In Confidence

**Office of the Minister for the Environment**

**Chair**

**Cabinet Business Committee**

## Second Phase of Resource Management Reforms: Batch 2 of policy decisions

### Proposal

1. This paper seeks Cabinet agreement for the second batch of policy proposals for inclusion in the Resource Legislation Amendment Bill 2015. It is the second of two papers, with the first batch of reforms considered in February 2015.
2. Should Cabinet agree to the proposals in this paper, I will instruct the Parliamentary Counsel Office (PCO) to produce drafting of the Resource Legislation Amendment Bill 2015, incorporating the changes agreed in both batches of reform proposals. I intend to use this drafting as the basis for further discussion with both support parties and iwi to seek their support for full package of reforms.
3. Following the completion of negotiations and agreement to a finalised package of reforms, I will return to Cabinet for final policy decisions (with a complete Regulatory Impact Statement (RIS)). I intend to introduce the Resource Legislation Amendment Bill 2015 by the end of the year.

### Overview

4. New Zealand's environmental, planning, and resource management legislation needs to strike a fine balance between our competing aspirations for New Zealand. The right balance will enable us to use our natural resource assets sustainably to develop our economy, while still protecting our environment and creating vibrant cities where people can access good jobs, affordable housing, efficient infrastructure, and enjoy a good quality of life. I do not believe that the current Resource Management Act (RMA) will allow us to meet these goals.
5. We know that changes to the RMA are necessary to both help our businesses succeed. A recent survey by Local Government New Zealand on perceptions of local government found that businesses identified resource consent processes as one of the areas of local government viewed least positively by businesses.[1]
6. We also know that the RMA needs to change to support our government's goals with regard to housing supply and affordability. The Productivity Commission has recently released its draft report on 'using land for housing' and found that many cities in New Zealand have struggled to provide adequate development capacity, which has manifested in rising land prices.

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[1] Local Government New Zealand, 2015, *Building a Stronger Local Government for New Zealand*

7. The Commission concluded that the complexity of the planning system has made it difficult for councils to bring together land use, infrastructure and transport planning. They also considered that consultation obligations and appeal rights in the RMA are a barrier to more efficient use of land.

8. These concerns reinforce the need for these reforms. In particular, more recognition of housing, and a planning process that is nimble enough to respond to the needs of a rapidly growing population. In the long term, we will need to look at ways to bring together land use, infrastructure and transport planning to ensure that cities can respond to growth.

9. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) is also important in striking this balance between our competing aspirations. I propose to amend the EEZ to improve its efficiency and effectiveness. Aligning it with aspects of the RMA is important to achieving these goals.

10. As outlined in the February Cabinet paper on Batch 1 of these reforms [Cab Min (15) 5/11 refers], the Government was elected in 2008 and embarked on a two phase reform package of the RMA. We are now on the second phase of these reforms, which is focused on substantive, long-term, system-wide reforms. This reform package has built on a range of technical advisory reports and public consultation processes.

11. Cabinet has already agreed to a raft of changes [Cab Min (15) 5/11 refers] that form the first batch of this ambitious resource management and freshwater reform package (see Appendix 2 for details of these proposals). I am seeking your agreement to the following remaining aspects of the programme through this paper:

| Cluster | Proposal |
|---|---|
| **National Direction** | A. Include "the management of significant risks from natural hazards" in section 6 of the RMA |
| | B. Include new duties in Part 3 to minimise restrictions on land and to specify process matters |
| | C. Strengthen the requirements on councils to improve housing and the provision of development capacity |
| | D. Create more flexibility for National Environmental Standards (NES) |
| | E. Create new regulation-making powers to provide national direction through regulation |
| | F. Create a new regulation-making power to require that stock are excluded from water bodies |
| **Plan-Making** | G. Remove the ability for Heritage Protection Authorities that are body corporates to give notice of a heritage protection order (HPO), and allow for Ministerial transfer of HPOs |
| | H. Rescind previous decisions regarding the Single Plan |

| Cluster | Proposal |
|---|---|
| **Resource consents: Process improvement** | I. Clarify the notification test to specify who can be considered an affected party<br>J. Preclude public notification and Environment Court appeals for residential activities in a residential zone<br>K. Enable alternative consent authorities to provide resource consenting services as an alternative to local councils |
| **Resource consents: Alignment of processes** | L. Joint resource consent and recreation reserve exchange processes under the RMA and Reserves Act 1977<br>M. Align the Conservation Act notified concessions process with notified resource consents under the RMA<br>N. Align decision-making for discretionary marine consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) and for Nationally Significant Proposals by Boards of Inquiry under the RMA |
| **Other** | O. Changes to the EEZ Act<br>P. Simplify charging regimes for new developments by removing financial contributions<br>Q. Provide equal treatment of stock drinking water takes<br>R. Make minor changes or clarifications of policy intent. |

12. Cabinet decisions on the policies in this Cabinet paper and the Cabinet paper already considered in February 2015 [Cab Min (15) 5/11 refers] will form the basis for the Resource Legislation Amendment Bill 2015.
13. Following your agreement to this second batch of proposals, I intend to instruct PCO to produce drafting of the complete bill (including all proposals from both batch 1 and batch 2). I will use this draft to support my discussion of the policy proposals with support parties and iwi.
14. Once these discussions have been completed, I intend to return to Cabinet to seek your agreement to a finalised package of proposals. I intend to introduce the Resource Legislation Amendment Bill 2015 by the end of the year. I will also provide a completed RIS to Cabinet at this time.

## National Direction Policy Proposals

15. Cabinet has already agreed to the following national direction proposals [Cab Min (15) 5/11 refers]:
    - Minor changes to National Policy Statements (NPS) and National Environmental Standards (NES)

- Enhanced council monitoring requirements

16. I am seeking your agreement to six new proposals to enhance the provision of national direction.

*A. Include "the management of significant risks from natural hazards" in section 6 of the RMA*

17. Including this new matter in section 6 of the RMA would introduce the concept of risk management, as it relates to natural hazards, into Part 2 of the RMA. It will require the management of significant risks of natural hazards (as defined in Section 2 of the Act).

18. This will provide greater emphasis for the consideration of natural hazard risk across all resource management decisions. It will support sections 30 and 31, which currently prescribe natural hazard management as a function for both territorial authorities and regional councils. It will also support the previously agreed amendment to section 106 regarding the consideration of natural hazards in subdivision consents.

19. This change will give effect to recommendation 186 of the Canterbury Earthquakes Royal Commission, which recommended amending Part 2 of the RMA to:

    *"ensure that regional and district plans (including the zoning of new areas for urban development) are prepared on a basis that acknowledges the potential effects of earthquakes and liquefaction, and to ensure that those risks are considered in the processing of resource and subdivision consents under the Act."*

20. This proposal was well supported by submitters on the 2013 RM reform discussion document.

*B. Inclusion of new duties in Part 3*

21. I am proposing to add a new requirement into the RMA to ensure that restrictions are not imposed under this Act on the use of any land, except to the extent that any restriction is reasonably required to achieve the purpose of the Act.

22. I am also proposing to include a number of new process matters in Part 3 of the RMA, requiring decision-makers to:

    - use timely, efficient, consistent, and cost-effective processes that are proportionate to the function or power being exercised
    - ensure that policy statements and plans only include matters relevant to the purpose of the RMA and use clear and concise language
    - promote collaboration between or among local authorities on common resource management issues

23. These proposals will limit land use restrictions and ensure decision-makers apply procedures to minimise the costs of implementing RMA processes. These proposals will support other more targeted process changes in the resource management reform package.

C. *Strengthen the requirements on councils to consider housing affordability and the provision of development capacity*

24. In some centres around New Zealand, demand for housing is increasing house prices and reducing housing affordability. I am seeking your agreement to the following two changes that will strengthen the requirements for councils to take account of the impact of planning decisions on supply and affordability of land and housing.

- Amending sections 30 and 31 of the RMA to introduce a new function for both regional councils and territorial authorities to ensure there is sufficient residential and business development capacity to meet expected long term demand
- Supporting these functions with a comprehensive programme of national direction and guidance, including an NPS

D. *Creating more flexibility for National Environmental Standards and creating a new regulation-making power*

25. Currently there are constraints that limit the government's ability to respond to significant and emerging resource management issues through national direction, which often means that the Government needs to amend the RMA on an ad hoc basis to respond.

26. I seek your agreement to create more flexibility in NES by:

- Allowing NES to specify certain situations where councils may make rules more lenient than the NES. This would support the policy intent of an NES designed to enable development (such as the Telecommunications NES)
- Allowing NES to specify that councils may charge to monitor specified activities permitted by an NES. This would support NES classifying more activities as permitted with greater assurance of compliance monitoring
- Enable NES to specify requirements for councils, for example how they would be required to monitor or implement a provision. This would increase the government's ability to influence council actions for achieving environmental standards

E. *Creating new regulation-making powers to provide national direction through regulation*

27. I am seeking your agreement to introduce three new regulation-making powers:

a. *Power to address duplication and overlapping subject matter.* This would enable the Minister for the Environment to override council planning provisions that duplicate the functions of, or have the effect of overriding or overlapping with, other legislation on the same subject matter.

b. *Power to address land-use restrictions by making certain activities permitted.* This 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.

c. *Power to address land-use restrictions by overriding unnecessary council planning provisions.* This would enable the Minister for the Environment to override council planning provisions that impose land-use restrictions for

residential development that are not reasonably necessary to achieve the purpose of the Act.

28. Both powers to address land-use restrictions (and regulations made using the powers) will be subject to a mandatory sunset clause coinciding with when the national planning template is implemented by councils. After this time, the national planning template will be able to perform the same function as these powers.

29. These proposals would allow the government to override planning provisions that unreasonably impose compliance costs, duplicate, or overlap with other Acts or regulations, or excessively impinge on people's use of their property.

Regulation of Hazardous Substances and New Organisms

30. I am seeking your agreement to reconfirm Cabinet's previous decision to remove all explicit functions for regional councils and territorial authorities that duplicate processes which are provided for under the Hazardous Substances and New Organisms Act 1996.

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

31. I am seeking your agreement to use this regulation-making power to specifically allow for a regulation to require that dairy cattle are excluded from water bodies by 1 July 2017.

*Comment*

32. These proposals to enhance national direction will provide greater clarity on the issues that councils are expected to manage through the RMA, and will allow the government greater scope to direct councils on how they are expected to fulfil these roles.

33. I do not consider that there are any significant risks arising from this cluster of new proposals. While the new regulation-making power could ultimately have the effect of overriding council plan provisions that have been through a community consultation process, the appropriateness of this response will be considered through the specific regulation-making processes which will involve public consultation.

**Plan-Making Policy Proposals**

34. Cabinet has already agreed to the following plan-making proposals [Cab Min (15) 5/11 refers]:

- Mandatory national planning template to reduce plan complexity and provide a home for national direction
- Changes to the plan-making process (under Schedule 1) to improve efficiency
- Providing councils, on approval from the Minister for the Environment (or the Minister for Conservation for coastal matters), with an option to use a Streamlined Planning Process, rather than the standard Schedule1 process, for developing or amending a particular plan

- Create a Collaborative Planning Process for all policy areas
- Enhance Maori participation by requiring councils to invite iwi to engage in voluntary iwi participation arrangements and enhancing consultation requirements

35. I am seeking your agreement to two new proposals to improve plan-making processes.

*G. Changes to Heritage Protection Authorities*

36. Currently the RMA allows for body corporates to become Heritage Protection Authorities and to issue notices for Heritage Protection Orders over land, including private land. This can result in significant reduction of the property rights of the landowner.

37. This proposal will amend the RMA to state that a body corporate may not give notice for a heritage protection order over private land. Body corporates would still be able to seek HPA status, however they would be unable to regulate private land through heritage orders. They would still be able to give notice for a heritage order over public lands, which is particularly important for iwi in view of heritage resources, such as significant waterbodies or wāhi tapu in public spaces.

38. I am also proposing new transfer provisions, which will enable the Minister for the Environment to transfer responsibility for a heritage order from one HPA to another.

*H. Rescind previous decisions regarding the Single Plan*

39. Cabinet has previously considered a proposal to require all territorial authorities and regional councils to combine regional policy statements, regional plan, regional coastal plan, and district council plan provisions that relate to a particular district (or other agreed area) into a single plan [Cab Min (13) 18/8 refers].

40. The objectives of the single plan were to:

- highlight inconsistencies between regional and district planning provisions
- provide an incentive for councils to work towards better integrating their planning provisions
- make it easier for plan users, by providing all the planning provisions applying in a district in one place

41. I no longer consider that this approach is the best way of achieving these objectives. Instead, I am proposing that the National Planning Template, agreed by Cabinet in February 2015 [Cab Min (15) 5/11 refers], be relied on to provide those same outcomes.

*Comment*

42. These proposals will create greater certainty for all parties involved in heritage protection and will enable a more efficient implementation of the wider plan-making proposals.

