

Chair

Cabinet Economic Growth and Infrastructure Committee

Progress of Phase Two of the Resource Management Reforms

Proposal

1. This paper informs Cabinet of progress on Phase Two of the government's resource management reforms and seeks agreement to the scope and timelines for the proposed work programme.

Executive summary

2. Phase One of the Resource Management Act 1991 (RMA) reforms sought to streamline and simplify processes, and focused largely on technical and process aspects of the legislation. Phase Two of the reforms addresses those issues that require more consideration and consultation.
3. In April 2009 Cabinet agreed [CAB Min xxx] that the primary objective of Phase Two of the resource management reforms is to achieve least cost delivery of good environmental outcomes, including:
 - providing greater central government direction on resource management
 - improving economic efficiency of implementation without compromising underlying environmental integrity
 - avoiding duplication of processes under the RMA and other statutes
 - achieving efficient and improved participation of Māori in resource management processes.
4. Cabinet also agreed to the establishment of focused workstreams targeting improvements in ten key sectors. Many people, including members of the Technical Advisory Group (TAG) established for the first phase of RMA reform, consider that the RMA is in need of substantial revision. There are, however, conflicting points of view on priorities and the scope and scale of the issues. In many instances a significant amount of work will be necessary to support quality outcomes in each of the workstreams. Workstreams will need to be prioritised and coordinated with other government work programmes to ensure that outcomes are delivered to quality and on time.
5. I consider that the top priorities for the Phase Two reforms are the Aquaculture, EPA, Water and Infrastructure workstreams.
6. Minister's have established an Aquaculture TAG along with other Ministers, and have also established the Land and Water Forum to make recommendations to Government in mid-2010 on high level outcomes, goals and options to achieve these in respect of water quality, quantity and infrastructure issues. I propose to establish TAGs for the Infrastructure and Urban Planning workstreams, and to retain

the Phase One TAG until xxx 2009 to provide a consistent source of independent advice as policy is developed.

7. Three of the Phase Two workstreams relate to improving the interface between the RMA and Acts that are the subject of specific and separate reviews (the Building Act, the Conservation Act and the Historic Places Act). The Infrastructure and Forestry workstreams will also address the interface between the RMA and other Acts (specifically the Public Works Act and Forestry Act). The outcomes of these separate reviews need to be aligned with the government's objectives for the Phase Two reform programme. At the same time, each workstream will need to draw on the process and outcomes of the separate review programmes, and the policy work undertaken in the first phase of RMA reform. This alignment is necessary to ensure that the Phase Two reforms make efficient use of available capacity and existing resources across government departments. The Ministry for the Environment (MfE) will take a coordinating role to ensure that policy outcomes are consistent and will effectively promote achievement of the government's objective for the Phase Two reforms.
8. From xxx 2009, officials will engage with sector/reference groups, key stakeholders and TAGs where appropriate to refine priorities and develop preliminary policy options for addressing problems identified during scoping.
9. I expect there will be significant interest in the scope and opportunities for consultation proposed in the Phase Two reform work programme. In order to be efficient, the degree of consultation will need to reflect the nature of the issues addressed in each of the workstreams. Where required, I will propose specific consultation programmes after taking into account the advice of officials and TAGs.
10. I will report to Cabinet by xxx 2010 on the progress of Phase Two, seeking confirmation of policy areas in each of the workstreams where potential legislative amendments would be appropriate in the 2010 legislative programme.

Background

11. In April 2009 Cabinet agreed [CAB Min xxx] that the primary objective of Phase Two of the resource management reforms is to achieve least cost delivery of good environmental outcomes, including:
 - providing greater central government direction on resource management
 - improving economic efficiency of implementation without compromising underlying environmental integrity
 - avoiding duplication of processes under the Resource Management Act 1991 (RMA) and other statutes
 - achieving efficient and improved participation of Māori in resource management processes.
12. To deliver on these objectives, Cabinet agreed to the establishment of ten focused workstreams targeting improvements in key sectors:
 - RMII-A – Aquaculture: review the way aquaculture is managed and, in particular, what changes are needed to provisions for allocating space for aquaculture in the coastal marine area
 - RMII-B – Interface with the Building Act 2004: review consenting processes under the RMA and the Building Act 2004 with a view to reducing duplication

- RMII-C – Interface with the Conservation Act 1987: review processes for consents under the RMA and concessions under the Conservation Act 1987 with a view to reducing duplication
 - RMII-E – Environmental Protection Authority (EPA): develop the scope, functions and structure of the Environmental Protection Authority
 - RM IIF – Interface with the Forests Act 1949: review processes for consents under the Resource Management Act 1991 and approvals for land subject to Sustainable Forestry Management Plan approvals under the Forests Act 1949 and the Forests Amendment Act 1993 with a view to reducing duplication
 - RMII-G – Generic process improvements: scope generic issues that have been identified by the Technical Advisory Group and others during Phase One of the reforms as being too complex to deal with in Phase One
 - RMII-H – Historic places/archaeological consents: review processes for consents under the Resource Management Act 1991 and for archaeological authorities under the Historic Places Act 1993 with a view to increasing alignment and reducing any duplication
 - RMII-I – Infrastructure: review the role of designations and compensation and examine other effective ways for planning for and managing the effects of network infrastructure
 - RMII-U – Urban planning: investigate new approaches to the planning and design of urban environments including ways of achieving better co-ordination between local authorities, government agencies and the private sector and examine the effectiveness and efficiency of options to manage urban growth and achieve better urban planning and design outcomes
 - RMII-W – Water: consider a fairer and more efficient water management system that addresses water quality issues and inefficient allocation.
13. MfE established cross-government scoping groups to identify and describe the problems evident in each workstream, and to develop work programmes aimed at identifying potential options for addressing the problems.
14. Cabinet invited me to report back with progress on these workstreams in August 2009 [CAB Min xxx].

