

[‘In Confidence’]

Office of the Minister for

Chair

Cabinet Economic Growth and Infrastructure Committee

Resource Legislation Amendment Bill

### Proposal

1. This paper provides you with the draft Resource Legislation Amendment Bill 2015.
2. Discussions are continuing with the Government’s support parties and the Iwi Leaders Group. I will seek Cabinet agreement to any further changes arising from these discussions before the Bill is introduced.
3. Subject to the outcome of these discussions, I am seeking your agreement to introduce this Bill into the House on 18 November 2015.

### Executive summary

4. The attached Resource Legislation Amendment Bill 2015 (the Bill) is intended to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way.
5. Sitting beneath this overarching purpose are three main objectives:
  - better alignment and integration of the resource management system
  - proportional and adaptable resource management processes
  - robust and durable resource management decisions.
6. Through this paper, I am seeking your agreement to policy changes that have been identified through the drafting process, and have been included in the attached Bill.
7. Subject to the outcome of discussions with the Government’s support parties and the Iwi Leaders Group, I am also seeking your agreement to introduce this Bill to the House on 18 November 2015.

### Background

8. This Government initiated a programme of reform of the resource management system in 2008, followed by a programme for freshwater reform in 2009. To date, these reforms have resulted in:
  - the Resource Management (Simplifying and Streamlining) Amendment Act 2009, which improved the operational efficiency of Resource Management Act 1991 (RMA) processes

- the Resource Management Amendment Act 2013, which focused on improving the resource consent regime and decision making.
9. The policies included in the current reform package build on the previous resource management reforms by focusing on substantive, long-term, system-wide reform. Many of these proposals have been informed by public consultation through two proposal papers; *Improving our resource management system* and *Freshwater reform 2013 and beyond*, released in February and March 2013.
  10. Cabinet has most recently agreed to the policy proposals contained in this Bill through two papers<sup>1</sup>:
    - In February 2015, *Second Phase of Resource Management Reforms: Batch 1 of Policy Decisions* [CAB Min (15) 5/11 refers]; and
    - In July 2015, *Second Phase of Resource Management Reforms: Batch 2 of Policy Decisions* [CBC Min (15) 2/3 refers].

### **The objectives of the reform package**

11. When it was introduced in 1991, the RMA established one integrated framework for decision-making and put sustainable management at the heart of resource management. The intention was good, but aspects of the current resource management system are not working for us because they are costly, complicated and time-consuming.
12. The Government's Small Business Advisory Group has noted that the RMA is the biggest regulatory frustration for small business trying to grow and create wealth for our country. Business New Zealand has also said that RMA reform is important to maintain New Zealand's economic and employment growth. This concern is backed up by an OECD report published in 2014, where New Zealand ranked bottom when it came to the administrative burden of our environmental policies.
13. Reform is needed to reduce the administrative burden of the RMA while maintaining high environmental standards.
14. The overarching purpose of the Resource Legislation Amendment Bill (the Bill) is to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way. Sitting beneath this overarching purpose are three main objectives:
  - a. better alignment and integration across the resource management system
  - b. proportional and adaptable resource management processes
  - c. robust and durable resource management decisions.

### **Further policy agreements**

15. I have identified several policy issues during the drafting process, outlined below, that require changes to the initial Cabinet policy agreements. I am

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<sup>1</sup> Cabinet had made decisions in 2013 on the resource management reform package through two papers: CAB Min (13) 15/8 and CAB Min (13) 18/8 refer. These earlier decisions were either reconfirmed or rescinded through CAB Min (15) 5/11 and CBC Min (15) 2/3.

seeking your agreement to these changes through this paper. The changes have already been included in the attached draft Bill.

*Removing powers and duties of territorial authorities and regional councils in relation to hazardous substances*

16. I am seeking to reconfirm the 2013 decision to amend the RMA to remove all explicit functions for territorial authorities and regional councils to control hazardous substances [CAB Min (13) 18/8 refers]. This was rescinded in error through CBC Min (15) 2/3.

*Requiring non-notification of residential activities in residential zones*

17. Cabinet agreed to preclude public notification of subdivisions (other than non-complying subdivisions) and inter-boundary rule breaches through CAB Min (15) 5/11 paragraph 84.
18. This agreement was replaced in error through CBC Min (15) 2/3 recommendation 56, which was intended to expand on the previous agreement and, in addition, preclude public notification for controlled, restricted-discretionary, and discretionary residential activities in the residential zone.

*Clarification of notification requirements for simple consents*

19. Cabinet agreed that only neighbours with affected boundaries are eligible to be notified if the activity is an inter-boundary rule breach (CAB Min (15) 5/11, paragraph 80 refers).
20. Subsequently CBC (with power to act) agreed to:
  - restrict notification of all controlled, restricted discretionary and discretionary district land use activities to owners of land adjacent to the application (CBC Min (15) 2/3, paragraph 52.1 refers)
  - preclude public notification (but enable limited notification) for residential activities in residential zones that are controlled, restricted discretionary or discretionary activities (CBC Min (15) 2/3, paragraph 56 refers).
21. The drafting of the notification provisions has exposed an overlap with these decisions and therefore a lack of clarity about what was intended. I wish to clarify that the policy intent from this combined set of proposals was that *only the narrowest set of eligible people* is intended to be notified:
  - for inter-boundary rule breaches or “boundary activities”, only neighbours with affected boundaries would be eligible to be notified
  - for all other district land use activities, including residential activities, the intent is that all neighbours of land adjacent to the application are eligible to be notified.
22. The drafting of the Bill includes a definition of “adjacent” to clarify the spatial extent of neighbours eligible for limited notification.

## *Enabling Alternative Consent Authorities*

### Iwi arrangements

23. CBC (with power to act) agreed that alternative consent authorities must give effect to any relevant arrangements set out in the provisions of an Iwi Participation Arrangement, Treaty settlement, Joint Management Agreement, other Act, or relevant iwi/hapu agreement (CBC Min (15) 2/3 paragraphs 63.9 and 67 refer).
24. However, as alternative consent authorities will not be party to any of these arrangements, it would be inappropriate to require them to give effect to these arrangements, other than those that are set out or provided for in Treaty settlement legislation or where the requirements of such arrangements are incorporated into a District Plan.

### Additional powers

25. I propose that, in addition to the consenting functions already agreed to by Cabinet, alternative consent authorities should have limited additional powers to issue:
  - a. certificates of compliance
  - b. existing use certificates
  - c. consent waivers for minor rule breaches
  - d. consent exemptions for inter-boundary rule breaches.
26. The process of determining whether to issue such certificates, waivers and exemptions can involve the consideration of matters of a similar nature to those that arise when processing applications for resource consent for controlled, restricted discretionary and discretionary activities, which it has previously been agreed that alternative consent authorities will be enabled to process.

### Compliance

27. In order to ensure appropriate accountability, I propose that the Secretary for the Environment be able to:
  - receive complaints about alternative consent authorities and investigate them
  - initiate his or her own investigation without a complaint being received.
28. I also propose that the Secretary for the Environment have additional disciplinary powers (modelled on those in the Building Act 2004) to enable:
  - requirements for remedial action
  - monitoring and reporting on remedial action
  - limitation of functions of the alternative consent authority
  - suspension of accreditation.
29. In order for the Secretary for the Environment to be able to effectively use the proposed powers, they will also be empowered to require information from alternative consent authorities.

30. In addition, I propose that it be an offence under the RMA if a person performs any function of an alternative consent authority without accreditation and that any offenders will be liable to a fine not exceeding \$50,000.