43. I do not consider that there are any significant risks arising from this cluster of new proposals.

**Resource consents: Process Improvement Policy Proposals**

44. Cabinet has already agreed to the following proposals [Cab Min (15) 5/11 refers]:

- Improved management of risks from natural hazards in decision-making on subdivision applications
- Streamlined assessment process for subdivisions
- No right of appeal to Environment Court for boundary infringements and subdivisions (unless non-complying activities)
- Consent exemption for boundary infringements with neighbours' approval, and full notification precluded for inter-boundary activities
- Consent exemption for minor rule breaches, at council discretion
- Fast-track process for simple applications, requiring consent decisions within 10 days
- Narrow submitters' input to reasons for notification, and require reasons for notification to be recorded and submissions to be struck out in certain circumstances
- Clarifying the notification process
- Specifying non-notification of simple proposals with limited effects and limited involvement of affected parties for certain activities
- Streamlined and electronic public notification requirements and electronic servicing of documents
- Consent decisions issued with a fixed fee
- Clarification of the legal scope of consent conditions so they are fair and reasonable and limited to the effects of the proposal
- Provide an alternative and independent route of objection to local authorities' consent decisions by allowing objections to be heard by an independent commissioner.
- Making subdivisions permitted unless restricted by plans

45. I am seeking your agreement to three new proposals to improve resource consent processes.

*I. Clarify the notification test to specify who can be considered an affected party*

46. Cabinet has already agreed to integrate some of the Housing Accords and Special Housing Areas Act 2013 (HASHA) provisions into the RMA by requiring some subdivisions and boundary infringements to be determined without public notification and without risk of appeal to the Environment Court [Cab Min (15) 5/11 refers].

47. I am proposing to clarify the notification provisions for other types of applications. I propose to refine consideration of affected parties (for limited notification purposes) to:

- The owners and occupiers of land adjacent to the proposed activity

- Owners or operators of infrastructure on, or over that land

48. This restriction would apply to district land-use activities only (eg, housing, commercial and industrial activities, and agriculture). It would not apply to activities regulated by regional councils.

49. This change will create the following two-step test for all district land-use applications:

    - Limited or non-notification test: Councils examine the effects on people who own or occupy adjacent land (if different from the applicant)
    - Public notification test: Councils examine the environmental effects beyond the adjacent land

50. This proposal will avoid unnecessary time, cost and uncertainty implications for activities that are broadly consistent with and/or anticipated by the applicable plan.

*J. Preclude public notification and Environment Court appeals for residential activities in the residential zone*

51. I am proposing to emulate the public notification and appeal provisions of HASHA so that they apply to housing developments in all residential zones described in district plans, except where they have non-complying status (and are therefore inconsistent with plan objectives and policies). These provisions give no right of appeal to the Environment Court where a development is three storeys or less in height.

52. This proposal ensures that council decisions are the "last stop" and forces submitters and applicants to put their best case to the council, rather than waiting for an Environment Court appeal. It gives developers certainty that the council's decision is final (notwithstanding the potential for judicial review), particularly where their proposal is consistent with developments signalled by plans.

*K. Enable alternative consent authorities to provide resource consenting services as an alternative to local councils*

53. I am proposing to enable alternative consenting authorities to be established to provide resource consenting as an alternative to local authorities. I have seen the introduction of the nationally significant proposals process for large consents drive improved practice within councils and prompt them to offer consent services for large proposals at a reduced overall cost. I believe enabling alternative consent authorities will enable faster and more cost effective consenting.

54. Alternative consent authorities may be an accredited Crown entity, departmental agency, other local authority, or private sector provider. The Building Act 2004 allows for alternative agencies for building consents, and the RMA enables this for projects of national significance.

55. I propose an enabling provision only. The functions, powers and duties that will be given to each consent authority will be agreed when it is established, including what types of consents it can process and over what area. I propose the scope of the enabling provision be such that alternative consent authorities can consider applications for controlled, restricted discretionary activities, and

discretionary activities. I also propose that consent applications currently considered by regional councils will be outside the scope of alternative consent authorities.

56. I propose a new regulation-making power that enables regulations to set out the detailed requirements for accrediting an organisation as an alternative consent authority.

*Comment*

57. With HASHA due to expire in 2018, these proposals will allow important provisions to remain in effect beyond this time through the RMA.

58. Creating alternative consenting agencies will introduce choice into the consenting market. It will provide an incentive for councils to lift their performance, be more customer-focused, and provide consents more efficiently. The introduction of choice will also enable applicants to raise concerns relating to the consent process without fear that doing so will result in delays and problems in future consenting.

59. I do not consider that there are any significant risks arising from the proposals to incorporate HASHA provisions into the RMA, as these provisions are already in effect through HASHA.

60. There are a number of risks associated with the introduction of alternative consenting authorities, however these will be addressed when an alternative consenting authority is established. There is no significant risk arising from the enabling provision proposed in this paper.

**Resource consents: Alignment of Policy Proposals**

61. I am seeking your agreement to three new proposals to better align resource consent processes with other legislation.

*L. Joint resource consent and recreation reserve exchange processes under the RMA and Reserves Act 1977*

62. The process for redeveloping an urban area can often involve plan changes, resource consents, and reconfiguration of reserves. However the processes for swapping or exchanging reserves are not integrated or well aligned with the RMA. This can create unnecessary delays and costs for development.

63. I propose to amend the RMA and the Reserves Act 1977 to enable a joint process of public notification, hearings, and decisions for urban redevelopment projects that involve plan changes/resource consents and reserve exchanges. The integrated process will:

    a. be optional

    b. be available on request by the applicant for resource consent or plan change.

    c. only apply to recreation reserves.

64. Where the local authority is also the administering body of the reserve(s) in question, I propose to allow them to make the final decisions on the exchange of a recreation reserve(s) and the resource consent/ plan change at the same time. The local authority will not be able to approve exchanges of reserve land unless

satisfied that it results in overall improvement in provision of public space for recreation.

M. *Align the Conservation Act notified concessions process with notified resource consents under the RMA*

65. Greater alignment of the concession and resource consent processes would provide for more synchronisation at key stages such as lodgement, notification, and submissions. The proposed changes to the Conservation Act are outlined below:

    a. require notification of all notifiable concession applications, not just those that the Minister of Conservation 'intends to grant';

    b. limit the period for submission on concession applications from 40 working days to 20 working days (as the nature and scale of information required for resource consent and concession submissions on the same activity are similar); and

    c. require a complete concession application to be received before the application is accepted.

N. *Align decision-making for discretionary marine consents under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) and for Nationally Significant Proposals by Boards of Inquiry under the RMA*

66. The process for decision-making for notified discretionary marine consents under the EEZ Act differs from that for Boards of Inquiry deciding on Nationally Significant Proposals (NSPs). The differences between these processes create confusion for applicants and submitters alike, and are inefficient in terms of EPA business process.

67. I am proposing the following changes to align decision-making through these two processes:

- **Marine consent decision-making model:** I propose to amend the EEZ Act to adopt the BOI model for decisions on marine consent applications for notified discretionary activities. This will include the composition of the Board, and Board processes.

- **Composition of the Board:** I propose amending the RMA and the EEZ Act to introduce the additional requirement that the Minister for the Environment (or other relevant Ministers) consider the need for BOI members to have relevant technical expertise. I also propose that the Minister for the Environment has the discretion to appoint an EPA Board member to BOIs, where appropriate. At the Minister's request, the EPA Board will be able to nominate suitable members for the Minister to consider when appointing a BOI.

- **Draft decision:** I propose to amend the RMA to align the draft decision and technical correction stages of the two processes by removing the draft decision stage and allowing BOIs to issue an amendment to a decision or an amended decision that corrects omissions as well as minor mistakes and defects in any decision of the BOI.

- **Timeframes:** I propose to amend the RMA and the EEZ Act to extend the submission period from 20 to 30 working days. In addition, I propose

removing the 40 working day timeframe between submissions closing and the start of the hearing to provide greater flexibility for decision-makers to scale the decision-making process according to the complexity of the application.

Note that consequential amendments to other statutory timeframes in the RMA and EEZ Act may be required, such as the time limits for the provision of evidence prior to a hearing, and for making minor corrections to consents, and this will be resolved through drafting.

I further propose to amend the EEZ Act to introduce a maximum timeframe of nine-months for BOIs to make decisions on notified marine consent applications (to align with the timeframes for Nationally Significant Proposals under the RMA) and to remove the maximum timeframe of 40 working days for notified discretionary marine consent hearings and the 20 working day timeframe for deliberation for notified discretionary marine consent applications.

- **Appeals:** I propose to amend the EEZ Act to align appeal provisions for decisions made by BOIs under the EEZ Act with the appeals process for NSPs under the RMA.
- **Determining if an application is complete:** I propose to amend the EEZ Act to align the test of whether an application is complete with Schedule 4 of the RMA (as amended in 2013).

*Comment*

68. This cluster of proposals will improve the alignment of RMA processes with other pieces of legislation in the resource management system. This greater alignment will reduce the time and cost of resource management processes and ensure that there is greater certainty of process.

69. There may be public concern and debate about the alignment of EEZ and RMA processes in that the Minister will appoint the decision making committee on marine consents rather than the EPA Board. I consider the risks of this are manageable and will not significantly change the makeup of the decision making committees

**Other Policy Proposals**

70. Cabinet has already agreed to the following proposals [Cab Min (15) 5/11 refers]:

    - Minor changes to the Public Works Act 1981 to ensure fairer and more efficient land acquisition processes
    - Provide regional councils with discretion to remove abandoned coastal structures

71. I am seeking your agreement to the following three new proposals and minor/technical amendments to proposals already agreed by Cabinet.

O. *Changes to the EEZ Act*

72. The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act) forms part of the resource management legislative framework and, like the RMA, needs to balance environmental with economic and other concerns. I am seeking your agreement to amend the EEZ Act to improve the efficiency and effectiveness of the resource management regime as it applies to the marine area by:

- allowing for more clarity on how decommissioning of structures should take place
- clarifying when an EPA ruling is required to allow minor alterations to existing structures in the EEZ
- strengthening enforcement provisions
- add a new statutory tool to provide national direction for matters that are relevant to achieving the purpose of the EEZ Act
- making a number of minor and technical amendments to improve the workability of the EEZ Act.

P. *Simplify charging regimes for new developments by removing financial contributions*

73. There is an ambiguous regime for how territorial authorities can charge developments for the provision of infrastructure and reserves.

74. Financial contributions were established under the RMA to be used by all councils for any RMA purpose, including offsetting environmental effects of activities on the environment. They can be collected for a permitted activity or as a condition of resource consent under the RMA and may be in the form of land and/or cash.

75. Development contributions were introduced through the Local Government Act 2002. They allow territorial and unitary authorities (but not regional councils) to recover a fair, equitable, and proportionate amount of the total cost of capital expenditure necessary to service growth over the long term.

76. The practice around financial and development contributions has been quite blurred. Councils have had a preference for development contributions because they are not subject to appeals to the Environment Court. Councils where there has been less development and growth have tended to keep their financial contribution regimes simply because of the transaction costs of rewriting their plans under the new regime.

77. I consider that these two mechanisms have in practice been used for the same purposes. The overlap between the two charging regimes can be confusing and can lead to perceptions of councils double or unjustifiably charging. It also reduces transparency of the true costs being recovered by councils for development. I am therefore proposing to remove the ability to charge a financial contribution under the RMA.

78. It would still be possible to offset environmental effects under the RMA if financial contributions were removed by placing conditions providing that the applicant supports the offsetting being proposed. Councils will still be able to

require development contributions for new developments under the Local Government Act 2002.

79. Existing financial contribution provisions will need to be removed from Council plans. I propose that provision be made to enable Councils to remove financial contributions without having to follow the normal plan change consultation processes.

80. I am proposing that the changes to financial contributions do not take effect for a period of five years to allow territorial authorities to amend or prepare their development contributions policies as part of their Long Term Plan processes.

*Q. Stock water takes*

81. The RMA currently allows an individual to take water for their reasonable needs – which can include drinking water taken by farmers for their livestock. However the RMA does not define individual, and some regional councils interpret "individual" to mean natural persons only, excluding companies and trusts. In doing so, they are requiring farms to have consent for their stock drinking water if the farm is in a company or trust structure.

82. I am seeking your agreement to amend section 14(3)(b)(ii) of the RMA to replace the term "individual" (which is not defined) with the word "person" (which is defined as including both natural and legal persons). This will clarify the meaning of this provision and ensure that it is implemented fairly and consistently.

*R. Minor changes or clarifications of policy intent*

83. In February 2015, Cabinet considered Batch 1 of the Resource Management Reform proposals [Cab Min (15) 5/11 refers]. Below are a number of small issues that I am seeking your agreement to, which either report back on outstanding issues or provide additional clarity of policy intent for drafting.

- Expand scope of Iwi Participation Arrangements to include resource consenting processes as well as plan development processes
- Further decisions on collaborative planning: Membership of collaborative group
- Further decisions on collaborative planning: Role of the Minister of Conservation in collaborative coastal planning
- Align the National Planning Template's effect on RM decision-making with NPSs
- Clarify changes to improve the efficiency of the plan-making process in Schedule 1
- Rescind planning decisions from 2013 that have now been superseded
- Rescind previous decisions regarding Ministerial Intervention Powers
- Reconfirm previous recommendations regarding:
    - Freshwater
    - Mediation requirements for plan hearings

- certain activities that are to be deemed non-notified and certain classes of person specified who may be deemed to be affected by an activity
- additional parties who may be considered to be affected for a proposed subdivision

*Comment*

84. These proposals will simplify and clarify the provisions of the RMA and the EEZ Act and will ensure that PCO has clear drafting instructions for previously agreed proposals.