Priorities for the Phase Two reforms

15. The scope of the Phase Two reform programme is broad and in many areas the work necessary to support quality outcomes will be resource intensive. Workstreams will need to be prioritised to ensure that outcomes are delivered to quality and on time. I consider that the top priorities for the Phase Two reforms are the Aquaculture, EPA, Water and Infrastructure workstreams.

Key Phase Two milestones to xxx 2010

16. Excluding the Aquaculture, EPA and Water workstreams, which are proceeding in accordance with their own specific Cabinet-approved timeframes, I propose that the Phase Two programme should proceed according to the following milestones:

- xxx 2009 – Officials will engage with sector/reference groups, key stakeholders and Technical Advisory Groups (TAGs) where necessary and appropriate to identify priorities and develop preliminary policy options
- xxx 2009 – Appoint and agree the Terms of Reference for the RMII-I and RMII-U TAGs via the Appointments and Honours Committee
- xxx 2009 – The Ministry for the Environment will provide me with a detailed briefing on the progress of Phase Two. I will make bids for the 2010 legislative programme after considering this information
- xxx 2010 – I will report back to Cabinet on progress in each of the workstreams, including where potential legislative amendments would be appropriate in the 2010 legislative programme
- xxx 2010 – Officials will continue to work with key stakeholders, sector/reference groups and TAGs to further develop policy options for Cabinet consideration
- xxx 2010 – I will report to Cabinet with legislative policy options and terms of reference for the scope of the Phase Two reform programme beyond xxx 2010.

Coordination of Phase Two

17. Phase One of the RMA reforms sought to streamline and simplify processes and focused largely on technical and process aspects of the RMA. Phase Two addresses those issues that require more consideration and consultation, including the interface with other legislation. This makes Phase Two a broad and complex review programme.
18. I have arranged the Phase Two programme into sector specific workstreams to promote clarity and focus. Resource management issues are, however, often inter-related and care needs to be taken to ensure that policy development is coordinated – across workstreams and with other major government work programmes – so that outcomes are efficient and complementary. Because many of the issues addressed in the Phase Two reforms cut across sectors, I expect MfE to engage broadly with all relevant/affected government departments during policy development.
19. I note that three of the Phase Two workstreams relate to improving the interface between the RMA and Acts that are the subject of specific and separate reviews (the Building Act, the Conservation Act and the Historic Places Act). The outcomes of these reviews need to be aligned with the government's objectives for the Phase Two reform programme. I expect MfE to ensure that the Phase Two programme draws on the processes and output of these reviews to avoid duplication and inconsistent policy.
20. Māori engagement will be required during policy development to ensure that robust policy is developed that delivers government objectives and can be effectively implemented. During problem scoping, it has become apparent that officials will need to work across departments to develop processes to ensure that each of the Phase Two workstreams will achieve the objective of promoting the efficient and improved participation of Māori in resource management processes.

Implications for Treaty settlements and Foreshore and Seabed Review

21. The Phase Two work programme is likely to have a significant effect on the legislative parameters within which historical Treaty settlements are negotiated. In particular, workstreams RMII-C, RMII-E, RMII-F, RMII-H, and RMII-I and RMII-W will all likely impact on aspects of the settlement framework. MfE will work with the Ministry of Justice, including the Office of Treaty Settlements, during policy development to ensure the Phase Two reforms align with the historical Treaty negotiation process and the Government's priority to settle all historical Treaty claims by 2014.
22. The Phase Two work programme is being undertaken concurrent to the Government review of the Foreshore and Seabed Act 2004. Unless there is adequate interaction between these work programmes there is a risk of inconsistent outcomes and public confusion regarding Government policy intentions for the coastal marine area. One area of particular relevance to the review is RMII-A. Due to the significance of the Foreshore and Seabed review for the future management of the coastal marine area, it may be appropriate to delay aspects of relevant Phase Two policy reform in order to ensure the integrity of the Foreshore and Seabed Act review process. MfE will work with the Ministry of Justice to ensure that the Phase Two reforms are not inconsistent with the review of the Foreshore and Seabed Act.

