes</li> <li>Make NPSs and NESs more efficient and effective</li> </ul>	<ul style="list-style-type: none"> <li>Require single resource management plans using a national template that would include standard terms and definitions</li> <li>An obligation to plan positively for future needs, including land supply</li> <li>Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court</li> <li>Empower faster resolution of Environment Court proceedings</li> </ul>	<ul style="list-style-type: none"> <li>A new 10-working-day time limit for straight-forward, non-notified consents</li> <li>Eliminate the need for some resource consents by allowing an ‘approved exemption’ for technical or minor rule breaches</li> <li>Specify that some applications should be processed without notification</li> <li>Limit the scope of conditions that can be put on consents</li> <li>Limit the scope of participation in consent submissions and in appeals</li> <li>Change appeals from <i>de novo</i> to merit by way of rehearing</li> </ul>	<ul style="list-style-type: none"> <li>Improve the consideration of natural hazards in resource consent decisions</li> </ul>	<ul style="list-style-type: none"> <li>Oblige councils to ensure iwi are able to provide comprehensive advice during plan-making</li> <li>Improve existing tools for Māori participation in the RMA</li> </ul>	<ul style="list-style-type: none"> <li>Improve council RMA performance measures of interest to their communities and users</li> </ul>

ISSUES	POLICY PROPOSALS TO IMPROVE RESOURCE MANAGEMENT IN NEW ZEALAND					
	Proposal 1: Greater national consistency and guidance	Proposal 2: Fewer resource management plans	Proposal 3: Effective and efficient consenting system	Proposal 4: Better natural hazard management	Proposal 5: Effective and meaningful Māori participation	Proposal 6: Working with councils to improve practice
			<ul style="list-style-type: none"> <li>• Allow a specified Crown-established body to do consent processing</li> <li>• Improve the transparency of consent processing fees</li> <li>• Memorandum accounts for resource consent activities</li> <li>• Provide consenting authorities tools to prevent land banking</li> <li>• Reduce the costs of the EPA nationally significant proposals process</li> </ul>			
<p><b>2. Resource management system that does not reflect contemporary values</b></p>	<ul style="list-style-type: none"> <li>• Changes to principles contained in sections 6 and 7 of the RMA</li> <li>• Improve the way central government responds to issues of national importance and promotes greater direction and national consistency where needed</li> <li>• Clarify and extend central government powers to direct plan changes</li> <li>• Make NPSs and NESs</li> </ul>	<ul style="list-style-type: none"> <li>• Require single resource management plans using a national template that would include standard terms and definitions</li> <li>• An obligation to plan positively for future needs, including land supply</li> <li>• Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court</li> </ul>		<ul style="list-style-type: none"> <li>• Changes to principles of the RMA contained in sections 6 and 7</li> <li>• Clarify and extend central government powers to direct plan changes</li> <li>• Make NPSs and NESs more efficient and effective</li> </ul>	<ul style="list-style-type: none"> <li>• Oblige councils to ensure iwi are able to provide comprehensive advice during plan-making</li> <li>• Improve existing tools for Māori participation in the RMA</li> </ul>	<ul style="list-style-type: none"> <li>• Improve council RMA performance measures of interest to their communities and users</li> </ul>

ISSUES	POLICY PROPOSALS TO IMPROVE RESOURCE MANAGEMENT IN NEW ZEALAND					
	Proposal 1: Greater national consistency and guidance	Proposal 2: Fewer resource management plans	Proposal 3: Effective and efficient consenting system	Proposal 4: Better natural hazard management	Proposal 5: Effective and meaningful Māori participation	Proposal 6: Working with councils to improve practice
	more efficient and effective					
<b>3. Tensions between different community values not resolved upfront</b>	<ul style="list-style-type: none"> <li>Changes to principles contained in sections 6 and 7 of the RMA</li> <li>Improve the way central government responds to issues of national importance and promotes greater direction and national consistency where needed</li> <li>Clarify and extend central government powers to direct plan changes</li> <li>Make NPSs and NESs more efficient and effective</li> </ul>	<ul style="list-style-type: none"> <li>Require single resource management plans using a national template that would include standard terms and definitions</li> <li>An obligation to plan positively for future needs, including land supply</li> <li>Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court</li> </ul>	<ul style="list-style-type: none"> <li>A new 10-working day time limit for straight-forward non-notified consents</li> <li>Eliminate the need for some resource consents by allowing an 'approved exemption' for technical or minor rule breaches</li> <li>Limit the scope of participation in consent submissions and in appeals</li> <li>Change appeals from <i>de novo</i> to merit by way of rehearing</li> </ul>		<ul style="list-style-type: none"> <li>Oblige councils to ensure iwi are able to provide comprehensive advice during plan-making</li> <li>Improve existing tools for Māori participation in the RMA</li> </ul>	
<b>4. Insufficient proactive and coordinated planning</b>	<ul style="list-style-type: none"> <li>Changes to principles contained in sections 6 and 7 of the RMA</li> <li>Improve the way central government responds to issues of national importance and promotes greater direction and national consistency where needed</li> <li>Clarify and extend central government</li> </ul>	<ul style="list-style-type: none"> <li>Require single resource management plans using a national template that would include standard terms and definitions</li> <li>An obligation to plan positively for future needs, including land supply</li> <li>Enable preparation of single resource management plans via</li> </ul>			<ul style="list-style-type: none"> <li>Oblige councils to ensure iwi are able to provide comprehensive advice during plan-making</li> <li>Improve existing tools for Māori participation in the RMA</li> </ul>	<ul style="list-style-type: none"> <li>Improve council RMA performance measures of interest to their communities and users</li> </ul>