85. I do not consider that there are any significant risks arising from this cluster of proposals.

**Treaty settlement implications**

86. Iwi/hapū have developed a number of relationships with consenting authorities both through the Treaty settlement process (legislative and non-legislative) and through separate initiatives (Joint Management Arrangements, Acts other than their Treaty settlement legislation or relevant iwi/hapū agreements). The package of reforms I am proposing will also provide for Iwi Participation Arrangements.

87. Cabinet previously noted that any potential conflicts between the previously proposed Iwi Participation Arrangements and existing arrangements in Treaty settlement legislation will be addressed though appropriate drafting instructions to ensure the existing arrangements will prevail [Cab Min (13) 18/8 (Recommendation 60)]

88. Given the range of the amendments being proposed, I am conscious that iwi/hapū groups may seek assurance that should there be any inconsistency between the reform Bill and their arrangements over natural resources (Joint Management Arrangement, Iwi Participation Arrangement, or other Act or relevant iwi/hapū agreement), that these arrangements will prevail.

89. I am therefore seeking Cabinet agreement to extend the scope of the previous Cabinet minute to ensure that any potential conflicts between the proposed package of reforms and Treaty settlements, other Acts, Joint Management Arrangements, Iwi Participation Arrangements, or relevant iwi/hapū agreements, will be addressed though appropriate drafting instructions to ensure the existing arrangements will prevail.

90. To provide further assurance to iwi/hapū, I also note that no changes will be made to Treaty settlement legislation or any other legislative arrangements (including *Marine and Coastal Area (Takutai Moana) Act 2011*) with iwi in relation to the management of natural resources without consultation with the Minister for Treaty of Waitangi Negotiations and the Attorney-General, and the agreement of the affected iwi.

**Consultation:**

91. The majority of the major RMA proposals have been publicly consulted on, as they were developed from the discussion documents on these reform proposals (*Improving our resource management system* and *Freshwater reform 2013 and*

*beyond*) in February and March 2013. There are a number of significant new proposals in this package that complement this reform. There is a good opportunity for input on these through the select committee process. It is inevitable that there will be further refinement through the select committee process.

92. In addition to consultation being undertaken through the select committee process, following your decisions on the proposals in this paper I will instruct PCO to produce drafting of the bill. I intend to use this drafting as the basis for further discussion with both support parties and iwi to seek their support for full package of reforms.

93. There has been engagement to date at the Ministry level with iwi advisors on this package of reforms, but I also intend to further consult directly with Iwi leaders. They will also be able to engage with the reform package through the select committee process. I also intend to instruct the Ministry to contact iwi/hapū with whom the Ministry has a Treaty settlement obligation to inform them of the reforms immediately prior to any announcement of the reform package.

*Agency consultation and comments:*

94. The following agencies have been consulted on this paper 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, and Maritime New Zealand. The Department of the Prime Minister and Cabinet has been informed.

95. While agencies have been generally supportive of the changes proposed in this paper, a number of substantive comments on the proposals have been received from agencies outlining some concerns. These are included as Appendix 3.

**Financial implications**

96. Initially central and local government will incur costs associated with the development and implementation of the parts of the reform package considered in this paper, however over time the cost saving elements of the reforms will lead to financial benefits. Outside local and central government the costs of these reforms are dependent on the level of involvement. For those using the consenting process, both individuals and business, I would expect to see significant cost savings as the process elements improve the timeliness and costs related to resource consenting. More detail on the costs implications are provided in the attached Regulatory Impact Statements.

97. 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. As noted in my previous paper, the full costs of the expanded package will be an increase from the original estimates in some areas, such as the streamlined planning process and contestable consenting, if implemented. 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 recent Budget process.

**Human rights**

99. The Ministry for the Environment will continue to work with the Ministry of Justice to address the consistency of proposed legislation with the New Zealand Bill of Rights Act. A final determination as to the consistency of the proposals with that Act will be possible once the legislation is drafted.

**Gender implications**

100. There are no gender implications resulting from this paper.

**Disability perspective**

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

**Legislative implications**

102. The recommendations in this Cabinet paper will require legislative change to the following Acts in order to implement:

- The Resource Management Act 1991
- The Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012
- The Reserves Act 1977
- The Conservation Act 1987.

103. Decisions from the previous Batch 1 Cabinet Paper [Cab Min (15) 5/11 refers] will also require changes to the Public Works Act 1981.

104. There may also be consequential amendments to the Environmental Protection Authority Act 2011, among other legislation.

105. The changes from the two Resource Management Reform Cabinet papers (this paper and the Batch 1 paper [Cab Min (15) 5/11 refers]) will be sought through an omnibus Resource Legislation Amendment Bill as part of the 2015 legislative programme.

106. The amendments will be binding on the Crown, consistent with the primary legislation.

**Regulatory impact analysis**

***Regulatory Impact Analysis requirements***

107. 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.

108. The Regulatory Impact Analysis Team (RIAT) in the Treasury has reviewed:

- the RIS entitled *Resource Legislation Amendment Bill 2015*
- the RIS entitled *Alignment of the Decision-Making Process for Nationally Significant Proposals and Notified Discretionary Marine Consents*
- the RIS entitled *Policy decisions for an EEZ Amendment Bill 2015*

109. RIAT considers that the information and analysis summarised in the RIS *Resource Legislation Amendment Bill 2015* currently **does not meet** the quality assurance criteria. RIAT notes that the RIS does not contain advice about preferred options, and that a revised final RIS will be worked on and presented to Cabinet before final decisions are made.

110. While the impact of the problems has been described, the options analysis falls short of the level required. Alternative options have been considered but not analysed on the same basis as the reform package, and there is a risk that unintended consequences have not been analysed. The lack of evidence underlying the analysis (acknowledged in the Agency Disclosure Statement) also makes it difficult to determine whether each element of the package will individually deliver net benefits.

111. While there was public consultation in 2013, the full package has not been consulted on. However, stakeholders' views have been used to inform the analysis. Consultation to date suggests that Councils are concerned about costs and practicalities of implementation. If the package of proposals is implemented it will be important to monitor outcomes with clear and transparent information.

112. RIAT considers that the information and analysis summarised in the RIS *Policy decisions for an EEZ Amendment Bill 2015* **partially meets** the quality assurance criteria. Due to time constraints the RIS does not include analysis of the proposal to include a statutory tool to provide national direction under the EEZ Act. However, I intend to return to Cabinet once a package has been agreed by support parties, and will provide a complete Regulatory Impact Statement at that time.

113. 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. A range of possible options has been assessed in each case. However, possibly because the regime is relatively new, the exact operation of the status quo is unclear, and there is little evidence to indicate the scale or urgency of the problems. Of greater concern, there has been limited stakeholder consultation. This makes it unconvincing that all the potential impacts have been identified.

114. 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.

115. RIAT notes that the proposed marine consent decision-making model (rec 90) 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.

116. 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**

117. I made a statement outlining the objectives of the reforms on 21 January 2015 and further discussed the reform package more recently at New Zealand Planning Institute conference on 15 April 2015.

118. I now intend to focus on talking with support parties and iwi leaders to seek their agreement to a finalised reform package.

119. I do not intend to undertake any other communications activities at this time. I will instead use the Select Committee and Parliamentary processes as the main avenues for discussing the package.

120. I will confirm my communications approach with Cabinet when I return with a finalised package prior to introduction.

**Recommendations**

The Minister for the Environment recommends that the Committee:

1. note that I am seeking policy decisions and agreement to enable PCO to produce drafting of the Resource Legislation Amendment Bill 2015

2. note that I intend to use this draft Bill as the basis for further discussion with both support parties and iwi to seek their support for full package of reforms

3. note that I intend to return to Cabinet once a package has been agreed by support parties to seek your final policy agreement, and will provide a complete Regulatory Impact Statement at this time

4. note that I intend to introduce the Resource Legislation Amendment Bill 2015 into the house by the end of 2015

*General requirement in terms of Treaty obligations – applicable to all reform proposals*

5. agree 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/hapū agreement over natural resources will be addressed though appropriate drafting instructions to ensure that such arrangements will prevail

6. agree that no changes will be made to Treaty settlement legislation or any other legislative arrangements with iwi in relation to the management of natural resources without consultation with the Minister for Treaty of Waitangi Negotiations and the Attorney-General, and the agreement of the affected iwi

7. agree that no changes will be made to *Marine and Coastal Area (Takutai Moana) Act 2011* without consultation with the Minister for Treaty of Waitangi Negotiations

### *A. Inclusion of natural hazards in section 6*

8. agree to add the management of significant risks from natural hazards as a new matter to section 6 of the RMA
9. note that on 13 May 2013, Cabinet agreed to amendments to sections 6 and 7 of the RMA [Cab Min (13) 15/8 recommendations 6-15]
10. agree to rescind the above decisions

### *B. Inclusion of new duties in Part 3*

11. agree to include in Part 3 of the RMA the requirement for all persons exercising functions and powers under the RMA to ensure that restrictions on land are not imposed under the RMA except to the extent that a restriction is reasonably required to achieve the purpose of the Act
12. agree to include in Part 3 of the RMA the requirement for all persons exercising functions and powers under the RMA to:
    - 12.1. use timely, efficient, consistent, and cost-effective processes that are proportionate to the function or power being exercised
    - 12.2. ensure that policy statements and plans only include matters relevant to the purpose of the RMA and use clear and concise language
    - 12.3. promote collaboration between or among local authorities on common resource management issues

### *C. Strengthen the requirements on councils to improve housing and the provision of development capacity*

13. note that on 4 June 2013, Cabinet:
    - 13.1. agreed to amendments to the functions of regional and district councils relating to the availability of appropriately-zoned land for urban development
    - 13.2. noted that the first version of the national planning template would include further detail around these amendments

    [Cab Min (13) 18/8, paragraphs 37-39 refer]
14. rescind the above decisions
15. agree to amend the functions of both regional councils and territorial authorities in the RMA to develop objectives, policies and methods to ensure the provision of sufficient development capacity of residential and business land to meet long-term demand
16. note that 'development capacity' in this context means the capacity of land that can be used for development, taking into account:
    - 16.1. the zoning of the land

16.2. the provision of infrastructure that supports the development of land

16.3. the totality of rules and methods in the operative plan that apply to land and which govern its capacity for development

16.4. other constraints on land that materially prevent or hinder its development, including natural, physical and human-made constraints

*Direction to support these changes*

17. agree that the proposed council functions concerning development capacity will be supported by a comprehensive program of national direction and guidance, including a National Policy Statement

18. agree that the first phase of this program will be to produce a National Policy Statement on housing that would provide further direction to councils on the introduction of a requirement for councils to undertake an assessment of demand and development capacity for residential land, and direction that development capacity provided through plans and policy statements must meet the identified demand

19. agree that the second phase of this programme will:

    19.1. focus on producing more detailed guidance or direction on policies and methods for assessing the sufficiency of development capacity responses, including a methodology for assessing demand and development capacity

    19.2. consider further direction on what constitutes 'sufficient' residential development capacity, which may include setting expectations on what must be achieved

    19.3. extend the scope of national direction to include business land and development capacity

20. agree that this second phase be delivered in 2017

21. note that the assessment of development capacity should cover:

    21.1. the present and future demand for housing and land

    21.2. the residential development capacity that is required to meet that demand

    21.3. the development capacity enabled by the operative resource management plans

22. note that the National Policy Statement will specify the timeframes by which councils must achieve compliance with it

23. note that councils must give effect to the National Policy Statement, and this will be done through amending their plans and policy statements

24. agree that, in developing the methodology for the assessment, officials will consider as an indicator the use of land-price differentials to evaluate the sufficiency of development capacity supply responses

25. agree that I will report back to Cabinet following the introduction of the Resource Legislation Amendment Bill with a detailed timeline and plan for progressing this national direction, and a proposal to carry out initial, targeted, consultation as required by the RMA on the first phase of the NPS development

26. note that while these proposals will improve the incentives on councils to make fit-for-purpose plans with regard to development capacity, they do not alter local government accountability and decision-making arrangements

27. note that the second phase of proposals are contingent on proposed changes to the National Policy Statement regime proceeding (recommendations 19 and 20 refer).