Terms of reference for Phase Two

23. Cabinet has invited Ministers responsible for workstreams under the regulatory review programme to present Cabinet with terms of reference for those workstreams [CAB Min xxx]. The second phase of resource management reform is part of the regulatory review programme.
24. I am confident that the Phase Two programme will deliver a feasible set of options for regulatory reform and recommendations (if reform is required) that will:
 - be the minimum necessary to achieve its objectives, having assessed costs, benefits and risks
 - be as generic and as simple as the sector allows
 - use self-regulatory approaches where appropriate
 - be appropriately durable, predictable and adaptable
 - where appropriate accord with international best practice being mindful of our commitment to a single economic market with Australia
 - minimise compliance costs imposed
 - aim to minimise adverse impacts on:
 - a. innovation and investments
 - b. competition
 - c. individual responsibility (with appropriate risk balance)
 - d. property rights.
25. I ask that Cabinet consider this paper to be the terms of reference required under the regulatory review programme as it:
 - presents the specific objectives for the review

- assigns project leads for each of the Phase Two workstreams
- identifies the key problems/concerns identified during problem scoping for each of the Phase Two workstreams
- identifies priority workstreams, defines timeframes and sets out work programmes going forward for each of the Phase Two workstreams
- proposes specific quality assurance mechanisms for each of the Phase Two workstreams.

RMII-A – Aquaculture

26. The laws regulating aquaculture are prescriptive and complex, and treat aquaculture more restrictively than other coastal activities. There is a difficult, uncertain and expensive path for aquaculture planning and consenting. This represents a substantial opportunity cost in terms of lost aquaculture development and income. No new aquaculture space has yet been created under the 2004 reforms and, without improvements to the legislation, it is unlikely that any new space will be created for a number of years. Some coastal plans also do not have the necessary flexibility to allow transition to higher-value types of aquaculture.
27. Encouraging sustainable aquaculture is a priority for this government. Aquaculture is an important primary industry, earning approximately \$334 million in sales in 2007. Growing global demand for sustainable seafood presents a significant opportunity for aquaculture to contribute to New Zealand's exports and economic growth. A fresh look at the legislation governing aquaculture is required to help unlock this potential. It is unlikely that minor amendments to legislation, or continued implementation support to regional councils, can make significant improvements.
28. Given the complexity of the issue and its relationship with the review of the Foreshore and Seabed Act, the Minister of Fisheries and I chose not to proceed with the report back due in xxx 2009. Instead Cabinet appointed an aquaculture TAG on xxx 2009 [APH Min xxx] to generate independent recommendations for aquaculture reform. This TAG will provide a written report to lead aquaculture Ministers (myself, the Minister of Fisheries, and the Minister of Economic Development) by xxx 2009. Aquaculture Ministers will consider the TAG's report and advice from officials before seeking final decisions from Cabinet on legislative reform. Ministers intend to introduce aquaculture reform legislation during 2010, with the exact timeframes for consultation and introduction depending on the complexity of the proposals.

RMII-B – Interface with the Building Act 2004

Progress

29. Key concerns identified by officials in consultation with a sector group (comprising representatives from local government, industry, professional groups, a senior lawyer with expertise in both the Building Act 2004 and the RMA, and a member of the Phase One TAG) relate to the:
 - consistency, certainty and speed of decision-making
 - consistency of standards and definitions applying to the RMA and the Building Act
 - consistency of conditions applied to building and resource consents

- risk-averse culture and practice of local authorities relating to potential liability for claims under the Building Act and costs under the RMA
- inconsistency of district plan controls on residential activities
- inability for minor RMA technical compliance issues to be addressed as part of the building consent process
- lack of links between permitted activities under the RMA and building consent exemptions
- lack of public understanding of the differences between resource consents and building consents.

Proposed work programme

30. I propose that MfE and the Department of Building and Housing (DBH) should, drawing on the process and outcomes of the review of the Building Act and the outcomes of the RMII-U workstream, continue to identify options for improving the interface between the RMA and Building Act.
31. I propose three specific work programmes to address the issues identified in the scoping process. These will identify options for:
 - align and streamlining processes for approving resource and building consents where both are necessary for a building (including possible joint or aligned processes for limited building types/situation)
 - improving consistency between the RMA and Building Act
 - improving public understanding of RMA and Building Act processes (for instance when consultation is required under the RMA compared with the Building Act, where consultation is not required).
32. I note that there are two work programmes that have been incorporated into the review of the Building Act which address issues raised during the scoping process. These will identify:
 - options for allocating risk and liability in order to reduce local government processing delays and uncertainty
 - different service delivery arrangements for the functions of building control authorities.
33. I propose to report progress back to Cabinet in xxx 2010 noting any options (including legislative amendments to the RMA and/or Building Act, or other options such as National Standards) that might be necessary to improve the interface between these two Acts, reduce transaction costs and simplify processes.

Provision for independent advice

34. Officials will continue to work across government and with the sector group of experts to identify and test policy options. For this reason, at this stage I do not consider it necessary to establish a TAG for the RMII-B workstream.