*Creating a National Planning Template*

31. To enable regulations made under the proposed amendments to s360 to transition into the national planning template, CBC (with power to act) has previously agreed that the national planning template will need to be able to:
- make certain activities permitted if, in the Minister for the Environment's opinion, provisions in the national planning template are required to avoid restrictions on land use that are not reasonably required to achieve the purpose of the Act
  - preclude council planning provisions if, in the Minister for the Environment's opinion the provisions would impose land-use restrictions for residential development that are not reasonably necessary to achieve the purpose of the Act [CBC Min (15) 2/3 paragraphs 33 and 36 refer].
32. However the national planning template, as already drafted in the Bill, has these powers expressed in terms that are less restrictive than what would be drafted from these recommendations. These recommendations should therefore be rescinded, as they are unnecessary.

*Creating a new regulation making power to require that stock are excluded from water bodies*

33. CBC (with power to act) has previously agreed to include:
- an enabling power under section 360 of the RMA to exclude stock from water bodies, with the technical detail to be specified in regulations
  - the ability for the regulations to set infringement offences (in addition to normal enforcement provisions).
- [CBC Min (15) 2/3 paragraphs 43 and 44 refer]
34. The policy intent was that the regulation making power would also apply to water bodies, estuaries and coastal lakes and lagoons; however the agreed provision is narrower than that. It is also too restrictive to enable the level of management that may be required by the policy (e.g. to require fencing, setback distances, and riparian management). I am proposing to broaden these policies to ensure they meet the policy intent.

*National Objectives Framework Implementation*

35. CBC (with power to act) previously reconfirmed an earlier Cabinet decision to amend the RMA so that section 69 and Schedule 3 will no longer apply to fresh water on the implementation of the national objectives framework [CBC Min (15) 2/3 paragraphs 148 and 150 refer].
36. Recent Environment Court interpretations of section 69(3) have necessitated clarification of the initial policy intent that Schedule 3, as applied by section 69, will no longer apply to fresh water.

*Increasing flexibility in National Policy Statements and Environmental Standards*

37. Cabinet has previously agreed to a new regulation-making power that would allow the Minister for the Environment to:

- make certain activities permitted to avoid restrictions on land use that are not reasonably required to achieve the purpose of the Act
- address land use restrictions by overriding council planning provisions if, in the Minister's opinion, the provisions would impose land use restrictions for residential development that are not reasonably necessary to achieve the purpose of the Act.

[CAB Min (15) 2/3 paragraphs 31 and 34 refer]

38. I wish to clarify the policy intent is that these regulation-making powers could be used either nationally, or in one or more specified districts or regions.

*Aligning the Conservation Act notified concessions process with notified consents under the RMA*

39. Cabinet has previously agreed to amend the Conservation Act 1987 to require an assessment of whether a concession application is complete to be made within five working days of receipt [CBC Min (15) 2/3 paragraph 88.3 refers].

40. This recommendation, in error, referred to the resource consent timeframes that applied prior to the 2005 RMA amendments. I wish to correct this error and specify that the assessment as to whether the application is compliant must be made within the current RMA provision of ten working days.

*Improving Environment Court process through increased use of alternative dispute resolution processes and judicial conferences*

41. Cabinet has previously agreed to amend the RMA to:

- require the Court to give due consideration to the merits of requiring a conference for consent appeals [CAB Min (13) 15/8 paragraph 72 refers], unless an exemption is granted by an Environment Court Judge
- make mediation compulsory prior to plan appeal hearings [CAB Min (13) 8/8 paragraph 72 refers] and resource consent appeal hearings [CAB Min (13) 15/8 paragraph 35.4 refers], unless an exemption is granted by an Environment Court Judge.

42. As it stands, these recommendations are limited to consent and plan appeals. However, there is merit in expanding these conference and mediation provisions to cover all Environment Court proceedings, empowering the Court to determine the most efficient process to resolve any proceedings before it.

43. Furthermore, these recommendations require the Environment Court to hold mediation prior to every plan appeal or resource consent appeal hearing. However, it would be more practical to empower the Environment Court to be able to compulsorily require parties to attend mediation before or during any hearing (unless an exemption is granted by an Environment Court Judge). This will provide the Court with the flexibility to determine the most efficient process on a case-by-case basis.

### *Improving efficiency for Nationally Significant Proposals*

44. Cabinet has previously agreed to enable the EPA to direct the proceedings of a Board of Inquiry (BOI) considering a nationally significant proposal (NSP) or a marine consent application for notified discretionary activities [CAB Min (15) 5/11 paragraph 131.1 and CBC Min (15) 2/3 paragraph 94.1 refer].
45. The existing Cabinet agreements do not provide enough direction to prevent the EPA from directing matters in a way that would fetter natural justice. The following approach is now proposed:
  - a Board of Inquiry must conduct its inquiry in accordance with any terms of reference set by the Minister
  - the EPA may make decisions regarding administrative and support matters that are incidental to the conduct of an inquiry.
46. As part of aligning notified marine consent applications under the EEZ Act with NSP provisions under the RMA, CBC (with Power to Act) has previously agreed to amend the EEZ Act provisions regarding the EPA determination of whether a marine consent application is complete [CBC Min (15) 2/3 paragraph 104 refers].
47. In addition to the matters already agreed, during the drafting process I have addressed two further matters to ensure the provisions for the completeness test are workable and efficient.
  - I propose that the current 10 working day timeframe for the EPA to determine completeness is amended to 20 working days, which better provides for the EPA's current power to commission an independent review of an application and/or seek further information from the applicant.
  - I also propose to simplify the current process for the EPA requesting further information when determining completeness by amending the provisions regarding the EPA's ability to set timeframes for applicants to provide additional information.

### *Treaty obligations*

48. CBC (with power to act) has previously agreed that "any potential conflicts between any proposal in the reform package and arrangements in a treaty settlement, Joint Management Arrangement, Iwi Participation Arrangement, or other Act or relevant iwi/hapu agreement over natural resources will be addressed through appropriate drafting instructions, to ensure that such arrangements will prevail" [CBC Min (15) 2/3 paragraph 5 refers].
49. I now consider that this previous agreement is not able to be practically implemented given its wide scope. However it is important that it is clear that Treaty legislation should prevail where there is conflict with the RMA.
50. I am seeking your agreement to rescind the previous recommendation and instead agree that where there is inconsistency, Treaty legislation prevails over the RMA.
51. In addition I am seeking your agreement to the following changes to specific policy proposals to give effect to this revised provision:

- *Notification*: I am proposing to broaden the scope of those persons who are eligible to be notified of consent applications to include owners of land subject to other redress mechanisms provided under Treaty settlements, iwi participation arrangements and any existing agreement iwi may have with a council over natural resources (such as wāhi tapu/burial grounds) for which they are treated as an affected party
- *Collaborative Planning Process*: I am proposing to provide that a local authority must ensure that a collaborative planning process is not inconsistent with obligations under any relevant iwi participation legislation or iwi participation arrangement
- *National Planning Template (Waikato Settlement specific provisions)*: I am proposing to clarify that the provisions in the two pieces of Waikato Treaty settlement legislation which specify that the Vision and Strategy shall prevail over any inconsistent provision in a national policy statement or NZCPS will also apply those aspects of the National Planning Template that would or could be contained in an NPS or NZCPS

#### *New Collaborative Planning Process*

52. Cabinet and CBC have previously agreed to create a new collaborative planning process [CAB Min (13) 18/8 paragraphs 42 – 42.44, CAB Min (15) 5/11 paragraphs 57-67, and CBC Min (15) 2/3 paragraphs 132-138 refer]. The drafting process has identified some imbalances and workability issues in the agreements made to date.
53. I am proposing to rescind the previous Cabinet agreement to require the council to establish and notify a process for seeking 'expressions of interest' for appointment of the collaborative group members [CAB Min (13) 18/8 paragraph 42.7 refers]. I consider that there is sufficient direction for councils on how to convene a collaborative group and that this change will make the overall process less onerous and more flexible, and therefore more attractive to councils.