### *D. Create more flexibility for National Environmental Standards*

28. agree that changes increasing the flexibility of NES will not be inconsistent with the obligations arising from Treaty settlement legislation or other legislative arrangements with iwi/hapū in relation to the management of natural resources

29. agree to further increase the flexibility of NES by:

    29.1. enabling NES to specify that council planning provisions may be more stringent or lenient than the NES

    29.2. enabling NES to specify that councils may charge for the monitoring of specified activities permitted by the NES

    29.3. enabling NES to specify requirements for how councils undertake their functions to achieve standards

### *E. Create new regulation-making powers to provide national direction through regulation*

*Power to address duplication and overlapping subject matter*

30. agree to a new regulation-making power to address duplication that would allow the Minister for the Environment to override council planning provisions, if in the Minister's opinion the provisions would duplicate, overlap or address the same subject matter as other legislation and that duplication, overlap or addressing of the same subject matter is undesirable

*Power to address land-use restrictions by making certain activities permitted*

31. agree 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

32. agree the powers to make certain activities permitted will be subject to a mandatory sunset clause coinciding with when the national planning template is implemented by councils

33. agree the national planning template will be able to make certain activities permitted, if in the Minister'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

*Power to address land-use restrictions by overriding unnecessary council planning provisions*

34. agree to a new regulation-making power to address land-use restrictions that would allow the Minister for the Environment to override 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

35. agree the power to address land-use restrictions (and regulations made using the power) will be subject to a mandatory sunset clause coinciding with when the national planning template is implemented by councils

36. agree the national planning template will be able to preclude 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

37. agree to a requirement that before exercising the power to address duplication, the power to make certain activities permitted, or the power to address land-use restrictions, the Minister for the Environment must carry out public consultation

**Additional agency recommendation:** [supported by Treasury only]

38. agree that when exercising the power to address duplication, the power to make certain activities permitted, or the power to address land-use restrictions, the Minister for the Environment will be required to undertake a cost-benefit evaluation under section 32 of the RMA

Regulation of Hazardous Substances and New Organisms

39. note that Cabinet has previously agreed to amend the RMA 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 [Cab Min (13) 18/8 recommendation 77.1]

40. agree to rescind the above decision

41. note that Cabinet has previously agreed to amend the RMA to exclude the ability of regional councils and territorial authorities to control new organisms, including genetically modified organisms [Cab Min (13) 18/8 recommendation 77.2]

42. agree to rescind the above decision

### *F. Create a new regulation-making power to require that stock are excluded from water bodies*

43. agree 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

44. agree to include the ability for the regulations to set infringement offences (in addition to normal enforcement provisions)

### G. *Changes to Heritage Protection Authorities*

45. Agree to amend the RMA so a Heritage Protection Authority (HPA) that is a body corporate may not give notice for a heritage order over private land

46. agree to include a new transfer provision in the RMA which gives the Minister for the Environment the ability to transfer responsibility for a heritage order to an HPA that is not a body corporate

47. agree that before making a decision on a transfer, the Minister will consider the heritage values of the place subject to the heritage order, the reasonable use of the place, and any other matters that the Minister considers to be important, including private property rights and the receiving HPA

48. agree that, before deciding whether to transfer an order, the relevant HPAs and relevant landowners will be given the opportunity to comment on the intention to transfer

49. agree that the Minister's decision to transfer a heritage order will be issued by notice in the *Gazette*

### H. *Rescind previous decisions regarding the Single Plan*

50. note that on 4 June 2013, Cabinet agreed to amend the RMA to require a single plan per district or other area by agreement' [Cab Min (13) 18/8 recommendations 32-35]

51. agree to rescind the above decisions

### I. *Clarification of notification test*

52. agree to amend the RMA to ensure that the only persons who may be eligible to be considered affected by a resource consent application, for a district land use activity that it is controlled, restricted discretionary or discretionary in status, are:

    52.1. owners of land adjacent to the application

    52.2. any infrastructure providers who have assets on, over or under the land subject to the application

    52.3. a requiring authority that has a designation on the land subject to the application

    52.4. iwi/hapū with relevant statutory acknowledgements who may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on, the statutory area

53. agree to amend the RMA so that, if consent authorities decide that special circumstances exist in relation to any application, they may:

    53.1. determine certain parties are affected, and

    53.2. give limited notification to those parties

54. note that provisions already exist to publicly notify applications where special circumstances apply

55. note that this proposal emulates provisions in the Housing Accords and Special Housing Areas Act 2013

## J. *Preclusion of public notification and Environment Court appeals for residential activities in the residential zone*

56. agree to amend the RMA to require that an application for resource consent must not be publicly notified (but may be limited notified) where the activity is:

    56.1. a residential activity, and

    56.2. is in a residential zone, and

    56.3. the application is a controlled, restricted discretionary, or a discretionary activity

    [replaces Cab Min (15) 5/11 recommendation 84]

57. agree to amend the RMA to remove the right of appeal to the Environment Court on decisions arising from controlled, restricted discretionary, or a discretionary resource consent applications for:

    57.1. a residential activity on a single residential site in a residential zone, and

    57.2. the application is a controlled, restricted discretionary, or a discretionary activity

58. note that this proposal emulates provisions in the Housing Accords and Special Housing Areas Act 2013

59. note that Cabinet has already agreed to integrate some of HASHA's policies into the RMA by requiring some subdivisions and boundary infringements to be determined without public notification and without risk of appeal to the Environment Court [Cab Min (15) 5/11 refers]

60. note concern has been raised that the proposed amendment on activities in the residential zone could have an impact on Statutory Acknowledgements which are a standard component of Treaty settlements

61. agree that the list of persons who are eligible to be considered as "affected by a natural resource consent application for a district land use activity that is controlled, restricted discretionary or discretionary in status, will include iwi/hapū with relevant statutory acknowledgements who may be adversely affected by the granting of a resource consent for activities within, adjacent to or impacting directly on, the statutory area

62. Note that the Treasury does not support recommendation 57 to remove appeal rights

## K. *Enabling alternative consent authorities to provide resource consenting services as an alternative to local councils*

63. agree to amend the RMA to enable a Crown entity, such as the Environmental Protection Authority (EPA), a departmental agency, a private sector provider or a local authority to be accredited as alternative consent authorities that can provide resource consenting services in addition to the existing consent authority, including:

    63.1. that an organisation must apply to the Secretary for the Environment to become accredited

63.2. enabling the Secretary for the Environment to decide whether or not an organisation is accredited and the specific scope of the accreditation. For example, the Secretary for the Environment may set a time period for accreditation, the types of consents an authority can decide, or the geographic area it can work in

63.3. that accreditation may be revoked under certain circumstances

63.4. that alternative consent authorities can consider applications for controlled, restricted discretionary, or discretionary activities

63.5. that consent applications considered by regional councils will be outside the scope of alternative consent authorities

63.6. the existing functions, powers and duties of a consent authority that an alternative consent authority may exercise

63.7. the existing functions, powers and duties of a local authority, including the ability to make administrative charges for resource consenting services, that an alternative consent authority may exercise

63.8. an obligation that consent authorities share information with each other and the relevant local authorities

63.9. require alternative consent authorities 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/hapū agreement

64. agree to a regulation making power that enables regulations to set out the detailed requirements for accrediting an organisation as an alternative consent authority and will include:

64.1. the standards and criteria for accreditation

64.2. requirements for how the different consent authorities will share information with each other and the relevant local authorities

64.3. the type of, and procedure for, local authority input into the consent process in cases where it is not the consent authority including requiring the relevant local authority to provide information to the alternative consent authority within a certain timeframe

64.4. how the performance of the alternative consent authorities will be evaluated and reviewed

64.5. the circumstances where accreditation may be revoked and the process for revocation

65. agree to amend the RMA to provide that if the Secretary for the Environment is satisfied that the applicant meets the standards and criteria for accreditation and agrees that an application to be an alternative consent authority should be granted, the Secretary for the Environment must issue a notice in the gazette that accredits the applicant as an alternative consent authority and sets out the scope of the accreditation

66. agree to amend the RMA to oblige local authorities to provide input into consent decisions made by the alternative consent authority, and allow the local authority to charge the alternative consent authority for provision of that information

67. agree 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/hapū agreement

68. agree to any necessary consequential amendments to the RMA to ensure the functions of the Environmental Protection Authority include the provision of consent services and enable the EPA to apply to become an alternative consent authority where directed to by the Minister for the Environment

69. agree to any necessary consequential amendments to the RMA to ensure a local authority may provide consenting services as an alternative consent authority outside its region or district if accredited to do so by the Secretary for the Environment.

70. agree to amend the RMA to ensure applicants will not be able to apply to more than one consent authority for the same or similar application

71. agree to amend the RMA to enable applicants to be able to make a single application to a consent authority for multiple occurrences of the same activity (even if different activity status) across that consent authority's geographic jurisdiction

72. agree to consequential amendments to the RMA to enable alternative consent authorities to provide resource consenting services

73. agree to require the Minister to consult the public on any regulations developed in accordance with the new regulation making power outlined above

*Expand EPA functions to support certain decision-making processes*

74. agree to amend the RMA to enable the Environmental Protection Authority to provide consenting services

75. Note that the proposal for alternative consent authorities is not supported by the Treasury or DIA.

### *L. Joint plan change/ resource consent and reserve exchange process*

76. agree to amend the Resource Management Act and the Reserves Act to allow an optional joint notification and hearing process under the RMA for proposals that require a publicly notified resource consent or plan change under the RMA and the exchange of recreation reserve land under the Reserves Act

77. agree that this process be at the discretion of the local authority, following a request from the applicant

78. agree that this optional joint process will only apply to proposals involving recreation reserves that are administered by the same local authority that would also be making the decision on the relevant resource consent/plan change

79. agree that if the local authority considers it appropriate to proceed with a joint process, it will notify the exchange at the same time as the resource consent/ plan change under the RMA, and will follow the same timeframes and format for submissions, further submissions, and a hearing as provided for under the RMA

80. agree that the relevant local authority will make its decisions on the resource consent/plan change applications and the recreation reserve exchange applications at the same time

81. agree that in deciding whether to approve a reserve exchange under the joint process, the local authority must be satisfied that the exchange would result in the overall improvement in the provision of public space for recreation

82. agree that if the joint process is followed, the exchange provisions in section 15(1)-(3) of the Reserves Act will not be applicable for the exchange of a recreation reserve

83. agree that sections 15(4) to 15(8) of the Reserves Act will apply to the joint process under the RMA with the necessary modifications

84. agree that the relevant local authority may delegate decision-making for this joint process in accordance with the RMA and/or Local Government Act 2002 delegation provisions as appropriate

85. agree that the costs of undertaking the joint process will be recoverable from the applicant for resource consent/plan change by the relevant local authority

86. agree that appeal rights for resource consents/plan changes under the RMA and reserves exchanges under the Reserves Act 1977 remain the same, following the existing process laid out in their respective Acts

87. agree that where the joint process is not followed, the existing exchange provisions under section 15 of the Reserves Act 1977 will apply

### *M. Align the Conservation Act notified concessions process with notified resource consents under the RMA*

88. agree to amend the Conservation Act to align notified concession processes with notified resource consent processes under the RMA, including by:

    88.1. shifting the requirement for public notification from before the Minister has an the 'intention to grant' stage, to the stage where an application is complete

    88.2. shortening the public submission period for concession applications from 40 working days to 20 working days

    88.3. requiring an assessment of whether a concession application is complete to be made within five working days of receipt

### *N. Alignment of decision-making for discretionary marine consents under the EEZ Act and for Nationally Significant Proposals by Boards of Inquiry under the RMA.*

*Marine consent decision-making model*

89. agree to adopt the BOI model for decisions on marine consent applications for notified discretionary activities, and that

    89.1. the Minister for the Environment will appoint a BOI consisting of three to five members to conduct a hearing and make a decision (unless the application is a joint application for an activity that crosses the boundary

between the EEZ and coastal marine area, in which case the BOI will be appointed by the Minister for the Environment and the Minister for Conservation)

89.2. the EPA will provide administrative support to the BOI and may also provide technical advice

89.3. the EPA will remain the decision-maker for non-notified activities and all other decisions under the EEZ Act

90. agree that in appointing BOI members the Minister for the Environment must consider the need for the board to have available to it, from its members , knowledge, skills and experience relating to:

90.1. the EEZ Act

90.2. the matter or type of matter that the BOI will be considering

90.3. tikanga Māori

91. agree that it will be optional for the Chair of the BOI to be a current, former or retired Environment Court Judge or a retired High Court Judge

92. agree that in appointing a BOI the Minister for the Environment (or the Minister for the Environment and the Minister for Conservation in the case of a cross boundary application) must consider including legal expertise

93. agree to amend the EEZ Act to explicitly allow BOIs to direct expert conferencing

94. agree to align the EEZ Act with recently agreed changes to RMA practice aiming to improve cost efficiency of the NSP process [Cab Min (15) 5/11 refers]:

94.1. enabling the EPA to direct the proceedings of a BOI deciding on an application

94.2. requiring BOIs to have regard to cost effective processes when carrying out their duties

94.3. requiring that BOIs must have specific regard to the estimated level of processing funding set by the EPA for the consideration of an application

94.4. improving the ability to use electronic provision of and access to information related to marine consent applications

94.5. enabling the EPA to pursue commercial avenues for unpaid debts

94.6. providing the EPA discretion to suspend processing of an application where there are outstanding debts, provided the EPA has:

94.6.1. made written demand for payment of the outstanding amount and

94.6.2. given the applicant 20 working days' notice of its intention to suspend processing if payment is not made

*Composition of the Board*

95. agree that in appointing a BOI under the RMA or EEZ Act, the Minister for the Environment (or the Minister for the Environment and the Minister for

Conservation in the case of a cross boundary application) must consider the need for BOI members to have relevant technical expertise

96. note the Minister for the Environment may appoint an EPA Board Member to BOIs under the RMA or the EEZ Act, only where appropriate; and that at the Minister's request, the EPA Board will be able to nominate suitable members for the Minister to consider when appointing a BOI.