RMII-C – Interface with the Conservation Act 1987

Progress

35. The Department of Conservation (DoC) began a review of the concessions process in January 2009. DoC held discussions with a range of stakeholder groups as part of the wider concessions review between February and August 2009. These groups included concessionaires, Land Transport Agency, Energy Generators Forum, non-government organisations, Te Runanga o Ngai Tahu, Ministry of Tourism, Ministry of Economic Development, Ministry for the Environment, Land Information New Zealand, the Tourism Industry Association, Local Government NZ, and the NZ Conservation Authority.
36. A cross-government officials group has drawn on the process and outcomes of this review to identify areas of duplication between the RMA and Conservation Act 1987.
37. Since 2008, approximately 6% of concession applications also required consents under the RMA. In some cases the scale of the activity has been relatively small (for example applications for jetties or boat sheds), but in other cases large infrastructure proposals have been involved.
38. Key concerns identified during the scoping process include:
 - the lack of statutory timeframes and an independent appeals process
 - duplication of information and process requirements
 - time delays associated with public notification processes and hearings
 - uncertainties over which approval should be sought first
 - repetition of conditions/uncoordinated decision-making.
39. I consider that there is clearly room to improve the way in which the RMA and Conservation Act work together.

Proposed work programme

40. The initial findings of the DoC concessions review are due to be reported to The Minister of Conservation in xxx 2009.
41. I propose that MfE should continue to work with DoC, drawing on the process and outcomes of the concessions review and the input of other government departments, to identify options for improving the interface between the RMA and Conservation Act.
42. The Minister of Conservation and I propose to report progress back to Cabinet in xxx 2010 noting areas where further intervention (including legislative amendments) might be necessary to complement the outcomes of the concessions review in order to improve the interface between the two Acts.

Provisions for independent advice

43. Officials will continue to work across government and with key stakeholders to identify and test policy options. At this stage I do not propose to establish a TAG for the RMII-C workstream.

RMII-E – Environmental Protection Authority

44. This work area focuses on the further development of the EPA to address weaknesses in environmental management. An expanded EPA will provide greater central government direction on the regulation of the environment. It will also consolidate regulatory and technical skills to increase efficiency.
45. Cabinet has received and accepted a report from me on my intentions around the proposed EPA. [Withheld]
47. [Withheld]

RMII-F – Interface with the Forests Act 1949

Progress

48. Some forest owners are required to obtain both resource consents under the RMA and approvals for sustainable forest management (SFM) permits or plans under the Forests Act 1949.
49. Different local authority plans have different approaches to vegetation clearance rules and how to implement section 6(c) of the RMA, which requires the protection of significant indigenous vegetation and the habitats of significant indigenous fauna. The Ministry of Agriculture and Forestry (MAF) and DoC have had different approaches to how district and regional plans should provide for SFM while protecting areas of significance.
50. MAF consults DoC on the approval processes for SFM plans and permits. Between July 2005 and April 2009 MAF received 105 draft SFM permits and one draft SFM plan for approval; 28 applications per year on average. It is estimated that about 10 percent of permits and 20 percent of plans also require resource consents under the RMA. These cases mostly relate to six district councils; Gisborne and Southland District Councils in particular.
51. Some forest owners/managers have incurred cost and time delays, mostly related to RMA processes. I consider that there is merit in investigating both non-legislative and legislative approaches for addressing this issue

Proposed work programme

52. I note that MAF will:
 - develop memoranda of understanding with affected local authorities to mitigate the potential for cost and time delays, and to help establish efficient working relationships.
 - continue to work with DoC to update a 1995 memorandum of understanding to improve the consistency of the departments' approaches to proposed provisions in local authority plans for SFM plans and permits.
53. In addition, I propose that MfE and MAF investigate further non-legislative and legislative options for addressing this issue.
54. I propose to report back to Cabinet in xxx 2010 on the progress of this investigation.

Provisions for independent advice

55. I do not propose to establish a TAG for the RMII-F workstream. I consider, however, that non-legislative and legislative options should be investigated by MAF and MfE

in consultation with a working group, including sector, local government and Maori representatives and DoC.

RMI-G – Generic

Progress

56. Officials analysed the range of issues that were identified by the Phase One TAG, officials and submitters on the Resource Management (Simplifying and Streamlining) Amendment Bill 2009 (the Bill), but that were generally too complex to be dealt with in Phase One of the reforms. Key concerns identified during this scoping process include:
- expert opinions on the effects and benefits of particular proposals are often starkly contrasting, and central government has provided little effective direction on its expectations through either environmental bottom lines and objectives, or sustainable development objectives. This often obliges judges, commissioners and/or elected representatives to resolve complex resource management issues within a context of uncertainty
 - under a system of devolved decision-making and in the absence of clear central government direction, some aspects of New Zealand's resource management planning framework have arguably become far more complicated than the issues require
 - access to resources is often unclear due to the lack of defined (quantified) environmental limits, and consent/permit transferability is not being effectively facilitated
 - the environmental performance of local authorities and other participants in New Zealand's natural resource sector is not being effectively monitored.
57. Many people – including members of the Phase One TAG – consider that the RMA is in need of substantial reform. There are, however, conflicting points of view on priorities and the scope and scale of the issues. More work is required to accurately define and quantify the problems that lie behind these more fundamental concerns.
58. I consider that the RMI-G workstream should focus on identifying areas where additional process improvements could be made to reduce transaction costs and increase efficiency. I do note, however, that resource management issues are often inter-connected and where possible policy should ensure that, as sector-specific issues are resolved, solutions do not constrain or foreclose options for dealing with issues in other sectors as they arise.