#### *Creating new Iwi Participation Arrangements*

54. CBC (with power to act) has previously agreed that:
  - the scope of Iwi Participation Arrangements (IPAs) includes plan development and resource consenting processes
  - the parties to the arrangements (including applicable Treaty settlement entities) set out what stages of the pre-notification resource consenting process iwi will provide advice to councils, and how that advice will be given to councils
  - a proposed policy statement or plan must be prepared in accordance with any applicable arrangements made, and that the pre-notification resource consenting process may proceed in accordance with any applicable arrangement.

[CBC Min (15) 2/3 paragraphs 126 -128 refer]



55. These recommendations sought, in error, to extend the scope of iwi participation arrangements to include the resource consenting processes. The policy intent is to confine the scope of iwi participation arrangements to plan development processes only.

*Enabling the Environment Court to allow councils to acquire land*

56. Cabinet has previously agreed to make an alternative remedy available to Councils where operative plan provisions have been found to render a person's interest in land incapable of reasonable use [CAB Min (15) 5/11 paragraphs 125-128 refer].
57. This alternative remedy would allow the council to acquire the relevant land if:
- the affected landowner consents; and
  - the provision is found to render that person's interest in the land incapable of reasonable use; and
  - the provision is found to place an unfair and unreasonable burden on that person.
58. I also propose to clarify that that the alternative remedy be available be available for proposed provisions affecting persons who obtained an interest in the land prior to notification of that provision, not just operative provisions. Provisions do not become operative until after appeals have been resolved, and this clarification will enable the Environment Court to allow councils to acquire land if a proposed provision being challenged through an appeal meets the threshold.
59. The Environment Court has established a procedure through case law where people can apply directly to the Court to challenge provisions under section 85. The affected landowner can also make a submission on a proposed plan or plan change, or apply to the local authority for a private plan change to resolve these issues. The Resource Legislation Amendment Bill does not change the procedure to enable persons to apply directly to the Court to challenge a provision. It also updates section 85 to refer to the new streamlined and collaborative planning proposals.

*Clarifying decommissioning under the EEZ Act*

60. CBC (with power to act) has previously agreed to amend the EEZ Act to include a new section specifying that the EPA has the authority to require owners to apply for consent to undertake decommissioning activities [CBC Min (15) 2/3 paragraph 105.1 refers].
61. This requirement is intended to ensure that owners of offshore installations and pipelines have a plan to address decommissioning, and that they engage with the EPA well before they cease production.
62. In line with this policy intent, to implement this recommendation the draft Bill sets out that:
- the EPA may require owners of offshore installations or pipelines to prepare a decommissioning plan, in accordance with requirements prescribed by regulations

- the owner must consult with the EPA on the decommissioning plan within the timeframe prescribed by the regulations.

*Allowing national direction under the EEZ Act*

63. CBC (with power to act) has previously agreed:

- to add a new statutory tool that would allow the Minister for the Environment to prepare national direction to state objectives and policies for matters that are relevant to achieving the purpose of the EEZ Act
- that decision makers must 'take into account' any national direction made under this new statutory tool.
- that after preparing proposed national direction, the Minister for the Environment must undertake consultation using the process set out in section 32 of the EEZ Act
- to amend section 32 to apply to the development of national direction, including requiring the Minister for the Environment to make a copy of any proposed national direction available during consultation
- the matters that the Minister must consider before recommending national direction to the Governor General.

[CBC Min (15) 2/3 paragraphs 110-118 refer]

64. I wish to note that these agreements have been implemented in the following ways in the draft Bill.

- The purpose of EEZ policy statements is to support decision-making on applications for marine consents (rather than for matters that are relevant for achieving the purpose of the EEZ Act). All decisions will be made in the context of the Act. This clarifies the intention that EEZ policy statements would support decision making on marine-consents.
- The EPA 'must have regard to' the national direction tool, when making decisions under the EEZ Act, in order to avoid a situation where national direction conflicted with the matters the decision maker must take into account.
- The Bill has included the proposed amendments to section 32 as standalone provisions, for usability.
- The matters the Minister must consider before recommending national direction to the Governor General differ slightly from those set out in CBC Min (15) 2/3, to ensure these matters align with other parts of the EEZ Act and equivalent provisions under the RMA.

**Next steps**

65. The Resource Legislation Amendment Bill 2015 holds priority 2 on the legislation programme.
66. Discussions are continuing with the Government's support parties and the Iwi Leaders Group. Subject to the outcome of these discussions, I am seeking your

agreement to introduce this Bill into the House on 18 November 2015. I then expect the first reading and referral to the Local Government and Environment Select Committee to be scheduled for 17 November 2015.

67. I intend for this Bill to take the full six months in Select Committee to allow for further rigorous consultation and debate on the reform package. I expect Select Committee would then report back to the House in mid May 2016, which would enable the Bill, if approved, to be enacted by the end of June 2016.

#### *Implementation report back*

68. The system-wide nature of these reforms means that there will be an intense period of implementation activity once the legislation comes into effect and a need for sustained activity in the longer term. The implementation package has a budget of \$8.9 million over four years and will be designed around the principle of ensuring smooth and efficient roll-out of the reforms.
69. In July 2015, CBC (with power to act) invited the Minister for the Environment to report back to Cabinet within two months following the introduction of the Bill on a full implementation plan for these reforms [CBC Min (15) 2/3 paragraph 182 refers].
70. I am now seeing your agreement to report back to Cabinet within four months following the introduction of the Bill with an overview of the implementation package for these reforms. This change will allow the detail provided to be scaled to an appropriate level for both the immediate implementation work, as well as implementation projects that are on a longer timeframe.
71. Cabinet has previously agreed to a post-implementation review of the reform package [CAB Min (15) 5/11 paragraph 162 refers], which was intended to address early issues identified within the Regulatory Impact Statement. The Regulatory Impact Statements have been assessed as partially meeting requirements, therefore this review is no longer required. I am therefore seeking Cabinet's agreement to rescind this previous agreement.

#### *Commencement*

72. As directed by Cabinet, I have directed PCO to draft the commencement arrangements for the amendments to the RMA using the following Cabinet-agreed principles [CBC Min (15) 2/3 refers]:
- commencement provisions should be batched to create greater certainty and reduce costs of implementation
  - where notification has occurred at the time of commencement of the new provisions, the old provisions shall apply to that process (allowing those applications to continue under the pre-reform framework)
  - if notification has not yet occurred at the time of commencement of the new provisions, the new provisions will apply to that process.
73. The majority of the reforms will come into effect immediately. This includes the provisions relating to the National Planning Template, which commence immediately following Royal assent. This will mean that the timeframe already agreed by Cabinet (for the first version of the National Planning Template to be

gazetted within two years of enactment of the Bill [Cab Min (15) 5/11 refers]) will start from the day after Royal assent.

74. The exceptions are outlined below.

75. The following reforms which will commence six months from the day after the date of Royal assent, to enable processes to be established, such as the development of guidance, changes to internal systems within councils, and building of capacity and capability within councils to deal with these changes:

- Consent exemption for minor rule breaches
- Consent exemption for boundary infringements with neighbours' approval
- Notification changes:
- Improving hearing efficiency and reducing appeal risk:
- Subdivision consent changes
- Fixed budget and remuneration for hearing panels
- Require councils to request approval from the Minister to exceed the two-year time to release decisions on a proposed plan
- Alignment of Conservation Act notified concessions process with notified resource consents under the RMA.