*Draft Decision*

97. agree to the removal of the draft decision stage from the BOI decision-making process in the RMA

98. agree that BOIs may, at any time during their appointment, issue an amendment to a decision or an amended decision that corrects omissions, as well as minor mistakes and defects in any decision of the BOI

*Timeframes*

99. agree to amend the RMA and EEZ Act to extend the submission period from 20 working days to 30 working days

100. agree to amend the RMA and EEZ Act to remove the 40 working day timeframe between submissions closing and the start of the hearing

101. agree to amend the RMA and EEZ Act to authorise the Minister for the Environment to make further decisions to timeframes as required to accommodate any consequential amendments arising from the change in timeframe for submissions and for the period between the close of submission and the start of the hearing

102. agree to amend the EEZ Act to:

    102.1. introduce a maximum timeframe of nine months for BOIs to make decisions on notified marine consent applications (to align with the timeframes for Nationally Significant Proposals under the RMA)

    102.2. remove the maximum timeframe of 40 working days for notified discretionary marine consent hearings

    102.3. remove the 20 working day timeframe for deliberation for notified discretionary marine consent applications

*Appeals*

103. agree that appeals on decisions made by BOIs under the EEZ Act will reflect the appeals process for Nationally Significant Proposals under the RMA

    103.1. appeals to the High Court on questions of law only will remain

    103.2. no appeal may be made to the Court of Appeal from a determination of the High Court

    103.3. a party may apply to the Supreme Court for leave to bring an appeal to that court against a determination of the High Court

    103.4. the Supreme Court can grant or deny leave, or remit the appeal to the Court of Appeal

*Determining if an application is complete*

104. agree to amend the test in the EEZ Act of whether an application is complete to better align it with Schedule 4 of the RMA (as amended in 2013), by:

    104.1. expanding the information required so that the information relevant to making the decision (ie, the relevant criteria in s59(2) of the EEZ Act) is required when an application is lodged

    104.2. allowing the EPA to return an application if it does not include information in sufficient detail for the purpose for which it is required

## *O. Changes to the EEZ Act*

*Decommissioning*

105. agree to a two stage approach to addressing decommissioning:

    105.1. 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

    105.2. develop regulations under the EEZ Act to specify the details of a decommissioning regime

106. note that development of a decommissioning regime through regulations under the EEZ Act will include consideration of financial security requirements

*Transitional arrangements – rulings for minor alterations to existing structures*

107. agree to amend the EEZ Act to make it clear that only activities with adverse effects on the environment or existing interests require a ruling under section 162

*Enforcement*

108. agree to clarify the provisions relating to search and seizure in section 141 of the EEZ Act, to remove any doubt that EPA enforcement officers have the power to seize evidence in line with the provisions of Part 4 of the Search and Surveillance Act 2012

109. agree to extend the limitation period for proceedings against offences under the EEZ Act from six months to twelve months after detection of the offence

*National Direction*

110. agree 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

111. agree that the Governor General, on recommendation of the Minister for the Environment, make the national direction by order in council

112. agree that any national direction made under this new statutory tool would be a disallowable instrument as defined in section 38(1)(b) of the Legislation Act 2012

113. agree that decision makers must 'take into account' any national direction made under this new statutory tool.

114. agree that national direction could apply to all or part of the exclusive economic zone and the continental shelf

115. agree that in deciding whether it is desirable to prepare national direction, the Minister for the Environment may have regard to:

    115.1. the actual or potential effects of the use, development, or protection of natural resources

    115.2. New Zealand's obligations under various international conventions relating to the marine environment

    115.3. anything which is significant in terms of section 12 of the EEZ Act (Treaty of Waitangi)

    115.4. any other matter related to the purpose of national direction

116. agree 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

117. agree 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

118. agree that before recommending national direction to the Governor General, the Minister for the Environment must consider:

    118.1. subpart 2 of the EEZ Act (Purpose and principles)

    118.2. the proposed national direction

    118.3. any submissions received on the proposed national direction

    118.4. the costs and benefits of implementing the proposed national direction

    118.5. any other matters that the Minister considers appropriate

*Minor and technical amendments*

119. agree to make the following minor and technical amendments to the EEZ Act:

    119.1. amend the definition of dumping to:

        119.1.1. exclude marine scientific research, in line with international obligations

        119.1.2. clarify that the activities excluded from the definition of dumping under (b)(i) are in line with those excluded under the London Protocol

    119.2. define 'treated' to make it clear when the EPA can decline an application for a dumping consent

    119.3. amend the wording of sections 74(3)(b) and 105(1)(b) to replace 'declined' with 'refused'

    119.4. clarify the meaning of the words 'during the processing of an application' in section 93

119.5. clarify that additional functions and services not listed in section 142(2) can be cost recovered by the EPA

119.6. ensure that the information sharing provisions do not prevent the EPA from sharing information with WorkSafe

119.7. minor amendments to drafting to ensure consistency throughout the EEZ Act

120. agree that the Minister for the Environment may agree to other minor and technical amendments to the Bill as identified during drafting

### *P. Remove the use of financial contributions*

**EITHER:**

121. agree to remove the ability to charge a financial contribution under the RMA

122. agree that the removal of financial contributions comes into effect five years after royal assent to allow councils time to amend or prepare their development contribution policies to take account of the amendments

123. agree to amend the RMA to require that councils must remove financial contribution policies from existing council plans within 5 years from Royal assent and allow such policies to be removed without using the normal plan change consultation processes

**OR:** [supported by Treasury, DIA, Ministry of Health, and MBIE]

124. agree to restrict the scope and use of financial contributions under the RMA to:

124.1. ensure charging is better aligned with, and proportionate to, the effects of a development

124.2. ensure financial contributions are used for the purpose for which they were charged

124.3. reduce the overlap with development contributions under the Local Government Act 2002

125. agree that the Minister for the Environment, in conjunction with the Minister of Finance, Minister for Economic Development, Minister for Building and Housing, and Minister of Local Government be authorised to make decisions on the detail of how the restrictions on the use and scope of financial contributions will be applied

### *Q. Equal treatment of stock drinking water takes*

*Equal treatment of stock drinking water takes*

126. agree that the provision for stock drinking water takes as of right be expanded so that all individuals, companies, trusts, partnerships, or other non-natural persons may take stock drinking water under section 14(3)(b)(ii), unless the take is unreasonable or is likely to have an adverse environmental effect

## R. *Minor changes or clarifications of policy intent from Batch 1*

*Iwi participation arrangements*

127. note that in February 2015 Cabinet reconfirmed their agreement to amend the RMA 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 recommendations 28-33]

128. agree that the scope of these arrangements includes plan development and resource consenting processes

129. agree that the parties to the arrangements (including applicable Treaty settlement entities) set out at what stages of the pre-notification resource consenting process iwi will provide advice to council and how that advice will be given to councils

130. agree that 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

*Improving Ministerial intervention powers*

131. note that on 4 June 2013, Cabinet agreed to strengthened central government powers to ensure council compliance with national direction and to intervene on request from councils [Cab Min (13) 18/8 recommendations 24 – 31]

132. note that following further consideration of this proposal and its fit within the revised reform package, I no longer recommend this proposal is pursued

133. agree to rescind the above decisions

*Further decisions on collaborative planning*

134. note that on 4 June 2013, Cabinet agreed that membership of a collaborative group include a list of sectors and groups with interests in relation to fresh water [Cab Min (13) 18/8, recommendation 42.8.1]

135. agree to rescind the above decision

136. agree that councils, in forming a collaborative group, must appoint members who collectively reflect a balanced range of the interests, investments, and values in the community in relation to the resource management issue to be considered by the group

137. note that on 4 June 2013, Cabinet agreed that a collaborative group must include a representative nominated by territorial authorities [Cab Min (13) 18/8, recommendation 42.8.4]

138. agree to rescind the above decision

139. agree that the territorial authority nomination and appointment process will only be available where a collaborative group is used for a regional council planning function

140. agree that the Minister of Conservation will approve coastal plans developed following a collaborative planning process, in the same way as for coastal plans developed under Schedule 1

*Align the National Planning Template's effect on resource management decision-making with NPSs*

141. agree that mandatory template objectives and policies included in the template to address matters that the Minister for the Environment considers to be nationally significant (as opposed to requiring national consistency) must be had particular regard to in resource management decision-making for resource consents, designations, heritage orders and water conservation orders as soon as the template, or an amendment to the template, is in force

142. note that the template will specify which objectives and policies of the template are included to address matters the Minister considers to be nationally significant, and which parts are included to address matters the Minister considers to require national consistency in order to ensure clear guidance to councils

*Changes to improve the efficiency of the plan-making process*

143. note that in February 2015, Cabinet agreed to introduce an option for limited notification under Schedule 1 where directly affected parties can be easily identified [Cab Min (15) 5/11, recommendation 68]

144. agree that only people served with a copy, or notice, of the plan change may make a submission or further submission on the plan change

*Rescind planning decisions from 2013 that have now been superseded*

145. note that on 4 June 2013, Cabinet agreed to:

    145.1. the provision of two alternative procedural tracks for plan making [Cab Min (13) 18/8 recommendations 40-41]

    145.2. the joint council planning process [Cab Min (13) 18/8 recommendations 43-47]

    145.3. the council planning agreement [Cab Min (13) 18/8 recommendations 49-53]

146. note that Cabinet has subsequently made a number of further decisions relating to planning processes [Cab Min (15) 5/11 refers] which have superseded these decisions

147. agree to rescind the above decisions

*Rescind requirement for independent commissioners to determine an application*

148. note that Cabinet has previously agreed to amend the RMA to require that, where a hearing is required to determine a resource consent application, the hearing must be heard by an independent commissioner or commissioners [Cab Min (15) 5/11 recommendation 107]

149. agree to rescind the above decision

*Reconfirmation of previously agreed recommendations*

National Objectives Framework implementation

150. note that Cabinet 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

151. note that Cabinet has previously agreed to amend the RMA to enable the Minister, in deciding whether a matter is a proposal of national significance, to have regard to whether a proposed plan gives effect to national direction

152. agree to reconfirm the above recommendations

Additional regulation making powers

153. note that Cabinet has previously agreed to amend the RMA to enable the making of regulations that set out the technical specifications for use of models

154. note that Cabinet has previously agreed to amend the RMA to enable the making of regulations that prescribe the form and content of water permits and discharge permits

155. agree to reconfirm the above recommendations

Water Conservation Orders

156. note that Cabinet has previously agreed to a review of the Water Conservation Order process, including how it interacts with the regional planning process, beginning in 2016, alongside the 5-year National Policy Statement for Freshwater Management review

157. note that Cabinet has previously agreed to not amend the current Water Conservation Order process at this time

Compulsory mediation for plan hearings

158. note Cabinet has previously agreed to amend the RMA to make mediation compulsory prior to plan appeal hearings, unless an exception has been granted by an Environment Court Judge [Cab Min (13) 18/8 recommendation 72 refers]

159. note Cabinet has previously agreed to amend the RMA 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 recommendation 73 refers]

160. agree to reconfirm the above recommendations

Certain activities to be deemed non-notified and specify classes of person who may be deemed to be affected

161. note Cabinet has previously agreed to introduce a new regulation making power to allow certain activities to be deemed non-notified and specify classes of person who may be deemed to be affected [Cab Min (15) 5/11 recommendation 93 refers]

162. note Cabinet has previously agreed that any matters provided for through regulations made under this provision should prevail over any contrary provision

in an operative or proposed plan or variation, including where a plan specifies that an application must be publicly or limited notified or must not be notified, and/or specifies a class of persons who must be considered affected by an application [Cab Min (13) 18/8 recommendation 67 refers]

163. agree to reconfirm the above recommendation

Additional parties who may be considered to be affected for a proposed subdivision

164. note that Cabinet has previously agreed to require that for applications for subdivisions that are controlled, restricted discretionary or discretionary activities the only person or persons who may be considered affected shall be the owners of the infrastructure assets to which to proposed subdivision is to connect [Cab Min (15) 5/11 82.1.3 refers]

165. note that Cabinet has previously agreed that affected party status should be extended to include regulatory agencies that have an interest for public health or safety reasons in the provision and functioning of infrastructure (or absence of infrastructure) [Cab Min (13) 18/8 recommendation 79 refers]

166. agree to reconfirm the above recommendation

***Publicity***

167. note that I will return to Cabinet with further details of a proposed communications plan once final policy decisions have been made

***Transitional Measures***

168. note that Cabinet has previously agreed to transitional provisions relating to consenting [Cab Min (13) 15/8 recommendation 17 refers]; natural hazards and subdivision consents [Cab Min (13) 15/8 recommendation 44 refers]; and Part 2 [Cab Min (13) 18/8 recommendation 82 refers]