Proposed work programme

59. I propose that the RMI-G workstream should identify options for improving the workability of the RMA to support and complement improvements arising from the Phase One reforms and the other sector-specific workstreams. This work will focus on:
- facilitating more efficient and effective central government direction via national policy statements, national environmental standards and Crown submissions

- further streamlining application processes, refining statutory timeframes, distinguishing minor from significant consent processes and clarifying information requirements
- improving the security of resource consents by clarifying the rights of existing consent holders, and facilitating effective registering and transfer of consents
- improving the cost/benefit analysis requirements in section 32 of the RMA
- increasing the effectiveness of performance monitoring programmes both in terms of environmental outcomes and process efficiency
- facilitating more effective mechanisms for identifying and addressing cumulative effects, and issues relating to reverse sensitivity
- clarify charging and cost recovery provisions for consent processing
- improving the consistency and reducing the complexity of plans
- clarifying the responsibilities of local government
- further improving the quality of decision-making
- identifying further minor amendments to improve the efficiency of the RMA.

60. I propose to report progress to Cabinet in xxx 2010.

Provisions for independent advice

61. Many of the concerns that I propose to address via the RMII-G workstream are related to matters that were addressed or raised in the Phase One Bill. I propose to retain the Phase One TAG until xxx 2009 to promote a consistent stream of independent advice as policy is developed.

RMII-H – Interface with the Historic Places Act 1993

Progress

62. The Ministry for Culture and Heritage (MCH), in consultation with the New Zealand Historic Places Trust (the Trust) and other relevant agencies, is undertaking a comprehensive review of the Historic Places Act 1993. This review is expected to lead to a Bill in xxx 2010.

63. Amongst the matters to be considered in this review is improving the interface between the RMA and processes under the Historic Places Act. I am advised that MCH will be exploring a range of approaches to resolving interface issues with the RMA, including further investigation of the 1998 ministerial advisory group recommendation that statutory protection of archaeological heritage under the Historic Places Act should be integrated into the RMA.

Proposed work programme

64. I am advised by MCH that a draft discussion document on policy proposals is expected to be submitted to Cabinet for approval for public consultation in xxx 2009. A draft policy paper is expected to be submitted to Cabinet in xxx 2010. I propose that the outcomes of this review will inform work in the RMII-H workstream that MfE and MCH will undertake, in consultation with Te Puni Kōkiri, to identify options for improving the interface between the RMA and Historic Places Act.

65. I propose to report progress back to Cabinet in xxx 2010 noting any options (including legislative amendments) that might be necessary to complement the outcomes of the MCH review programme in order to (a) improve the interface between the RMA and Historic Places Act and (b) promote the government's objectives for the Phase Two reforms.

Provisions for independent advice

66. MCH has established a Reference Group comprising representatives of major users of archaeological authority processes in the Historic Places Act, including Maori and archaeological interests. I am advised by the Ministry for Culture and Heritage that this Reference Group has been advised of the need to align the outcomes of the review of the Historic Places Act with the government's objectives for Phase Two. At this stage I do not consider it necessary to appoint a TAG for this workstream.

RMI-I – Infrastructure / Public Works

Progress

67. Officials identified and defined infrastructure problems related to the RMA designation provisions, Public Works Act 1981 (PWA) compensation provisions and the interface between the two Acts. Problems identified were circulated to the Phase One TAG and key stakeholders (including Local Government New Zealand and Business New Zealand) for comment.
68. Concerns identified during this process include:
- designations are a powerful tool for promoting infrastructure proposals but they do not effectively support long term strategic planning or facilitate the coordinated provision of infrastructure. There are also a number of operational and technical problems with designation provisions that increase uncertainty, delay and cost
 - Requiring Authority status affords extraordinary planning powers and provides access to powers of compulsion – including being the applicant and decision-maker on notices of requirement – but the eligibility criteria for requiring authority status are not clearly linked to government objectives
 - although decisions on appeals against designations under the RMA and objections to compulsory acquisition under the PWA are subject to similar criteria and are both heard in the Environment Court, they are not able to be heard concurrently. Designations apply to district plans and subsequent approvals are sometimes required from regional councils before a proposal can proceed. In both cases there is the potential for duplication, delay and increased cost as opposing parties are afforded multiple opportunities to litigate related issues
 - compensation options under the PWA and RMA are limited and not flexible enough to effectively facilitate the timely and equitable resolution of environmental and property rights issues
 - the lack of clear statutorily defined principles for establishing injurious affection (the compensation for depreciation in value of land affected but not compulsorily acquired) confuses eligibility for compensation, complicates negotiation with affected landowners and increases uncertainty, costs and delays for all parties

- the National Infrastructure Plan is still in development and, until recently, there has been little clear national vision or guidance, and no clear long term objectives to guide integrated or strategic infrastructure planning and investment in New Zealand. As a result, New Zealand's planning framework neither regularly nor consistently recognises the national benefits of infrastructure
- in the absence of clear central guidance on how to weigh local adverse effects against national benefits there can be no guarantee that local authorities will adequately provide for infrastructure development or decision-makers will adequately reflect the national benefits of infrastructure in decisions on particular proposals.