76. The amendments relating to alternative consent authorities will commence by order in council or 5 years after the date of Royal Assent, whichever is the sooner. This is to allow sufficient time to develop regulations that will enable alternative consent authorities to integrate smoothly with the existing consenting framework.

77. In addition to the above, a small number of policy proposals have already had Cabinet agreement to their commencement provisions:

*Public Works Act*

78. Agreement on the commencement provisions for the legislative changes to the Public Works Act (PWA) were agreed through CBC Min (15) 2/3. These provisions were:

- The start date for the six-month early agreement period for \$10,000 criteria for solatium payments includes dates prior to the date on which the amendment enters into force
- The amendments do not apply to Environment Court hearings that began, and land acquisitions with agreements entered into or proclamations made, before the amendments came into force.

*Financial Contributions*

79. Cabinet has previously agreed that councils must remove financial contribution policies from existing council plans within five years from Royal Assent [CBC Min (15) 2/3 refers].

*Regulations*

80. A number of regulations are also required to be created or amended to implement the reform package, as discussed briefly in paragraphs 108-110 below.

### Consultation

81. The following departments have been consulted on previous Cabinet Papers and previous iterations of the reforms, and have been included in informal discussions on the development of the revised reform package: the Treasury, Ministry of Business, Innovation and Employment (MBIE), Department of Conservation (DOC), Department of Internal Affairs, Te Puni Kōkiri (TPK), Ministry of Transport, the New Zealand Transport Agency (NZTA); Ministry of Justice, the Ministry for Primary Industries, Land Information New Zealand, Ministry for Culture and Heritage, Heritage New Zealand, Ministry of Education, Ministry of Health, the Environmental Protection Authority, Ministry of Civil Defence & Emergency Management, and Maritime New Zealand. The Department of the Prime Minister and Cabinet has been informed.
82. Departments have had a limited amount of time to consider this Cabinet paper and have seen previous versions of the attached drafting for comment. These versions were very similar to the most recent drafting.

### Agency comments

83. Agencies have raised a number of concerns about the reform package through previous Cabinet papers. The main comments that still apply to the package contained in the draft Bill are summarised in the table below, for your information.

Theme/proposal	Nature of comments	Agency
New regulation making powers to provide national direction through regulation	<ul style="list-style-type: none"> <li>Concerns at the extent of the Minister's powers and non-compliance with LAC guidelines</li> </ul>	Treasury, TPK, MoJ
Improve the management of risks from natural hazards under the RMA	<ul style="list-style-type: none"> <li>Impact of proposal unclear.</li> <li>May impact on ability of Councils to protect biodiversity on private land and manage natural hazards</li> </ul>	DOC
Strengthen the requirements on councils to improve housing and provide for development capacity	<ul style="list-style-type: none"> <li>Natural justice and fairness concerns</li> </ul>	MoJ
New duties in Part 3 to minimise restrictions on land	NZTA, MoE, DOC, MoJ	
<ul style="list-style-type: none"> <li>Agency concerns that they may no longer be considered 'affected parties' and be precluded from contributing info on adverse effects.</li> <li>Natural justice and fairness concerns</li> </ul>	<ul style="list-style-type: none"> <li>Concerns that affected iwi/hapū will not be notified in some circumstances</li> </ul>	TPK
	<ul style="list-style-type: none"> <li>Iwi/Maori ability to raise legitimate issues will be affected</li> </ul>	TPK, MoJ

Theme/proposal	Nature of comments	Agency
Not many gains from removing these and may have unintended consequences No appeals to Environment Court for: boundary infringements and subdivisions (unless non-complying activities); and residential activities in a residential zone	<ul style="list-style-type: none"> <li>Concern on lack of specificity of policy proposal leading to a lot of uncertainty on how enabling provision will be used</li> </ul>	Treasury, DIA, MoE
	<ul style="list-style-type: none"> <li>May create issues for existing arrangements that iwi/hapu have developed with councils under the RMA</li> </ul>	TPK
	<ul style="list-style-type: none"> <li>Support, but recommend additional consultation with iwi in relation to Reserves Act changes</li> </ul>	DOC
Simplify charging regimes for new developments by removing financial contributions	<ul style="list-style-type: none"> <li>Will remove transparency and certainty for developers</li> </ul>	MBIE, DIA, Treasury
Consultation	<ul style="list-style-type: none"> <li>Concerns about lack of consultation on revised package, extent of changes and possible unintended consequences</li> </ul>	Treasury, TPK, MoJ, MoE

84. In addition, the following comments have been provided by agencies in relation to this Cabinet paper.

*Ministry of Justice: Office of Treaty Settlements and the Post Settlement Commitments Unit*

85. The Office of Treaty Settlements and the Post Settlement Commitments Unit of the Ministry of Justice support the inclusion in the Bill of sections to protect the integrity of iwi participation legislation.

86. We note some proposals in the Bill (including the National Planning Template and the power of the Minister for the Environment to make regulations to permit or prohibit certain rules) increase the influence central government has over the resource management process. This reduces decision-making power at the regional and territorial level and therefore could be perceived by iwi as limiting the level of influence they have over particular natural resources achieved through Treaty settlements. This risk needs to be carefully considered and managed (for example, by seeking the views of settled iwi) before national instruments are applied.

*Te Puni Kōkiri*

87. Te Puni Kōkiri (TPK) supports elements of the proposed reform package, particularly the creation of iwi participation arrangements to more clearly provide for iwi/Māori involvement in the planning process, and the provisions for improving iwi/Māori involvement in the new collaborative planning process. TPK note that these provisions have been developed in consultation with the Freshwater Iwi Leaders Group (and their advisers), and they represent a considerable amount of work to try and improve Māori participation in planning processes. However, TPK has some broad concerns about the collective impact of the proposals overall which may cumulatively limit public participation and

local decision-making in the interests of streamlining resource management processes. TPK also considers that there are risks that iwi/Māori may be unsupportive of some of the proposals, and that this may have an adverse impact on Crown-Māori relationships.

Iwi participation arrangements

88. TPK note the recommendations to limit the scope of iwi participation arrangements to planning processes only. TPK is disappointed that resource consenting processes will no longer be within the scope of iwi participation arrangements. TPK supported the proposal to extend the scope of iwi participation arrangements to include resource consenting processes (as outlined in CBC Min (15) 2/3).
89. TPK note that many councils already have arrangements in place that provide for iwi/Māori involvement in resource consenting processes, some through Treaty settlements and some voluntary, and that having resource consent processes included within the scope of an iwi participation arrangement would provide a strong incentive for other councils to follow suit.

Implementation report back

90. TPK also note the proposals in the paper around an implementation package to support the reforms. TPK are supportive of the package and have previously highlighted concerns with ensuring that the reforms are reinforced by an effective implementation support package. TPK are keen to ensure that this implementation support package includes provision for building the capacity and capability of both iwi/Māori and councils to effectively implement the reforms, particularly those aspects relating to iwi/Māori participation.

*Ministry of Transport*

92. The changes to notification proposed in the Bill (Clause 130, section 95DA(4)(b) refers) will ensure providers of infrastructure associated with providing services to the land are eligible to be notified in relation to future subdivisions. For land use applications, only the owner of infrastructure assets that pass through, over, or under the allotment on which the activity is to occur is eligible to be notified.
93. The Ministry of Transport is therefore concerned that transport infrastructure providers would not be notified of applications relating to activities that potentially have significant adverse effects on road, rail, port or airport operations. Transport would prefer that the proposed notification of both subdivision and land use activities be amended to “affected infrastructure providers”.