169. agree to rescind the above agreements relating to transitional provisions

170. note that the transitional arrangements for components of the Resource Legislation Amendment Bill 2015 require consideration of risks, lead-in times, and connections between components

171. agree that transitional provisions be developed using the following principles:

    171.1. commencement provisions be batched to create greater certainty and reduce costs of implementation

    171.2. agree that savings provisions will be provided where an application has been notified at the time of commencement of new provisions,

    171.3. agree that, if an application has not yet been notified at the time of commencement of new provisions, the new provisions will apply

172. authorise the Minister for the Environment to develop commencement, transitional and savings provisions based on the principles outlined above and to instruct Parliamentary Counsel Office (PCO) to draft those provisions

173. note that the drafted commencement, transitional and savings provisions will be subject to approval by Cabinet when it considers the Resource Legislation Amendment Bill 2015 for introduction

174. with regards to the changes to the Public Works Act 1981, the Minister for Land Information and I recommend that the committee:

174.1. note that Cabinet agreed that amendments to the Public Works Act 1981 come into force on the day following Royal assent [Cab Min (13) 20/9A]

174.2. agree to the Public Works Act 1981 transitional provisions specifying that:

174.2.1. For the $10,000 criteria for solatium, the start date for the six month early agreement period includes dates prior to the date on which the amendment enters into force

174.2.2. The Public Works Act 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

***Other matters***

175. note that the RIS entitled *Resource Legislation Amendment Bill 2015* did not meet requirements for the reform package proposed in this paper

176. note that the RIS entitled *Alignment of the Decision-Making Process for Nationally Significant Proposals and Notified Discretionary Marine Consents* partially met requirements for the reform package proposed in this paper

177. note that the RIS entitled *Policy decisions for an EEZ Amendment Bill 2015* partially met requirements for the reform package proposed in this paper

178. invite the Minister for the Environment to issue drafting instructions to the PCO to implement the proposals set out in the above paragraphs through the Resource Legislation Amendment Bill 2015, in consultation with relevant portfolio Ministers where appropriate

179. authorise the Minister for the Environment to further clarify and develop policy matters relating to the proposals in the paper under CAB (13) 249 in a way not inconsistent with Cabinet decisions

180. authorise the Minister to issue drafting instructions to PCO to make consequential amendments to the RMA and other affected statutes and regulations to give effect to Cabinet decisions on the contents for the 2015 Bill to ensure workability of the agreed amendments

181. invite the Minister for the Environment to bring a draft Resource Legislation Amendment Bill to LEG by the end of the year

182. note that a post-implementation review of the reform package has been agreed by Cabinet [Cab Min (15) 5/11 refers], with the nature and timing of the review to be agreed by the Treasury and the Ministry for the Environment, and signed off by the Minister for the Environment, in consultation with the Minister of Finance and the Minister for Regulatory Reform

183. note the Minister for the Environment is currently considering the costs of the new additions to this reform package and the scale of implementation on the

Ministry for the Environment and will request any additional funds through the budget process

184. invite 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

185. note that the Resource Legislation Amendment Bill 2015 is required to be an Omnibus Bill, as you have previously agreed to make changes to the Public Works Act 1981 [Cab Min (15) 5/11 refers]. Should you agree to the proposals in this paper, the Bill will also amend the Reserves Act 1977, and the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012

186. agree that the Minister for the Environment may share the Cabinet minute arising from this paper, drafts of further Cabinet papers on related issues, drafting instructions to PCO, subsequent drafts of amendments to the relevant Acts and related documents with the EPA where matters considered relate to the functions of the EPA.

Hon Dr Nick Smith
**Minister for the Environment**
21 / 7 / 2015.

# Consultation on Cabinet and Cabinet Committee Submissions

| **Certification by Department:** |
|---|
| Guidance on consultation requirements for Cabinet/Cabinet committee papers is provided in the CabGuide (see Procedures: Consultation): http://www.cabguide.cabinetoffice.govt.nz/procedures/consultation |
| **Departments/agencies consulted:** The attached submission has implications for the following departments/agencies whose views have been sought and are accurately reflected in the submission:<br>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, and Maritime New Zealand. |
| **Departments/agencies informed:** In addition to those listed above, the following departments/agencies have an interest in the submission and have been informed:<br>The Department of the Prime Minister and Cabinet |
| **Others consulted:** Other interested groups have been consulted as follows: |
| **Name, Title, Department:** Libby Masterton, Manager RM Reform, Minstry for the Environment |
| **Date:** 01/July/2015 — **Signature** |

If this form covers two pages ensure that both certification sections are completed and attached at the back of the Cabinet/committee submission

**Certification by Minister:**

Ministers should be prepared to update and amplify the advice below when the submission is discussed at Cabinet/Cabinet committee.

**The attached proposal:**

| | |
|---|---|
| *Consultation at Ministerial level* | ☐ **has been** consulted with the Minister of Finance *[required for all submissions seeking new funding]*<br>☑ **has been** consulted with the following portfolio Ministers: Rel Ministers .<br>☐ **did not need** consultation with other Ministers |
| *Discussion with National caucus* | ☐ **has been** or ☑ **will be** discussed with the government caucus<br>☐ **does not need** discussion with the government caucus |
| *Discussion with other parties* | ☑ **has been** discussed with the following other parties represented in Parliament:<br>☑ Act Party ☑ Maori Party ☑ United Future Party<br>☐ Other [specify] No committed until draft on support.<br>☐ **will be** discussed with the following other parties represented in Parliament:<br>☐ Act Party ☐ Maori Party ☐ United Future Party<br>☐ Other [specify]<br>☐ **does not need** discussion with other parties represented in Parliament |

| **Portfolio** | **Date** | **Signature** |
|---|---|---|
| **Environment** | 21 / 8 / 2008 | |

# APPENDIX 1: Summary of reform package

| Policy | Agreed Reforms: Cabinet Paper Batch One (23 February 2015) | Proposed Reforms: Cabinet Paper Batch Two (June 2015) |
|---|---|---|
| National direction | • Combined development process for NPS and NES, through joint consultation, development and publication, to streamline the implementation of national direction.<br>• Clarified scope of NPS to give more specific direction about how the objectives and policies should be implemented in plans.<br>• Allow NPSs and NESs to be developed in relation to a specific area to address a local resource management issue that has national significance.<br>• Enhanced council monitoring requirements. | • Proposed addition to Section 6 RMA: 6(h) the management of significant risks from natural hazards.<br>• Inclusion of new duties in Part 3<br>• New regulation making powers to provide national direction through regulation, stating where activities should be permitted or certain rules should not be made. Regulations would make certain rules permitted or override council planning provisions for the purposes of:<br>o avoiding duplication with other legislation<br>o avoiding land-use restrictions that are not reasonably necessary to achieve the purpose of the Act<br>• New regulation making power to require that stock are excluded from water bodies<br>• Provide greater flexibility for NESs by:<br>o enabling council rules to be more lenient than the NES<br>o allowing NES to specify councils may charge to monitor activities permitted by an NES<br>o enable NES to specify requirements for councils |
| Plan-Making | • Mandatory National Planning Template to reduce plan complexity and provide a home for national direction.<br>• Changes to plan-making processes to improve efficiency<br>• Providing councils, on approval from the Minister, an option to use a Streamlined Planning Process, rather than the standard Schedule 1 process, for developing or amending a particular plan.<br>• Create a Collaborative Planning Process for all policy areas (modelled on the Land and Water Forum).<br>• Enhanced Māori participation by creating voluntary iwi participation arrangements with councils and enhancing consultation requirements. | • Rescind previous decisions regarding the Single Plan, as the benefits of this proposal will be better achieved through the national planning template.<br>• Exclude body corporate Heritage Protection Authorities from giving a notice of requirement for a heritage order over privately owned land and enable the Minister to transfer heritage orders between Heritage Protection Authorities<br>• Strengthened the requirements on councils to take account of the impacts of planning decisions on supply and affordability of land and housing, to robustly assess future demand for housing and land, and ensure their plans respond to that demand. |
| **Resource consents: Process improvement** | • Improved management of risks from natural hazards in decision-making on subdivision applications.<br>• Streamlined assessment process for subdivisions, by restricting involvement to infrastructure providers.<br>• No right of appeal to the Environment Court for boundary infringements and subdivisions (unless non-complying activities).<br>• Consent exemption for boundary infringements with neighbours approval and full notification precluded for inter-boundary activities<br>• Consent exemption for minor rule breaches, giving councils the power to waive the need for resource consent in circumstances where the effects being controlled are so minor the full consent process gives little benefit.<br>• Fast-track process for simple applications, requiring consent decisions within 10 days<br>• Narrowing submitters' input to the reasons for notification, ensuring input is focussed on the parts of the proposal that warranted public input.<br>• Notification decisions will be made with reference to environmental effects and the policies and objectives of plans at the same time.<br>• Requiring reasons for notification to be recorded and requiring submissions to be struck out where they do not relate to those reasons, are not relevant, do not provide evidence and/or advance arguments that have no chance of succeeding.<br>• Introducing regulation-making powers providing nationwide:<br>o non-notification of simple proposals with limited effects<br>o limited involvement of affected parties for certain activities<br>o consent decisions issued with a fixed fee.<br>• Requires limited notification be restricted to the owners and occupiers of surrounding sites.<br>• Streamlined and electronic public notification requirements and electronic servicing of documents.<br>• Clarification of the legal scope of consent conditions so they are fair and reasonable and | • Clarified assessment process for all district land use activities by restricting limited notification to the owners of adjacent land and relevant infrastructure providers (unless there are special circumstances).<br>• Refined assessment and decision-making process for residential activities in residential zones, by precluding public notification and Environment Court appeals (unless applications have non-complying status).<br>• Enabling alternative consent authorities to provide resource consenting services as an alternative to local councils. |

## Appendix 2: Policy detail on the reform proposals

### A. Inclusion of natural hazards in section 6

1. I propose that "the management of significant risks from natural hazards" is included as a new matter in section 6 of the RMA. This change will introduce the concept of risk management, as it relates to natural hazards, into Part 2 of the RMA. It will require the management of significant risks from all natural hazards.
2. While sections 30 and 31 of the RMA already include naturals hazards management as a function of both regional councils and territorial authorities, adding this new matter to the principles of the Act will provide greater emphasis to the consideration of these issues across all resource management decisions.
3. Note that natural hazards related changes to sections 106 and 220 of the RMA relating to subdivision consents were considered and agreed by Cabinet in February 2015 [Cab Min (15) 5/11 refers].

*Impact of this proposal*

4. Adding this new matter to the principles of the Act will provide greater emphasis to the consideration of natural hazard risk across all resource management decisions. This supports sections 30 and 31 of the RMA, which prescribes natural hazards management as a function of both regional councils and territorial authorities. This change also supports changes to section 106 regarding consideration of natural hazards in subdivision consents.

### B. Inclusion of new duties in Part 3

5. Applicants wishing to undertake activities under the RMA are often subject to requirements and processes that are disproportionately costly, time-consuming, and uncertain. Sometimes decisions made under the RMA can also result in unreasonable restrictions on private property rights.
6. In 2013, Cabinet agreed to insert two new matters into the RMA, requiring decision-makers to endeavour to:
   - 6.1. ensure that restrictions are not imposed under this Act on the use of private land except to the extent that any restriction is reasonably required to achieve the purpose of this Act
   - 6.2. apply a range of process matters in decision-making
7. I consider that the proposed duties regarding land restrictions be expanded to cover all land (including private, Crown-owned and council-owned land). This is to ensure that the public's use of its land is not unreasonably restricted by provisions under the RMA.
8. I also propose that the new process matters be included in a new section, requiring decision-makers to:
   - 8.1. use timely, efficient, consistent, and cost-effective processes that are proportionate to the function or power being exercised
   - 8.2. ensure that policy statements and plans only include matters relevant to the purpose of the RMA and use clear and concise language

8.3. promote collaboration between or among local authorities on common resource management issues.

Finally, I propose to remove the words "must to endeavour to" in both these sections, replacing it with a more prescriptive "must", which would require all decision-makers exercising functions and powers to ensure that the above criteria are met.*Impact of these proposals*

9. These proposals would limit land use restrictions, and ensure decision-makers apply procedures to minimise the costs of implementing RMA processes. These proposals will support other more targeted process changes in the resource management reform package.