ISSUES	POLICY PROPOSALS TO IMPROVE RESOURCE MANAGEMENT IN NEW ZEALAND					
	Proposal 1: Greater national consistency and guidance	Proposal 2: Fewer resource management plans	Proposal 3: Effective and efficient consenting system	Proposal 4: Better natural hazard management	Proposal 5: Effective and meaningful Māori participation	Proposal 6: Working with councils to improve practice
	<p>powers to direct plan changes</p> <ul style="list-style-type: none"> <li>• Make NPSs and NESs more efficient and effective</li> </ul>	<p>a joint process with narrowed appeals to the Environment Court</p>				
<b>5. Lack of a consistent service culture</b>		<ul style="list-style-type: none"> <li>• Require single resource management plans using a national template that would include standard terms and definitions</li> <li>• An obligation to plan positively for future needs, including land supply</li> <li>• Enable preparation of single resource management plans via a joint process with narrowed appeals to the Environment Court</li> </ul>	<ul style="list-style-type: none"> <li>• Limit the scope of consent conditions</li> </ul>	<ul style="list-style-type: none"> <li>• Improve the consideration of natural hazards in resource consent decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Oblige councils to ensure iwi are able to provide comprehensive advice during plan-making</li> <li>• Improve existing tools for Māori participation in the RMA</li> </ul>	
<b>6. Improving housing affordability</b>	<ul style="list-style-type: none"> <li>• Changes to principles contained in sections 6 and 7 of the RMA</li> <li>• Improve the way central government responds to issues of national importance and promotes greater direction and national consistency where needed</li> </ul>	<ul style="list-style-type: none"> <li>• Require single resource management plans using a national template that would include standard terms and definitions</li> <li>• An obligation to plan positively for future needs, including land supply</li> <li>• Enable preparation of</li> </ul>	<ul style="list-style-type: none"> <li>• A new 10-working-day time limit for straight-forward non-notified consents</li> <li>• Eliminate the need for some resource consents by allowing an 'approved exemption' for technical or minor rule breaches</li> <li>• Specify that some</li> </ul>			<ul style="list-style-type: none"> <li>• Improve council RMA performance measures of interest to their communities and users</li> </ul>

POLICY PROPOSALS TO IMPROVE RESOURCE MANAGEMENT IN NEW ZEALAND						
ISSUES	Proposal 1: Greater national consistency and guidance	Proposal 2: Fewer resource management plans	Proposal 3: Effective and efficient consenting system	Proposal 4: Better natural hazard management	Proposal 5: Effective and meaningful Māori participation	Proposal 6: Working with councils to improve practice
	<ul style="list-style-type: none"> <li>Clarify and extend central government powers to direct plan changes</li> <li>Make NPSs and NESs more efficient and effective</li> </ul>	<p>single resource management plans via a joint process with narrowed appeals to the Environment Court</p> <ul style="list-style-type: none"> <li>Empower faster resolution of Environment Court proceedings</li> </ul>	<p>applications should be processed without notification</p> <ul style="list-style-type: none"> <li>Limit the scope of conditions that can be put on consents</li> <li>Limit the scope of participation in consent submissions and in appeals</li> <li>Change appeals from <i>de novo</i> to merit by way of rehearing</li> <li>Allow a specified Crown-established body to do consent processing</li> <li>Improve the transparency of consent processing fees</li> <li>Provide consenting authorities tools to prevent land banking</li> <li>Reduce the costs of the EPA nationally significant proposals process</li> </ul>			



## Chapter 4: Consultation process

### 4.1 How to make a submission

The Government welcomes your feedback on this discussion document. Anyone can make a submission on the matters raised. Your submission may address any aspect of the discussion document, but we would appreciate you paying particular attention to the questions posed throughout.