*Heritage New Zealand*

94. The recognition in the RMA of the heritage value of places entered on the New Zealand Heritage List/ Rārangī Kōrero means that Heritage New Zealand has the opportunity to be considered an affected party for proposals that may affect Listed heritage places, including places of significance to Māori – e.g. wāhi tapu, wāhi tapu areas and wāhi tūpuna. Not only does this ensure that historic heritage is taken into account in decisions on resource consents, it also provides the opportunity for Heritage New Zealand to provide heritage advice to councils and:
- owners of heritage properties on heritage conservation and adaptive reuse
  - owners of adjacent properties on activities that may affect historic heritage.
95. The advice of Heritage New Zealand (provided free of charge) often saves consent applicants time and money and results in a better outcome for all parties.
96. The proposals that limit notification for certain activities may mean that applicants for resource consents that will affect historic heritage will be less likely to contact Heritage New Zealand for advice.

#### **Financial implications**

97. Initially central and local government will incur costs associated with the development and implementation of the reform package included in the Bill. However, over time, I expect the cost saving elements of the reforms will lead to net savings for local government and users of the resource management system. For central government, discretionary costs associated with the development of national direction will be dependent on the level of ambition by the Government to create national direction.
98. The Ministry for the Environment has already undertaken significant reprioritisation in anticipation of the Resource Management Reform package and, as such, can deliver some aspects within existing baselines. In order to deliver a comprehensive and effective package of reforms with the level of ambition desired for national direction and template proposals, I have been provided with additional funding through the 2015 Budget process over four years (2015/16 – 2018/19).

#### **Compliance**

##### ***Principles of the Treaty of Waitangi***

99. The Resource Legislation Amendment Bill complies with the Principles of the Treaty of Waitangi. It contains specific provisions that clarify that, where the RMA conflicts with Treaty legislation, the Treaty legislation prevails.

##### ***Disclosure statement requirements***

100. An agency disclosure statement has been prepared and is attached to the paper.



### ***Principles and guidelines set out in the Privacy Act 1993***

101. This Bill does not raise any privacy concerns, as set out in the Privacy Act 1993.

### ***Legislation Advisory Committee Guidelines***

102. I consider that the Resource Legislation Amendment Bill 2015 does not depart from the LAC guidelines, with the following exceptions, which I do not consider to be significant and are justified:

- Public consultation has not been undertaken on all proposals
- Some narrowing or removal of appeal rights and notification provisions, which may limit some parties ability to appeal decisions
- The creation of alternative consent authorities, whose powers will overlap with existing consent authorities.

103. A number of these proposals were publicly consulted on in 2013. The remainder are clearly within the purposes of the reforms and have been well signalled.

104. Appeal rights have been removed in the new streamlined planning process, in the interest of ensuring the planning process can be responsive to urgent issues. However checks and balances have been provided in the form of a Minister's decision on the council's proposed planning instrument, statutory tests and entry criteria in the process and judicial review is still available. Appeal rights have also been restricted as part of the collaborative planning process, however the collaborative nature of this process means that this is also justified.

105. Appeal rights have been narrowed in relation to resource consents. I consider this narrowing to be justified, given the benefits this will produce in relation to the time and cost of affected consents and the scope of the proposals.

106. Although the functions of alternative consent authorities overlap with territorial authorities, I consider it desirable to enable competition to encourage more effective functioning of councils and faster, more efficient processing of resource consents.

### **Human rights**

107. The Ministry of Justice has assessed the Bill and concluded that it appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

### **Gender implications**

108. There are no gender implications of this Cabinet paper.

### **Disability perspective**

109. There are no implications for people with disabilities resulting from this paper.

### **Legislative implications**

110. The Bill is an omnibus bill, which seeks to amend six Acts:

- the Resource Management Act 1991

- the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
  - the Environmental Protection Authority Act 2011
  - the Conservation Act 1987
  - the Reserves Act 1977
  - the Public Works Act 1981.
111. Consequential changes to the Local Government Act 2002 are also required as a result of the repeal of financial contributions.
112. The amendments will be binding on the Crown, consistent with the primary legislation.

*Associated regulations and other instruments*

113. The Bill creates new regulation making powers (to require councils to fix fees, to provide for enhanced monitoring of councils, to provide for alternative consent authorities, to exclude stock from water bodies, to permit certain activities and strike down certain rules) and modifies existing powers (to make national environmental standards).
114. It also creates new disallowable instruments (the national planning template under the RMA and EEZ policy statements under the EEZ Act) and modifies existing powers (to make national policy statements).
115. Explanations of these powers are included in the explanatory note. The purpose of these changes is to provide for matters that are detailed, require some flexibility of amendment and are appropriately dealt with by the executive.

**Regulatory impact analysis**

116. The Regulatory Impact Analysis (RIA) requirements apply to the proposal in this paper. Three Regulatory Impact Statements (RIS) have been prepared by the Ministry for the Environment and are attached.
117. The Regulatory Impact Analysis Team (RIAT) in the Treasury has reviewed:
- the RIS entitled “*Resource Legislation Amendment Bill 2015*”, presenting the Ministry for the Environment’s analysis to date of a package of reforms proposed by the Minister for the Environment.
  - the RIS entitled “*Resource Legislation Amendment Bill 2015: EEZ Amendments*” and
  - the RIS entitled “*Alignment of the Decision-Making Process for Nationally Significant Proposals and Notified Discretionary Marine Consents*”.
118. RIAT considers that the information and analysis summarised in the RIS “*Resource Legislation Amendment Bill 2015*” **partially meets** the quality assurance criteria.
119. The RIS is well structured to show how the resource management system fits together and how proposed actions contribute towards addressing clearly

defined problems. Individual proposals are for the most part clearly set out, their risks identified and their rationale convincingly explained. The concerns of other Government departments and stakeholders, where these are known, are clearly set out.

120. As the RIS makes clear, there has been no consultation on several actions, including some that are identified as being among the most significant. This means there is little evidence as to how stakeholders are likely to respond to new incentives and opportunities provided by the proposed reforms. It is therefore unclear how far the reform package is likely to deliver its objective of robust and durable resource management decisions.
121. The new National Monitoring System should help the Ministry to monitor the effectiveness of the new system in practice. On top of that, it will be important also to identify and address additional data requirements in order to be better placed in future to understand and address further reform needs.
122. RIAT considers that the information and analysis summarised in the RIS "*Resource Legislation Amendment Bill 2015: EEZ Amendments*" **partially meets** the quality assurance criteria.
123. The RIS sets out individual problems with the EEZ regulatory regime, making it clear that the problems relate to uncertainty as to how the regime will operate, creating potential risks for the Crown and stakeholders.
124. A range of possible options has been assessed in each case, and the trade-offs between them are illustrated by the options analysis. However, because costs and benefits of each option are not systematically weighed against the objectives, it is difficult to be certain that the most suitable option has been preferred in each case.
125. Possibly because the regime is relatively new, the exact operation of the status quo is unclear, and there is only anecdotal or hypothetical evidence to indicate the scale or urgency of the problems. Furthermore there has been limited stakeholder consultation. This makes it unconvincing that all the potential impacts have been identified, underlining the importance of the evaluation programme described at the end of the RIS.
126. RIAT considers that the information and analysis summarised in the RIS "*Alignment of the Decision-Making Processes for Nationally Significant Proposals and Notified Discretionary Marine Consents*" **partially meets** the quality assurance criteria.
127. RIAT notes that the proposed decision-making model is not supported by the analysis. Options are consistently assessed under well-established objectives, but the costs and benefits are not explained consistently across the proposals. This is particularly the case for the proposed changes to appeal rights.
128. The absence of empirical evidence (again, possibly because of the newness of the EEZ regime) and the limited consultation means that it is difficult to assess how the proposals are likely to perform in practice. The monitoring, evaluation and review process set out at the end of the RIS will be important in this regard.