### C. *Strengthen the requirements on councils to improve housing and the provision of development capacity*

10. Cabinet has previously agreed [Cab Min (13) 18/8 refers]:
    a. to require territorial authorities to provide a minimum of 10 years' supply of "appropriately-zoned land"
    b. to require regional councils to ensure the "strategic, long-term supply of urban land"
    c. that any supporting detail for this requirement would be developed as part of the national planning template
11. Having considered the practical application of these proposals, I am no longer proposing this approach because I consider it is too narrowly focused to achieve our desired outcomes for housing and development across the range of urban areas in New Zealand.
12. I am instead proposing new changes to strengthen the requirements on councils to take account of the impacts of planning decisions on supply and affordability of land and housing, to robustly assess future demand for housing and land (business and residential), and ensure their plans respond to that demand. The proposals are to:
    a. introduce a new function for both regional councils and territorial authorities to ensure that there is 'sufficient residential and business development capacity' to meet expected long term demand
    b. support these functions with a comprehensive program of national direction and guidance, including a National Policy Statement (NPS), which will include, amongst other policy approaches, a requirement for councils to do an assessment of future demand for housing and land and how their plans will supply that
13. These proposals are deliberately broader than the previously agreed proposal. In these new proposals, 'development capacity' refers to the combined effect of land zoning, infrastructure provision, and the council rules that govern development. The proposals will set a requirement that councils respond to the particular circumstances of demand in local markets, which is a more responsive approach than prescribing a particular timeframe (eg, 10 years of land) that may not be appropriate in all areas.

14. The program of national direction will be developed in phases. I propose that the first phase of the NPS will relate to housing as this is a top priority. It will provide further direction to councils on:

    a. high-level policy tools for assessing the sufficiency of residential development capacity responses, including a requirement for councils to undertake an assessment of demand and development capacity

    b. direction that development capacity provided through plans and policy statements must meet the identified demand

    c. other objectives and policies as appropriate

15. I propose that the second phase of this program will focus on:

    a. more detailed guidance or direction on a methodology for assessing demand and development capacity

    b. consideration of further direction on what constitutes 'sufficient' residential development capacity, which may include setting expectations on what must be achieved

    c. extending the scope of the national direction to include business land. Although housing is an urgent priority for the Government, it cannot be considered in isolation; how councils manage business land is also critical for the success of our cities

16. The proposed changes to the NPS provisions of the RMA will provide the ability for the Government to require councils to use a specified methodology. In the context of the second phase of a housing NPS, if those proposed changes are enacted, a methodology could be introduced covering how residential development capacity is calculated and demand assessed, along with assessing how well council plans provide this. The methodology would consider a number of factors, including future growth, demographic change and the development feasibility of zoned land. As an indicator, it would consider the use of land-price differentials for assessing the sufficiency of development capacity responses.

17. If the proposed changes to the NPS regime are not enacted, it will be possible to include general objectives that councils will need to give effect to, however, it will not be possible to include locally specific direction. Similarly, it will be possible to require councils to conduct demand and development capacity assessments, but not to use a particular methodology for doing so. Non-statutory guidance could be developed to fill this gap, but providing this direction through an NPS is preferable.

18. The first phase of this national direction will be delivered in 2016, while the second phase is planned to be delivered in 2017.

19. I intend to report back to Cabinet following the introduction of the Bill with a detailed plan for how the program of national direction will be progressed. This will include a proposal to carry out initial, targeted, consultation as required by the RMA. This will be developed jointly by officials from the Ministry for the Environment and the Ministry for Business, Innovation and Employment, in consultation with other Government departments.

*Impact of these proposals*

20. These new proposals support the areas already in the reform package which will collectively have a positive impact on housing and land supply by getting a better match between demand and supply, increasing certainty for housing developers, and taking cost and time out of the planning and consenting system.

### *D. Create more flexibility for National Environmental Standards*

21. As part of the first batch of resource management reform decisions, Cabinet agreed to proposals to strengthen national direction [Cab Min (15) 5/11 refers]. This was in recognition of the need for local planning to align with central priorities and to provide consistency across New Zealand where there is less or limited benefit in local variation.

22. I believe further changes are required to effectively address emerging resource management issues without the need to continually amend the RMA.

*Further proposals to increase flexibility of NES*

23. I am proposing three minor amendments to NES provisions to increase the range of enabling powers available through NES. Greater flexibility for NES would increase the Government's ability to address nationally important resource management issues.

24. I am proposing that NES are enabled to:

    a. allow councils to make rules more lenient than an NES to balance the current ability to allow rules to be more stringent than an NES. Enabling more lenient rules would increase flexibility for NESs to enable development and provide default rules (from which councils may depart based on specific district/region circumstances)

    b. allow councils to charge for monitoring specified permitted activities in an NES. This would provide increased certainty that requirements for permitted activities would be monitored and enforced. This would be desirable if future national direction is to classify activities as permitted subject to specific requirements

    c. specify requirements for how councils undertake their functions to achieve standards. This would improve the ability for central government to track progress and require councils to implement specific measures to achieve standards

### *E. Create new regulation-making powers to provide national direction through regulation*

*New regulation-making power*

25. I am seeking your agreement to three new regulation making powers to enable the Minister for the Environment to permit activities or to prevent and remove council planning provisions that duplicate other legislation or impose land-use restrictions that are not reasonably necessary to achieve the purpose of the Act.

26. There are instances of councils making rules under the RMA that duplicate other legislation, such as the Building Act, and rules that control building and design

features that are not required to achieve the purpose of the Act. The intent of the new regulation-making power is to prevent council planning provisions that unreasonably impose compliance costs, particularly in relation to building.

27. The exercise of the new regulation-making power would be subject to a statutory consultation requirement as well as the full range of safeguards that apply to all secondary legislation (regulatory impact analysis, Cabinet decision-making, regulations disallowance and judicial review).

*Regulation of Hazardous Substances and New Organisms*

28. I propose reconfirming Cabinet's previous decision to remove all explicit functions for regional councils and territorial authorities to control hazardous substances (Cab Min (13) 18/8 refers). This will clarify that councils are not required to duplicate processes which are provided for under the Hazardous Substances and New Organisms Act 1996. It will not limit councils' ability to use land-use controls to avoid hazardous substances events where appropriate (eg, controlling land use around hazardous substance facilities).

29. I propose rescinding Cabinet's previous decision to exclude the ability of regional councils and territorial authorities to control new organisms including genetically modified organisms (Cab Min (13) 18/8 refers).

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

30. To give effect to our 2014 election manifesto policy, I propose to amend the RMA to enable regulations to be made that require dairy cattle to be excluded from water bodies by 1 July 2017. Excluding dairy cattle on dairy farms from accessing water ways will help to:

- improve water quality
- give national coverage to the Sustainable Dairying: Water Accord requirements by including suppliers to Westland Milk Products Company
- pick up the poor performers
- improve some of the negative public perceptions around stock in water bodies.

31. The impacts of the proposal are likely to be minimal, given that a significant proportion of water bodies are already fenced[2]. I am proposing a new regulation making power as full dairy exclusion from waterways cannot be achieved using current national environmental standards through the RMA. The detailed costs and benefits will be considered at the time that detailed proposals for the regulations are developed.

32. I also want to ensure that there is an efficient way of enforcing such regulations and propose to allow for a breach of the regulation to be an infringement offence. This would enable councils to use a streamlined, single-step process

[2] Fonterra, which accounts for 86.8% of the national milk supply, has reported that as of October 2014, 96.1% of the length of defined water bodies on their suppliers' farms are fenced.

for enforcing compliance with the regulation, rather than relying solely on the current abatement notice and enforcement order process.

*Impact of these proposals*

33. These changes will make national direction tools more flexible, enabling government to respond more quickly and appropriately to emerging and strategic issues.

### G. *Changes to Heritage Protection Authorities*

34. The RMA gives powers to Heritage Protection Authorities (HPA) in order to protect a particular place or structure with special heritage qualities. Currently, an HPA may give notice to a territorial authority of its requirement for a heritage order in respect of a place. An HPA includes all Ministers of the Crown, local authorities, and Heritage New Zealand Pouhere Taonga (Heritage New Zealand). A body corporate with an interest in protecting a place may also apply to the Minister to become an HPA.

35. A high level of protection is afforded to heritage orders:

    a. no person may do anything that would nullify or partly nullify the effect of the heritage order without the prior written consent of the relevant HPA. This includes the owners of land under which heritage orders have been put in place, even where a resource consent may have been granted to carry out an activity

    b. a heritage order can only be removed or amended in a more than minor way by the relevant HPA

36. A private or community group is able to apply to become an HPA through application as a body corporate. The use of heritage orders by body corporate HPAs may have an intrusive regulatory impact on private land. There have been long standing concerns about how heritage orders work in practice with respect to body corporates.

37. I am seeking your agreement to amend the RMA to state that an HPA that is a body corporate may not give notice of its requirement for a heritage order over privately owned land. Body corporates would still be able to seek HPA status, and body corporate HPAs would still be able to seek heritage orders over publicly owned land, including council land. However, the proposed amendments to section 189 will remove the ability of HPAs (that are body corporates) to constrain the use of private land through heritage orders.

38. With regard to existing HPAs, I am seeking your agreement to introduce new transfer provisions in the RMA, which will give the Minister for the Environment the ability to transfer responsibility for a heritage order to an HPA that is not a body corporate.

39. Before making a decision to transfer a heritage order, the Minister will consider:

    a. The heritage values of the place

    b. The reasonable use of that place

    c. Any other matters that the Minister considers to be important

40. The Minister must then provide the relevant approved HPA and the HPA receiving the transfer opportunity to provide comment on the intention to transfer. The decision of the Minister will be issued by notice in the Gazette, and a copy of the decision will be provided to the relevant HPAs and local authorities.

41. This approach will allow the Minister for the Environment to transfer all powers and responsibilities for a heritage order, including financial responsibilities, without revoking the body corporate as an HPA, removing heritage orders, or introducing retrospective legislation.

42. While this process could remove a heritage order responsibility from a body corporate HPA to Heritage New Zealand, a local authority or any Minister of the Crown, the body corporate would still continue as an HPA of a heritage place, without exercising powers under a heritage order.

43. Removing the ability for body corporates to give notice for a heritage order over private land will prevent body corporates from having an intrusive regulatory impact over private land, while retaining a body corporate's ability to become an HPA over public land. This retention is particularly important for iwi in view of heritage resources, such as significant places or wāhi tapu in public spaces.

*Impact of these proposals*

44. Enabling the Minister for the Environment to transfer responsibility for a heritage order to another HPA will give the Minister more flexibility, in order to transfer orders to the most appropriate body.

45. The transfer process would provide certainty and ensure relevant matters have been considered. The Minister's decision will potentially be subject to judicial review.

### *H. Rescind previous decisions regarding the Single Plan*

46. Cabinet has previously considered a proposal to require all territorial authorities and regional councils to combine regional policy statements, regional plan, regional coastal plan, and district council plan provisions that relate to a particular district (or other agreed area) into a single plan [Cab Min (13) 18/8 refers].

47. The objectives of the single plan were to:

    a. highlight inconsistencies between regional and district planning provisions

    b. provide an incentive for councils to work towards better integrating their planning provisions

    c. make it easier for plan users, by providing all the planning provisions applying in a district in one place

48. I no longer consider that this approach is the best way of achieving these objectives. Instead, I am proposing that the National Planning Template, agreed by Cabinet in February 2015 [Cab Min (15) 5/11 refers], be relied on to provide those same outcomes.

49. Significant concerns about the workability of the single plan were raised by submitters (including concerns from regular plan users - professional

associations, business and infrastructure submitters). Almost all submitters recognised there was a need to simplify and enhance accessibility to planning documents; however issues were raised about the time and cost involved in producing a single plan which would achieve only limited benefits.

50. In the timeframe proposed (1 year after the introduction of the template) the single plan would be a composite of an average of 4-5 existing planning documents from 2 or more councils; resulting in one very large plan per district made up of a collation of poorly integrated provisions. The majority of plan users only require information (and resource consents) under one plan, not multiple plans[3]. The single plan will be bulkier, more complex, and more difficult to navigate because of the inclusion of plan provisions that will not be of benefit to the majority of plan users. This would work against the overall goal of the reforms to make plans simpler and easier to use.

51. Over time, the template can deliver the goals set out for the single plan in the following ways:

    a. The structure of the template plan will improve consistency and integration of plan provisions

    b. If government wishes, the template can set out provisions which require consistency between regional and district levels

    c. If the government wishes, the template can require that all the provisions applying in an area are brought together into one easily accessible place, using smart electronic functions to make it easier to find and search planning information

    d. Once the template is implemented, it will be much easier for councils to work together to combine their plans

*Impact of these proposals*

52. I anticipate this change will enable councils and stakeholders to better focus resources on engagement in the development of the template and the future implementation of the template.

## I. Clarification of notification test

53. Cabinet has previously agreed to eligibility criteria that must be met before people can be considered affected by consent applications for subdivisions and boundary infringements [Cab Min (15) 5/11 refers]. These support councils by removing risk from their notification decisions and support planning decisions by reducing the risk that decisions are re-litigated consent-by-consent.

54. I am now seeking your agreement to a further change that clarifies the notification provisions for other types of applications. I propose to refine consideration of affected parties (for limited notification purposes) to:

    a. the owners and occupiers of land adjacent to the proposed activity

[3] Thames Coromandel District Council (2013 discussion document submission): "the large majority of applications (around 95%) use only one plan."
Stratford District Council (2013 discussion document submission): "approximately 12% of applications for consent put to council also require parallel consents from the Regional Council. These applications are either oil and gas related or related to quarrying. The differences in consents are well understood by the oil and gas industry and have not lead to any duplication in the regulation of such activities".

b. owners or operators of infrastructure on, under, or over that land

c. a requiring authority that has a designation on the land subject to the application

d. iwi/hapū with relevant statutory acknowledgements who may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on, the statutory area.