Proposed work programme

69. Infrastructure has significant implications for New Zealanders and the New Zealand environment. It contributes directly to living standards, quality of life and economic productivity, and can have significant environmental implications. It is a clear priority of this government to facilitate efficient and timely development of high-quality infrastructure.
70. The RMII-I, RMII-W and RMII-U workstreams are highly inter-related and share common issues – a key barrier to quality urban and rural development is 'getting the right infrastructure in the right place at the right time'. I consider that MfE should progress the RMII-I workstream in consultation with the Ministries of Economic Development and Transport, Ministry of Agriculture and Forestry and the Treasury.
71. I consider that MfE should work with the Government Urban Economic Development Office to coordinate the output of the RMII-I and RMII-U workstreams.
72. Problems with compensation tend to relate primarily to the PWA. I consider it appropriate that MfE and Land Information New Zealand jointly lead the work programmes under the RMII-I workstream related to compensation and the RMA/PWA interface.
73. I propose the following four work programmes to identify options to:
 - 73.1 improve designation provisions to facilitate sustainable infrastructure development under the RMA, focusing on:
 - improving the workability of designation provisions (specifically outline plans and notification requirements)
 - confirming eligibility for requiring authority status and the roles and powers of requiring authorities
 - improving local authority understanding and processing efficiency in relation to notices of requirement and outline plans
 - better coordinating district and regional approvals once a designation has been confirmed.
 - 73.2 improve compensation provisions focusing on:
 - clarifying eligibility for compensation in the PWA and RMA
 - increasing the speed, flexibility and equity of compensation under the PWA and RMA.

73.3 improve the interface between the RMA and PWA objections and decision-making processes, and the alignment of the RMA and PWA with other legislation (specifically the Electricity Act)

73.4 improve central government direction on infrastructure proposals focusing on:

- clarifying the degree of consideration decision-makers are required to give to sunk investment and economic benefits
- clarifying the degree of consideration decision-makers are required to give to non-statutory government strategies and policies
- clarifying the role of government departments as participants in RMA processes
- assessing whether the guidance provided by sections 6 and 7 of the RMA is sufficient to ensure that the government's infrastructure objectives are reflected in decisions made under the RMA
- alternative methods of planning for and managing the effects of infrastructure proposals such as concept and/or staged approval processes.

74. I propose to report progress back to Cabinet in xxx 2010.

Provisions for independent advice

75. I propose to establish an Infrastructure TAG drawing on specialist expertise from across the infrastructure sector and the RMII-U TAG to promote consistency.

RMII-U – Urban planning

76. In scoping the RMII-U workstream, officials drew on the findings of the Royal Commission on Auckland Governance, public and private sector views expressed during consultation undertaken by agencies on urban issues, as well as recent urban research, which includes work undertaken by MOTU reviewing the metropolitan urban limit.

77. Key concerns identified during the scoping process include:

- the lack of alignment and connection between planning statutes (specifically the RMA, Local Government Act and Land Transport Management Act) has created an overly complex regulatory environment
- the lack of coordination and consistency in decision making and action by participants – including local and central government, the private sector and infrastructure providers – in urban planning, design and development
- the RMA does not effectively recognise the positive economic, social and cultural contribution that quality urban planning and design can make to New Zealand towns and cities
- some of the tools currently available for implementing urban development are either not used to their full potential (e.g. urban design panels) or inadequate (e.g. metropolitan urban limit, financing and funding mechanisms for infrastructure), or need to be complemented by new tools to be effective (e.g. spatial and structure plans).

Proposed work programme

78. I intend, through the RMII-B and RMII-U workstreams, to promote a more efficient housing sector with lower compliance costs.
79. On xxx 2009 Cabinet agreed to include the investigation of the Royal Commission on Auckland Governance's recommendations for integrated planning, including a spatial plan and an infrastructure investment plan in the scope of the RMIIU work stream [CAB Min xxx].
80. I propose three work programmes to focus on improving the link between housing affordability and land supply, integrated growth management and infrastructure development and the quality of outcomes delivered by urban design and urban planning. Within this context, these workstreams will identify options to:
 - address the limitations of the RMA in urban environments, particularly in instances where the effects-based nature of the Act does not effectively facilitate the long term achievement of efficient and integrated urban planning and urban design outcomes
 - improve the tools and resources used to promote quality urban planning and urban design outcomes in New Zealand's urban environments including reviewing the role of metropolitan urban limits and investigating the role of spatial plans
 - integrate and align planning statutes and planning mechanisms (specifically the RMA, Local Government Act and Land Transport Management Act).