## Publicity

129. The Resource Legislation Reform Bill will be publicly released once it has been introduced into the House. I intend to make a public announcement at this time.
130. I expect there will be significant interest from the media and the public in the reform programme. The Ministry is developing a high-level brochure outlining the purpose of the reforms and its key proposals to support my announcement of the reforms. For those stakeholders that want more detailed information, they will be able to refer to the detail in the General Policy Statement and Clause-By-Clause Analysis within the Bill, as well as the three RISs, which will be available online.
131. To further support the Bill process, I intend to proactively release this paper, as well as the of the following two Cabinet papers, at an appropriate time following introduction:
- *Second Phase of Resource Management Reforms: Batch 1 of Policy Decisions* [CAB Min (15) 5/11 refers]
  - *Second Phase of Resource Management Reforms: Batch 2 of Policy Decisions* [CBC Min (15) 2/3 refers].

## Recommendations

132. The Minister for the Environment recommends that the Committee:
1. Note that the Resource Legislation Amendment Bill 2015 holds priority 2 on the legislation programme
  2. Note that the Resource Legislation Amendment Bill 2015 seeks to achieve:
    - 1.1. better alignment and integration of the resource management system
    - 1.2. proportional and adaptable resource management processes
    - 1.3. robust and durable resource management decisions
  3. Agree that, subject to discussions with the Government's support parties and the Iwi Leaders Group, the Bill be introduced on 18 November 2015
  4. Agree that the government propose that the Bill be:
    - 4.1. referred to the Local Government and Environment committee for consideration
    - 4.2. enacted by the end of June 2016
- Further policy agreements*
5. Note that a number of policy issues have arisen through drafting that require further Cabinet agreement and that these issues have been incorporated in the attached Bill
- Hazardous Substances
6. Note that Cabinet Business Committee (with Power to Act) has previously:

- 6.1. noted that on 4 June 2013, Cabinet agreed to amend the RMA to remove all explicit functions for territorial authorities and regional councils to control hazardous substances
- 6.2. rescinded the above decision  
[CBC Min (15) 2/3 paragraphs 39 and 40]
7. Agree to remove all explicit functions for territorial authorities and regional councils to control hazardous substances, and to remove the explicit ability for regional councils to prepare regional plans on hazardous substances  
Non-notification of residential activities in residential zone
8. Note that Cabinet Business Committee (with Power to Act) has previously agreed to amend the RMA to require that an application of resource consent must not be publicly notified (but may be limited notified) where the activity is:
  - 8.1. a residential activity; and
  - 8.2. is in a residential zone; and
  - 8.3. the application is a controlled, restricted discretionary or a discretionary activity[CBC Min (15) 2/3 paragraph 56]
9. Note that the above paragraph replaced recommendation 84 of CAB Min (15) 5/11
10. Agree to reconfirm paragraph 84 of CAB Min (15) 5/11, in addition to paragraph 56 of CBC Min (15) 2/3, regarding the preclusion of public notification in certain circumstances

Clarification of notification requirements for simple consents

11. Note that only neighbours with affected boundaries will be eligible to be notified for resource consents for activities that only affect the shared boundary
12. Note that for all other district land use activities, including residential activities, all neighbours of land adjacent to the application are eligible to be notified

Alternative Consent Authorities

13. Note that Cabinet Business Committee (with Power to Act) has previously agreed that the RMA be amended to require all alternative consent authorities (whether a Crown entity, departmental agency, private company or local authority) to give effect to any relevant arrangements set out in the provisions of an Iwi Participation Arrangement, Treaty settlement, Joint Management Agreement, other Act, or relevant iwi/hapu agreement [CBC Min (15) 2/3 paragraphs 63.9 and 67 refer]
14. Note that as alternative consent authorities will not be party to any of these arrangements, it would be inappropriate to require them to give effect to these arrangements, other than those that are set out or provided for in Treaty settlement legislation or where the requirements of such arrangements are incorporated into a District Plan

15. Agree that alternative consent authorities be required to give effect to Treaty settlement legislation
16. Agree that in addition to processing specified resource consents, alternative consent authorities will have limited powers to issue:
  - 16.1. Certificates of compliance
  - 16.2. Existing use certificates
  - 16.3. Consent waivers for minor rule breaches; and
  - 16.4. Consent exemptions for inter-boundary rule breaches
17. Agree to enable the Secretary for the Environment to receive complaints about alternative consent authorities or initiate his or her own investigation without a complaint being received and investigate them.
18. Agree that, in addition to the power of revocation, the Secretary for the Environment may exercise disciplinary powers to:
  - 18.1. require remedial action
  - 18.2. require monitoring and reporting on remedial action
  - 18.3. limit the functions of an alternative consent authority
  - 18.4. suspend the accreditation of an alternative consent authority
19. Agree that the Secretary for the Environment have a right to access information and also to require alternative consent authorities to provide information or answer questions
20. Agree that it be an offence to perform the functions of an alternative consent authority without accreditation for that function
21. Agree that liability on conviction for the above offence will be a fine not exceeding \$50,000

National Planning Template

22. Note Cabinet Business Committee (with Power to Act) has previously agreed that the national planning template will be able to:
  - 22.1. make certain activities permitted if, in the Minister for the Environment's opinion, provisions in the national planning template are required to avoid restrictions on land use that are not reasonably required to achieve the purpose of the Act
  - 22.2. preclude council planning provisions if, in the Minister for the Environment's opinion, the provisions would impose land-use restrictions for residential development that are not reasonably necessary to achieve the purpose of the Act

[CBC Min (15) 2/3 paragraph 33 refers]
23. Agree to rescind the above recommendation
 

Create new regulation making power to require that stock are excluded from water bodies
24. Note that Cabinet Business Committee (with Power to Act) has previously agreed to:

- 24.1. include an enabling power under section 360 of the RMA to exclude stock from water bodies, with the technical detail to be specified in regulations [CBC Min (15) 2/3 paragraph 43]
- 24.2. include the ability for the regulations to set infringement offences (in addition to normal enforcement provisions)
- 25. Agree to clarify that CBC Min (15) 2/3 paragraph 43 applies to fresh water and also to “water bodies, estuaries and coastal lakes and lagoons”
- 26. Agree that the regulation may prescribe technical requirements for the purposes of the regulations (for example, fencing set back and riparian planting requirements)

#### National Objectives Framework Implementation

- 27. Note that Cabinet Business Committee (with Power to Act) has previously agreed to amend the RMA so that section 69 and Schedule 3 will no longer apply to fresh water on the implementation of the national objectives framework [CBC Min (15) 2/3 paragraph 150 refers]
- 28. Agree to amend CBC Min (15) 2/3 paragraph 148 to clarify that Schedule 3, as applied by section 69, will no longer apply to fresh water

#### Increasing Flexibility in NPS and NES

- 29. Note that Cabinet has previously agreed to a new regulation making power that would allow the Minister for the Environment to:
  - 29.1. make certain activities permitted to avoid restrictions on land use that are not reasonably required to achieve the purpose of the Act [CAB Min (15) 2/3 paragraph 31 refers]
  - 29.2. address land-use restrictions by overriding council planning provisions to if, in the Minister’s opinion, the provisions would impose land-use restrictions for residential development that are not reasonably necessary to achieve the purpose of the Act [CAB Min (15) 2/3 paragraph 34 refers]
- 30. Agree to amend the above recommendations to clarify that these regulation making powers can be applied to a specific council area

#### Align the Conservation Act notified concessions process with notified consents under the RMA

- 31. Note that Cabinet Business Committee (with Power to Act) has previously agreed to amend the Conservation Act 1987 by requiring an assessment of whether a concession application is complete to be made within five working days of receipt [CBC Min (15) 2/3 paragraph 88.3 refers]
- 32. Agree to rescind the above decision
- 33. Agree to require that an assessment of whether a concession application is compliant is to be made within ten working days of receipt