The questions provided in 4.2 are to guide your feedback on the issues and proposed package of reform. These are collated from throughout the document, where they appeared within and/or at the end of each chapter. You may answer some or all of the questions. The Government would also like to hear whether there are alternative proposals you think would better improve the resource management system.

To ensure your point of view is clearly understood, you should explain your rationale and provide supporting evidence where appropriate.

Please note, this discussion document is not intended to revisit the matters that were considered in the *'Building Competitive Cities – reform of the urban and infrastructure planning system'* discussion document released by the Ministry for the Environment in October 2010. The outcomes of that process will be considered alongside the results of this discussion document as part of final policy decisions later this year.

There are three ways you can make a submission:

- Use our online submission tool available at [www.consultation.mfe.govt.nz](http://www.consultation.mfe.govt.nz)
- Download a writable version of the submission form to complete and return to us. This is available at [www.rmreform.mfe.govt.nz](http://www.rmreform.mfe.govt.nz). If you do not have access to a computer, the Ministry can post or fax a copy of the submission form to you.
- Prepare your submission in a separate document.

Please ensure you provide the following information with your submission:

- Contact information:
  - Name of submitter/organisation
  - Address
  - Telephone
  - Email
- The title of the discussion document
- Your submission, with reasons for your views
- Any further information you wish the Minister for the Environment to consider.

The Ministry asks that electronic submissions be submitted as a PDF, Microsoft Word document (2003 or later version), or other compatible format.

The closing time and date for submissions is **5:00pm on Tuesday 2 April 2013**.

After receiving submissions, the Ministry will evaluate them and may, where necessary, seek further comments. After this, policy recommendations would be developed for Ministers, and then Cabinet, to consider.

#### **4.1.1 Contact for queries and lodging submissions**

Please direct all submissions and any queries to:

Freephone: 0800 RMREFORM (0800 767 336)

STD: +64 4 439 7548

Facsimile: +64 4 439 7700

Email: [rmreform@mfe.govt.nz](mailto:rmreform@mfe.govt.nz)

Postal: RM Reform, PO Box 10362, Wellington 6143

#### **4.1.2 Publishing and releasing submissions**

The Ministry may publish all or part of any written submission on its website, [www.mfe.govt.nz](http://www.mfe.govt.nz). Unless you clearly specify otherwise in your submission, the Ministry would consider that you have consented to website posting.

Contents of submissions provided to the Ministry may have to be released to the public under the Official Information Act 1982 following requests to the Ministry (including via email). Please advise if you have any objection to the release of any information contained in a submission, and, in particular, which part(s) you consider should be withheld, together with

the reason(s) for withholding the information. The Ministry would take into account all such objections when responding to requests for copies of, and information on, submissions to this document under the Official Information Act.

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including the Ministry. It governs access by individuals to information about themselves held by agencies. Any personal information you supply to the Ministry in the course of making a submission would be used by the Ministry only in conjunction with the matters covered by this document. Please clearly indicate in your submission if you do not wish your name to be included in any summary of submissions that the Ministry may publish.

## 4.2 Questions to guide feedback on the proposed package of reforms

### Chapter 1

- Has this section correctly described the key issues and opportunities with New Zealand's resource management system?

### Chapter 3

#### *Questions for proposal 1: Greater national consistency and guidance*

- Do you agree with the proposals in 3.1.1–3.1.4? Could they be improved? Are there any issues that you think have not been considered?
- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?
- Beyond the suggested additional matters in section 6 and 7, are there any matters of national importance that should be covered in Part 2 of the RMA?
- What matters should additional NPSs and NESs cover?

#### *Questions for proposal 2: Fewer resource management plans*

- Do you agree with the proposals in 3.2.1–3.2.4? Could they be improved? Are there any issues that you think have not been considered?
- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?
- Do you agree with our assessment that better quality plans and plan-making processes would significantly reduce costs and delays, including those associated with consenting and appeals?
- Who should be responsible for making final decisions on resource management plans?

#### *Questions for proposal 3: More efficient and effective consenting*

- Do you agree with the proposals in 3.3.1–3.3.11? Could they be improved? Are there any issues that you think have not been considered?

- For each proposal you wish to comment on, are there any costs and benefits that you think have not been considered?

*Questions for proposal 4: Better natural hazard management*

- Do you agree with the proposal in 3.4.1? How could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?

*Questions for proposal 5: Effective and meaningful iwi/Māori participation*

- Do you agree with the proposal in 3.5.1? Could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?
- How flexible or prescriptive should the tools for iwi/Māori participation be?

*Questions for proposal 6: Improving accountability measures*

- Do you agree with the proposal in 3.6.1? Could it be improved? Are there any issues that you think have not been considered?
- Are there any costs and benefits that you think have not been considered?
- How flexible or prescriptive should reporting requirements be?