Specific timing and deliverables

81. I will report back to Cabinet with progress in xxx 2010.

Specific quality assurance provisions

82. Cities and towns are key contributors to New Zealand's wealth, economic growth and performance, and to the health and wellbeing of New Zealanders. Consequently, I propose to establish a TAG to provide me with independent advice on possible urban-related policy options. Members of this group will be drawn from a range of entities with expertise and knowledge in urban design, planning and development. There will be some overlap of membership between the RMII-I and RMII-U TAGs to ensure consistency.

RMII-w – Water

83. On 8 June, after agreeing on the direction for Phase Two in April 2009, Cabinet agreed on a new strategic approach to addressing fresh water issues [CAB Min xxx].
84. At the core of this strategy are three processes: a collaborative process involving water stakeholders, a policy work programme (of which a joint programme with iwi advisors is a key part) and engagement between Ministers and iwi leaders.
85. The collaborative stakeholder process is being carried out through the Land and Water Forum. The Forum is expected to make recommendations to Government in xxx 2010 on high level outcomes, goals and options to achieve these in respect of water quality, quantity and infrastructure issues.

86. Subject to Cabinet approval, the proposed policy work programme will comprise 10 priority projects and will be advanced by officials in partnership with iwi advisors. The projects cover the areas of water quality, water allocation, infrastructure, effective decision making and science and monitoring
87. The proposed water programme is the subject of a separate report to Cabinet.

Consultation

88. The following departments/agencies participated in the scoping process and were consulted on this paper: Ministry of Agriculture and Forestry, Ministry of Transport, New Zealand Transport Agency, State Services Commission, Treasury, Department of Conservation, Te Puni Kōkiri, Department of Internal Affairs, Ministry of Justice, Ministry of Research, Science and Technology, Ministry of Fisheries, Ministry of Economic Development, Energy Efficiency and Conservation Authority, Land Information New Zealand, Department of Building and Housing, Ministry of Health, Ministry of Education, NZ Defence Force, Department of Corrections, and the Ministry for Culture and Heritage.
89. The Department of the Prime Minister and Cabinet was informed of the contents of this paper.
90. Where appropriate, comments were sought from various reference groups, the Phase One TAG and sector-specific stakeholders on the scope and scale of problems identified by departments during the problem scoping process referred to in this paper.

Financial implications

91. The costs associated with research, consultation and policy development associated with each workstream will be met within the baselines of the departments involved.

Human rights

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

Legislative implications

93. This paper has no direct legislative implications. It does, however propose work programmes that may subsequently lead to legislative change. I will make bids in the 2010 legislative programme after having considered the more detailed reports I will receive from the Ministry for the Environment in xxx 2009.

Regulatory impact analysis

94. These proposals set the scope of work programmes for identifying policy options that will be put to Cabinet at a later date. The Regulatory Impact Analysis requirements will be incorporated into the policy development process and Regulatory Impact Statements will be prepared when policy proposals are presented for approval.

Publicity

95. I expect there will be significant interest in the scope of, and opportunities for, consultation proposed in the Phase Two reform work programme. In order to be efficient, the degree of consultation will need to reflect the nature of the issues addressed in each of the workstreams.
96. Given the broad scope of issues, care will need to be taken to coordinate consultation and engagement to avoid 'consultation fatigue'.
97. Where required, after taking into account the advice of officials and TAGs, I will propose specific consultation programmes for particular workstreams in my xxx 2010 progress report to Cabinet.
98. I intend to release this paper, subject to any appropriate withholdings, at an appropriate time.

Recommendations

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

Coordination and alignment

1. note that Cabinet invited the Minister for the Environment to report back on the progress of the Phase Two resource management reforms by xxx 2009 [Cab Min xxx].
2. direct the Ministry for the Environment to monitor and coordinate policy development across the Phase Two workstreams to ensure the outcomes are consistent and will effectively promote achievement of the government's objective for the Phase Two reforms.
3. agree that the top priorities for the Phase Two reforms are the Aquaculture, Environmental Protection Authority, Water and Infrastructure workstreams.
4. note that officials will work across government to develop processes to ensure that each of the Phase Two workstreams will promote the efficient and improved participation of Māori in resource management processes.
5. direct the Ministry for the Environment to work with the Ministry of Justice, including the Office of Treaty Settlements, to ensure the Phase Two policy reforms align with the Government's priority to settle all historical Treaty claims by 2014 and are not inconsistent with the review of the Foreshore and Seabed Act 2004.
6. agree that the outcomes of the reviews of the Building Act, Concessions under the Conservation Act and Historic Places Act need to be aligned with the government's objectives for the Phase Two reform programme.

RMII-A - Aquaculture

7. note that Aquaculture Ministers (the Minister for the Environment, Minister of Fisheries and Minister of Economic Development):
 - 7.1 have appointed an Aquaculture Technical Advisory Group (TAG)
 - 7.2 will set timeframes for consultation and policy development after considering the TAG's report, due to the complexity of the issues

and the interrelationship between the RMII-A workstream and the review of the Foreshore and Seabed Act.