#### Environment Court process improvements: Use of dispute resolution strengthened and consideration of judicial conference required to narrow issues in contention

34. Note that Cabinet agreed to the following changes to empower faster resolution of Environment Court hearings on consent appeals:
- 34.1. ensure that the Court gives due consideration to the merits of requiring a conference for all appeals lodged
  - 34.2. require that a conference required by the Court be attended by a person who has the authority to make a decision, whether that authority is provided by delegation or otherwise
  - 34.3. enable the Environment Court to require alternative dispute resolution in the first instance, with parties being required to seek leave of the Court to not participate
  - 34.4. require that alternative dispute resolution be attended by a person who has the authority to make a decision, whether that authority is provided by delegation or otherwise  
[CAB Min (13) 15/8 paragraphs 35.2-35.5; reconfirmed in CAB Min (15) 5/11 paragraph 118.2]
35. Note that Cabinet has previously agreed to make mediation compulsory prior to plan appeal hearings unless an exception is granted by an Environment Court Judge [CAB Min (13) 18/8 paragraph 72; reconfirmed by CBC Min (15) 2/3 paragraph 158]
36. Note that Cabinet has previously agreed to require that parties participating in pre-hearing mediation on plan appeals must have the authority or delegated authority to agree to a settlement [CAB Min (13) 18/8 paragraph 73; reconfirmed by CBC Min (15) 2/3 paragraph 158]
37. Agree to rescind the above three decisions
38. Agree to the following changes to empower faster resolution of Environment Court proceedings:
- 38.1. ensure that the Court gives due consideration to the merits of requiring a conference for all proceedings
  - 38.2. require that a conference required by the Court be attended by a person who has the authority to make a decision, whether that authority is provided by delegation or otherwise
  - 38.3. enable the Environment Court to make alternative dispute resolution compulsory before or at any time during the course of any proceedings unless an exception is granted by an Environment Court Judge
  - 38.4. require that alternative dispute resolution be attended by a person who has the authority to make a decision, whether that authority is provided by delegation or otherwise
- Nationally Significant Proposals efficiency reforms
39. Note that the Cabinet has previously agreed to enable the EPA to direct the proceedings of the Board of Inquiry deciding on a nationally significant proposal (CAB Min (15) 5/11 paragraph 131.1)



40. Note that the Cabinet Business Committee (with Power to Act) has also agreed to mirror this provision as it applies to the EEZ [CBC Min (15) 2/3 paragraph 94.1]
41. Agree to rescind the above decisions
42. Agree that a Board of Inquiry must conduct its inquiry in accordance with any terms of reference set by the Minister
43. Agree that the EPA must make decisions regarding the administrative and support arrangements that are incidental to the conduct of the Board of Inquiry
44. Note that the Cabinet Business Committee (with Power to Act) has previously agreed to amend the EEZ Act provisions regarding the EPA determination of whether a marine consent application is complete [CBC Min (15) 2/3 paragraph 104].
45. Note that in addition to the matters already agreed, I have addressed two further matters to ensure the provisions for determining completeness under the EEZ Act are workable and efficient
46. Agree to amend the EEZ Act so that the current 10 working day timeframe for the EPA to determine completeness of applications is amended to 20 working days
47. Agree to amend the EEZ Act to simplify the current process for the EPA requesting further information when determining completeness

Treaty obligations

48. Note that CBC (with power to act) has previously agreed that any potential conflicts between any proposal in the reform package and arrangements in a treaty settlement, Joint Management Arrangement, Iwi Participation Arrangement, or other Act or relevant iwi/hapu agreement over natural resources will be addressed through appropriate drafting instructions, to ensure that such arrangements will prevail [CBC Min (15) 2/3 paragraph 5 refers]
49. Note that this previous agreement is not able to be practically implemented given its wide scope
50. Agree to rescind the above recommendation
51. Agree that where there is inconsistency, Treaty legislation prevails over the RMA
52. Agree that the scope of those persons who are eligible to be notified of consent applications be broadened to include owners of land subject to other redress mechanisms provided under Treaty settlements, iwi participation arrangements and any existing agreement iwi may have with a council over natural resources (such as wāhi tapu/burial grounds) for which they are treated as an affected party
53. Agree that a local authority must ensure that a collaborative planning process is not inconsistent with obligations under any relevant iwi participation legislation or iwi participation arrangement

54. Agree to clarify that the provisions in the two pieces of Waikato Treaty settlement legislation which specify that the Vision and Strategy shall prevail over any inconsistent provision in a national policy statement (NPS) or New Zealand Coastal Policy Statement (NZCPS) will also apply those aspects of the National Planning Template that would or could be contained in an NPS or NZCPS

### New Collaborative Planning Process

55. Note that Cabinet has previously agreed to:

- 55.1. require the council to establish and notify a process for seeking 'expressions of interest' for appointment of the collaborative group members [CAB Min (13) 18/8 paragraph 42.7 refers]

56. Agree to rescind the above decision

### Iwi Participation Arrangements

57. Note that Cabinet previously agreed to require councils to invite iwi authorities, consistent with the existing terminology in the RMA, to enter into an arrangement that specifies the role of tangata whenua in plan development and how advice will be provided to council pre-notification [CAB Min (15) 5/11, paragraph 28-33]

58. Note that the Cabinet Business Committee (with Power to Act) rescinded the above recommendation and agreed to expand the scope of iwi participation arrangements to include plan development and resource consenting processes [CBC Min (15) 2/3 paragraph 126 -128]

59. Agree to reconfirm CAB Min (15) 5/11 paragraphs 28-33

60. Agree to rescind CBC Min (15) 2/3 paragraphs 126 -128

### Ability for the Environment Court to allow councils to acquire land

61. Note that Cabinet has previously agreed:

61.1. that in cases where a plan provision renders land or part of land incapable of reasonable use, and places an unfair and unreasonable burden on the person with an interest in that land or part of it, the Environment Court may direct the council, as the council considers appropriate, to either:

61.1.1. modify, delete or replace the provision in accordance with its direction (as is currently provided); or

61.1.2. acquire all or part of the estate or interest in the land by agreement under the Public Works Act 1981 [CAB Min (15) 5/11 paragraph 125]

61.2. that this new power to acquire all or part of the estate or an interest in land will be available only for operative provisions of plans or proposed plans, but will not be available for regional coastal plans [CAB Min (15) 5/11 paragraph 126]

61.3. to prevent the Court from directing councils to acquire all or part of the estate or an interest in land where the landowners purchased a property after the plan restriction in question was first notified or otherwise included in the relevant plan in substantially the same form as it ultimately took when it became operative [CAB Min (15) 5/11 paragraph 127]

61.4. that compensation will be payable for all or part of an estate or interest in land ordered to be taken and will be assessed under the

Public Works Act 1991 as if the restrictions did not apply [CAB Min (15) 5/11 paragraph 128]

62. Agree that this new power to acquire all or part of the estate or an interest in land will be available for proposed or operative provisions of proposed plans or plans, but will not be available for regional coastal plans
63. Agree to prevent the Court from allowing councils to acquire all or part of the estate or an interest in land where the landowners purchased a property after the plan restriction in question was first notified or otherwise included in the relevant plan and the plan restriction remained in substantially the same form
64. Agree to rescind [CAB Min (15) 5/11 paragraph 126]
65. Agree to rescind [CAB Min (15) 5/11 paragraph 127]

EEZ Act: Decommissioning

66. Note that the Cabinet Business Committee (with Power to Act) has previously agreed to amend the EEZ Act to include a new section specifying that the EPA has the authority to require operators to apply for consent to undertake decommissioning activities [CBC Min (15) 2/3 paragraph 105.1]
67. Note that the Bill sets out that the EPA may require owners of offshore installations or pipelines to prepare a decommissioning plan, in accordance with requirements prescribed by regulations
68. Note that the Bill sets out that the owner must consult with the EPA on the decommissioning plan within the timeframe prescribed by the regulations

EEZ Act: National direction

69. Note that the Cabinet Business Committee (with Power to Act) has previously agreed:
  - 69.1. to amend the EEZ Act to add a new statutory tool that would allow the Minister for the Environment to prepare national direction to state objectives and policies for matters that are relevant to achieving the purpose of the EEZ Act [CBC Min (15) 2/3 paragraph 110]
  - 69.2. that decision makers must 'take into account' any national direction made under this new statutory tool [CBC Min (15) 2/3 paragraph 113]
  - 69.3. that after preparing proposed national direction, the Minister for the Environment must undertake consultation using the process set out in section 32 of the EEZ Act [CBC Min (15) 2/3 paragraph 116]
  - 69.4. to amend section 32 to apply to the development of national direction, including requiring the Minister for the Environment to make a copy of any proposed national direction available during consultation [CBC Min (15) 2/3 paragraph 117]
  - 69.5. the matters that the Minister must consider before recommending national direction to the Governor General [CBC Min (15) 2/3 paragraph 118]

70. Note that to implement CBC Min (15) 2/3 paragraph 110, the Bill sets out that the purpose of EEZ policy statements is to support decision-making on applications for marine consents
71. Agree that to implement CBC Min (15) 2/3 paragraph 113, the EPA 'must have regard to' the national direction tool, when making decisions under the EEZ Act
72. Note that to implement CBC Min (15) 2/3 paragraphs 116 and 117, the Bill has included the proposed amendments as standalone provisions, rather than amendments or references to section 32 of the EEZ Act
73. Note that the matters the Minister must consider before recommending national direction to the Governor General set out in CBC Min (15) 2/3 paragraph 118 differ slightly to those included in the Bill to ensure these matters align with the matters in CBC Min (15) 2/3 paragraph 115 and equivalent provisions under the RMA

#### Next Steps

74. Agree that the Minister for the Environment introduce this Bill into the House on 18 November 2015

#### Implementation

75. Note that CBC (with power to act) has previously invited the Minister for the Environment to report back to Cabinet within two months following the introduction of the Bill on a full implementation plan for these reforms
76. Agree to rescind the above recommendation
77. Invite the Minister for the Environment to report back to Cabinet within four months of introduction with an overview of the implementation package for these reforms
78. Note that Cabinet has previously agreed to a post-implementation review of the reform package [CAB Min (15) 5/11 paragraph 162 refers] to address issues within the Regulatory Impact Statement, which had been assessed as not meeting requirements
79. Agree to rescind the above recommendation, as the Regulatory Impact Statements have now been assessed as partially meeting requirements

#### Commencement

80. Note that I have directed PCO to draft the commencement arrangements for the amendments to the RMA using the following Cabinet-agreed principles [CBC Min (15) 2/3 refers]:
  - 80.1. commencement provisions should be batched to create greater certainty and reduce costs of implementation
  - 80.2. where an application has been notified at the time of commencement of the new provisions, the old provisions shall apply (allowing those applications to continue under the pre-reform framework)

80.3. If an application has not yet been notified at the time of commencement of the new provisions, the new provisions will apply.

81. Note that the majority of the reforms will come into effect immediately

82. Note that the following reforms which will commence six months from the day after the date of Royal assent, to enable processes to be established, such as the development of guidance, changes to internal systems within councils, and building of capacity and capability within councils to deal with these changes:

82.1. Consent exemption for minor rule breaches

82.2. Consent exemption for boundary infringements with neighbours' approval

82.3. Notification changes:

82.4. Improving hearing efficiency and reducing appeal risk:

82.5. Subdivision consent changes

82.6. Fixed budget and remuneration for hearing panels

82.7. Require councils to request approval from the Minister to exceed the two-year time to release decisions on a proposed plan

82.8. Alignment of Conservation Act notified concessions process with notified resource consents under the RMA

83. Note that the amendments relating to alternative consent authorities will commence by order in council or 5 years after the date of Royal Assent, whichever is sooner.

84. Note that the provisions relating to the National Planning Template commence immediately following Royal assent, which will mean that the timeframe already agreed by Cabinet (for the first version of the National Planning Template to be gazetted within two years of enactment of the Bill [Cab Min (15) 5/11 refers]) will start from the day after Royal assent

85. Note that Cabinet has already agreed to the commencement provisions for changes to the Public Works Act amendments and the removal of financial contributions [CBC Min (15) 2/3 refers].

#### Legislative implications

86. Note that the Resource Legislation Amendment Bill 2015 is an omnibus bill, with amendments to the following six Acts:

86.1. the Resource Management Act 1991

86.2. the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

86.3. the Environmental Protection Authority Act 2011

86.4. the Conservation Act 1987

86.5. the Reserves Act 1977

86.6. the Public Works Act 1981

87. Note that consequential changes to the Local Government Act 2002 are also required as a result of the repeal of financial contributions
88. Note that amendments relating to the Public Works Act 1981, proposed by the Minister for Land Information and agreed separately by Cabinet in June 2013, have been included in the draft Bill [CAB Min (13) 20/9A refers]
89. Note that amendments relating to the Conservation Act 1987 and Reserves Act 1977 were agreed by CBC (with power to act) in July 2015 and have been included in the draft Bill [CBC Min (15) 2/3 refers]

Associated regulations and legislative instruments

90. Note that the Bill creates the following new regulation making powers:
- 90.1. to require councils to fix fees
  - 90.2. to provide for enhanced monitoring of councils
  - 90.3. to provide for alternative consent authorities
  - 90.4. to exclude stock from water bodies
  - 90.5. to permit certain activities and strike down certain rules
91. Note that the Bill modifies existing powers to make national environmental standards
92. Note that the Bill creates the following new disallowable instruments:
- 92.1. the national planning template under the RMA
  - 92.2. EEZ policy statements under the EEZ Act
93. Note that the Bill modifies existing powers to make national policy statements

Regulatory impact analysis

94. Note that the following Regulatory Impact Statements (RIS) partially meet the quality assurance requirements:
- 94.1. *Resource Legislation Amendment Bill 2015*
  - 94.2. *Resource Legislation Amendment Bill 2015: EEZ Amendments*
  - 94.3. *Alignment of the Decision-Making Processes for Nationally Significant Proposals and Notified Discretionary Marine Consents*
95. Note that these documents will be publicly available upon introduction of the Bill

Publicity

96. Note that the Resource Legislation Amendment Bill 2015 will be publicly released once it has been introduced into the House
97. Agree that the Minister for the Environment make a public announcement, jointly with the Maori Party, following the introduction of the Resource Legislation Amendment Bill 2015
98. Agree that the Ministry produce a high-level brochure outlining the purpose of the resource management reforms and its key proposals

99. Agree that the Minister for the Environment proactively release this paper, as well as the following two previous Cabinet papers, at an appropriate time following introduction:
- 99.1. *Second Phase of Resource Management Reforms: Batch 1 of Policy Decisions* [CAB Min (15) 5/11 refers]
  - 99.2. *Second Phase of Resource Management Reforms: Batch 2 of Policy Decisions* [CBC Min (15) 2/3 refers].
100. Note that the release of these papers be made with information withheld in a way consistent with the Official Information Act 1982.

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Hon Dr Nick Smith  
**Minister for the Environment**

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