RMII-B – Interface with the Building Act 2004

8. direct the Ministry for the Environment and Department of Building and Housing to identify options for:
 - 8.1 an effective single project consent process for simple buildings under the Resource Management Act (RMA) and Building Act.
 - 8.2 improving consistency between the RMA, the Building Act and the Building Code
 - 8.3 improving public understanding of the differences between the RMA and Building Act consent processes.
9. note that the Department of Building and Housing in its review of the Building Act will identify:
 - 9.1 options for allocating risk and liability in order to reduce local government processing delays and uncertainty
 - 9.2 different service delivery arrangements for the functions of building control authorities.

RMII-C – Interface with the Conservation Act 2004

10. note that the initial findings of the Department of Conservation concessions review are due to be reported to the Minister of Conservation in xxx 2009.
11. invite the Minister of Conservation and the Minister for the Environment to report back to Cabinet Economic Growth and Infrastructure Committee progress of the concessions review by xxx 2010.

RMII-E – Environmental Protection Authority

12. note that Cabinet considered and accepted the work programme relating to the Environmental Protection Authority on xxx 2009 [withheld].

RMII-F – Interface with the Forests Act

13. note that the Ministry of Agriculture and Forestry will continue to work with the Department of Conservation to update their 1995 memorandum of understanding to improve consistency between the departments' approaches to proposed provisions in local authority plans for sustainable forest management plans and permits.
14. direct the Ministry for the Environment and Ministry of Agriculture and Forestry, in consultation with the Department of Conservation, to investigate non-legislative and legislative options for addressing issues arising from the interface between the RMA and Forests Act.

RMII-G – Generic

15. direct the Ministry for the Environment to identify options for addressing generic process or technical problems with the RMA.

RMII-H – Interface with the Historic Places Act

16. note that a draft discussion document on policy proposals is expected to be submitted to Cabinet for approval for public consultation in xxx 2009. A draft policy paper is expected to be submitted to Cabinet in xxx 2010.

RMII-I – Infrastructure

17. direct the Ministry for the Environment in consultation with the Ministry of Economic Development, Ministry of Transport and Treasury to:
 - 17.1 identify options for improving RMA designation provisions
 - 17.2 identify options for improving central government direction on infrastructure proposals.
18. direct the Ministry for the Environment and Land Information New Zealand to:
 - 18.1 identify options for improving compensation provisions under the RMA and Public Works Act
 - 18.2 identify options for improving the interface between the RMA and the Public Works Act, and other Acts.

RMII-U – Urban planning

19. note that the investigation of the Royal Commission on Auckland Governance's recommendation for integrated planning, including a spatial plan and infrastructure investment plan for the Auckland Council is included in the urban planning workstream [CAB Min xxx].
20. note that the urban planning work stream has a focus on improving the link between housing affordability and land supply, integrated growth management and infrastructure development, and the quality of outcomes delivered by urban design and urban planning.
21. direct, with reference to recommendation 20 (above), the Ministry for the Environment together with the Ministries of Transport and of Economic Development the Departments of Building and Housing, and of Internal Affairs, the Treasury, and other agencies as appropriate to identify policy options to:
 - 21.1 address the limitations of the RMA in urban environments where the effects based nature of the Act does not effectively facilitate the long term achievement of efficient and integrated urban planning and urban design outcomes
 - 21.2 improve the tools and resources, used to promote quality urban planning and urban design outcomes in New Zealand's urban environments including reviewing the role of metropolitan urban limits and investigating the role of spatial plans.

- 21.3 integrate and align planning statutes and planning mechanisms (specifically the RMA, Local Government Act and Land Transport Management Act).

RMI-W – Water

- 22. note that the work programme for water is the subject of separate report to Cabinet.

Terms of reference

- 23. agree that this paper constitutes the terms of reference for the Phase Two reform programme to xxx 2010 for the purposes of the regulatory review programme [CAB Min xxx].

Next steps

- 24. invite the Minister for the Environment to report to the Appointment and Honours Committee by xxx 2009 with proposed Terms of Reference and membership of Technical Advisory Groups for the urban planning and infrastructure workstreams.
- 25. invite the Minister for the Environment, in consultation with appropriate Ministers, to report to Cabinet by xxx 2010 on the progress of Phase Two, seeking confirmation of policy areas in each of the workstreams where potential legislative amendments would be appropriate in the 2010 legislative programme.
- 26. invite the Minister for the Environment in the xxx 2010 report back to Cabinet, referred to in recommendation 25 above, to note:
 - 26.1 areas where amendments to the RMA and/or Building Act, or other options such as National Standards, may be necessary to improve the interface between the RMA and Building Act, reduce transaction costs and simplify processes
 - 26.2 areas where further intervention (including legislative amendments) might be necessary to complement the outcomes of the concessions review in order to improve the interface between the RMA and Conservation Act
 - 26.3 any further non-legislative and legislative options to improve the interface between the RMA and Forests Act
 - 26.4 any options (including legislative amendments) that might be necessary to complement the outcomes of the review of the Historic Places Act in order to:
 - 25.4.1 improve the interface between the RMA and Historic Places Act; and
 - 25.4.2 promote the government's objectives for the Phase Two reforms.

27. authorise the Minister for the Environment to publicly release this paper, subject to any necessary withholdings.

Hon Dr Nick Smith
Minister for the Environment

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