55. This restriction would apply to district land-use activities only (for example housing, commercial and industrial activities, and agriculture). This is appropriate as these are activities where the effects are most prominent in the immediate surroundings and diminish away from the site. It would not apply to activities considered by regional councils (eg, the taking of groundwater) where effects occur on other users of the resource, rather than on adjacent parties.

56. This change will create the following two-step test for all district land-use applications:

a. *Limited or non-notification test*: Councils examine the effects on people who own or occupy adjacent land

b. *Public notification test*: Councils examine the environmental effects beyond the adjacent land

57. The above will also provide a clear assessment process if the RMA, regulations, or plans specify that public or limited notification is precluded.

58. Direction in the RMA to enable decision-makers to only consider adjacent land for limited notification would be beneficial for councils and developers because it would add clarity and certainty to the notification test. Currently this test is complex and unclear, leading to a lack of consistency in how it is applied.

59. In addition, the Housing Accords and Special Housing Areas Act 2013 (HASHA) uses a similar test, though it is limited in scope to residential activities in residential zones where accords are in place. My proposal would allow the clarity of HASHA to apply to housing throughout New Zealand and to all district land use activities.

60. I am proposing that this policy should apply to district land use only. While district land use effects are usually most prominent on the site of the activity and in the immediate surroundings, and they diminish away from the site, this is not the case in relation to regional activities, which can have effects beyond adjacent land but without any adverse effects occurring nearby. For example:

a. taking ground water may affect water users in the same water zone, irrespective of whether they occupy adjacent land

b. discharges of sediment to a waterway may affect fisheries or water users downstream rather than adjacent land owners

c. coastal structures affect other occupiers of coastal space, irrespective of local land ownership

61. Concerns have been raised by Crown infrastructure providers and others (eg, NZTA and Heritage New Zealand) regarding this proposal, but I am satisfied that adequate scope exits for the right parties to provide input into consent decisions, either directly as affected parties or via expert advice commissioned by councils.

62. As a safeguard measure, however, I propose to extend existing powers to recognise that occasionally special circumstances exist in relation to consent applications. Currently, public notification of an application can be made if special circumstances exist, but this provision does not apply to limited notification. Case law shows this is a high test to meet and is rarely used, but also that it can be useful where odd circumstances surround a development proposal. I intend to allow councils to determine that, if special circumstances exist, individual parties may be deemed affected and that limited notification (as well as public notification) can occur. This would allow heritage authorities, government departments or infrastructure operators (for example) to be served notice where there is a compelling reason for this, and in turn may avoid the need to publically notify an application.

63. I consider that this set of policy proposals is consistent with, and complements, other changes to the notification regime that are part of the current reform package.

*Impact of these proposals*

64. Overall, this set of amendments will simplify district councils' assessments of the parties affected and not affected by consent applications, and in turn reduce their exposure to the risk of judicial review. It will also help applicants understand, in advance of the council's assessment, who they may need to consult with in the adjacent environment, to ensure a smooth process.

## J. Preclusion of public notification and Environment Court appeals for residential activities in the residential zone

65. HASHA further supports the supply of housing in special housing areas by precluding public notification of consent applications and giving no right of appeal to the Environment Court (in the majority of circumstances). Although this is not replicated in the RMA, Cabinet has already agreed to integrate some of HASHA's policies into the RMA by requiring some subdivisions and boundary infringements to be determined without public notification and without risk of appeal to the Environment Court [Cab Min (15) 5/11 refers].

66. I intend to ensure the remainder of HASHA's provisions continue in effect via the RMA. I therefore am seeking your agreement to require that applications for residential activities on residential sites are not publically notified, and that decisions cannot be appealed to the Environment Court (unless the consent status is non-complying).

67. This proposal will simplify the council's decision by removing the need to assess effects and justify decisions regarding more peripheral parties. It would also reduce the risk of judicial review and avoid it from any party other than an adjacent neighbour. This would benefit the majority of applicants for consents for residential housing developments, and help councils by relieving them of the current assessment requirements.

68. HASHA's powers to preclude Environment Court appeals are limited to developments of three storeys or less. This simple provision applies nationwide wherever housing accords are in place, but because district plan controls vary throughout the country (and within districts), it is inappropriate to transfer this provision directly into the RMA. Rather, I propose to preclude Environment Court

appeals for these developments unless they have *non-complying* status in the relevant district plan. This status would mean a development is not consistent with the objectives and policies of the plan, and would mean that an application could be appealed to the Environment Court.

*Impact of these proposals*

69. This proposal adds certainty for developers and decision-makers and reduces costs and delays of gaining permission for developments – particularly where these affect housing supply and where those developments are consistent with existing plan provisions.

70. There are some perceived risks that developers who receive unfavourable decisions will not be able to seek relief through an appeal to the Environment Court. While this is true, case law shows that unfavourable initial decisions are most often overturned when the developer amends their proposal to make it more consistent with district plan provisions. In the absence of an appeal right, I expect developers will make those amendments in front of the council commissioners rather than at the court. Overall, therefore, I expect outcomes development community will, if anything, be improved because decisions will be reached more quickly and simply.

## K. Enabling alternative consent authorities to provide resource consenting services as an alternative to local councils

71. I am seeking your agreement to a new proposal to enable alternative consent authorities to provide resource consenting services as an alternative to local councils. These alternative consent authorities may be a Crown entity, such as the EPA, a departmental agency, a private sector provider or a local authority. I note that this provision could provide an opportunity for iwi authorities to become a private sector provider.

72. Once established, alternative consent authorities would give applicants a choice about who decides their application. Councils would still be required to provide the full range of resource consenting functions in their area, while the alternative consenting authorities could be limited to particular geographical areas or consent types. The scope of alternative consent authorities will be for applications for controlled, restricted discretionary, or discretionary activities. In addition consent applications considered by regional councils will be outside the scope of alternative consent authorities.

73. At this time I only propose to include an enabling provision in the RMA to allow for the accreditation of alternative consent authorities in the future. The functions, powers and duties of each alternative consent authority will be agreed by the Secretary for the Environment when it is accredited.

74. I propose to amend the RMA to enable a crown entity, a departmental agency, a local authority, or a private sector organisation to apply to the Secretary for the Environment to be accredited as a consent authority. Once accredited, these authorities will be able to provide resource consent services within the scope of their specific accreditation. There is a similar accreditation process in the Building Act 2004.

75. Under this proposal, local authorities will be able to provide resource consent services outside of their jurisdictions should they wish to expand their services to properties close to their district/regional boundaries, for example. Local authorities who have geographic jurisdiction (by default) will not need to apply to become accredited in their own district.

76. The RMA will set out:

    a. that an application must be made to the Secretary for the Environment

    b. that the Secretary for the Environment will decide whether or not an organisation is accredited and the specific scope of accreditation (for example, setting a time period for accreditation, the types of consents an authority can decide, or the geographic area it can work in)

    c. that accreditation may be revoked in certain circumstances

    d. that alternative consent authorities can consider applications for controlled, restricted discretionary, or discretionary activities

    e. that consent applications considered by regional councils will be outside the scope of alternative consent authorities

    f. the potential scope of accreditation (which of the existing functions, powers and duties of a consent authority may be given to an alternative consent authority)

    g. that consent authorities must share information with each other and the relevant local authorities

    h. how the alternative consent authorities will be required 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/hapū agreement

77. Regulations will set out the detailed requirements for accrediting an organisation as an alternative consent authority. Specifically:

    a. the standards and criteria for accreditation

    b. requirements for how the different consent authorities will share information with each other and the relevant local authorities

    c. the type of, and procedure for, local authority input into the consent process in cases where it is not the consent authority including requiring the relevant local authority to provide information to the alternative consent authority within a certain timeframe

    d. how the performance of the consenting authorities will be evaluated and reviewed

    e. the circumstances where accreditation may be revoked and the process for revocation

78. I propose that if the Secretary for the Environment agrees that an application to be a consent authority should be granted and is satisfied that the applicant meets the standards and criteria for accreditation, the Secretary for the Environment must issue a notice in the gazette that accredits the applicant as an alternative consent authority and sets out the scope of the accreditation.

79. The nature and scale of the costs of establishing and maintaining a Crown entity or departmental agency as a consenting authority would depend on its design and functions. These costs, plus any cost recovery approach, will be fully considered if such an entity or departmental agency is proposed to be established as a consent authority in the future.

80. To enable the EPA to be directed by the Minister for the Environment to apply to become an alternative consent authority, I propose to ensure the functions of the EPA include the provision of consenting services.

81. To ensure applicants do not 'shop around' for the decision they want, I propose to prevent applicants from applying to more than one consent authority for the same or similar activity.

*Treaty of Waitangi implications*

82. Many iwi/hapū have a variety of relationships and arrangements with local authorities, including those that have been established as part of Treaty of Waitangi settlements. To mitigate any impact on iwi/hapū, I propose to require all alternative consenting authorities (including private sector organisations) to give effect to any relevant arrangements set out in the provisions of a Treaty settlement, Joint Management Agreement, Iwi Participation Arrangement, other Act or relevant iwi/hapū agreement.

83. The Whanganui River settlement, for example, requires the relevant local authority to give particular regard to a register of accredited commissioners who have knowledge of the river when appointing the hearings panel for a resource consent application relating to the Whanganui River. An accredited alternative consent authority would be required to have regard to these same provisions.

84. Individual iwi/hapū can also engage in the consultation process that will occur at the time any regulation is developed to establish the accreditation process that will apply to alternative consent authorities.

*Impact of these proposals*

85. By introducing choice for applicants, I expect incumbent local authorities to lift their performance and be motivated to provide consents cheaper and faster. I expect costs to applicants from delays in the consenting process and unnecessary information requests to be reduced. The alternative consenting authorities are expected to provide a better service for applicants by attracting high quality staff, using digital technology, and increasing national consistency (by offering applicants the ability to apply for the same proposal in multiple locations/plan areas in a single application).

86. The alternative consenting authorities are expected to provide a better service for applicants by:

    a. Attracting high quality staff, resulting in more effective and efficient processing and decision-making

    b. Using digital systems that will increase efficiency and reduce cost for applicants

    c. Incentivising a nationally consistent approach to processing applications, especially if offering the ability to apply for the same proposal in multiple districts

## L. Joint plan change/ resource consent and reserve exchange process

87. A proposal for developing an urban area can often involve plan changes and resource consents as well as exchanges of reserves. However the process for exchanging reserves under the Reserves Act is not aligned with the RMA. This can result in prolonged decision-making processes, unnecessary costs to developers and local authorities, and duplication of evidence heard. Having two separate processes for issues that are part of the same proposal also leads to ineffective and inefficient community engagement and consultation.

88. I am seeking your agreement to amend the RMA and the Reserves Act to enable an optional joint process of public notification, hearings and decisions for proposals that involve publicly notified plan changes/ resource consents and recreation reserve exchanges.

89. This process will only be able to be accessed where the local authority making a decision on the plan change/resource consent application is also the administering body for the recreation reserve exchange. I am also therefore seeking your agreement to amend the Reserves Act to remove the statutory responsibility of the Minister of Conservation to authorise exchanges of recreation reserves in the circumstance when a joint process is followed.

90. This optional joint process will be available upon request by the applicant and if considered appropriate by the relevant local authority. The local authority will also have the option of delegating decision-making under the joint process to a hearing commissioner(s).

*Impact of this proposal*

91. This proposal would reduce costs, provide faster decisions and enable a more efficient process for proposals that involve plan changes/resource consents and reserve exchanges. This process would be particularly beneficial in facilitating urban redevelopment projects, as it enables one integrated public consultation process and ensures optimal urban design outcomes.

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

92. Currently, the concession and consent processes differ in a number of ways. Examples are provided in the table (below).

| | **Conservation Act** | **RMA** |
|---|---|---|
| Criteria for notification | All concession leases, and licences over 10 years must be notified, and any concession may be notified if the effects of it make that step appropriate | Plan provisions under RMA are both highly relevant and highly variable |
| When the decision to notify is made | No statutory requirement for a concession application | Within 10 working days of application |
| The possible scope of notification | National notification unless the activity is only of local interest | Notification if the activity will have or is likely to adverse effects on the environment that are more |

| | | |
|---|---|---|
| | | than minor, the applicant request it, or a rule or national environmental standard requires it |
| What is notified | A proposed decision (if there is an intention to grant) | The consent application |
| Submission time period | 40 days | 20 days |

93. Greater alignment of the concession and resource consent processes would provide for more synchronisation at key stages such as lodgement, notification, and submissions. The proposed changes to the Conservation Act are outlined below:

    a. require notification of all notifiable concession applications, not just those that the Minister of Conservation 'intends to grant';

    b. limit the period for submission on concession applications from 40 working days to 20 working days (as the nature and scale of information required for resource consent and concession submissions on the same activity are similar); and

    c. require a complete concession application to be received before the application is accepted.

94. This proposal was developed as part of DOC's 2010 Concessions Processing Review, and was widely consulted on at that time. The changes would benefit applicants who need to apply for both a resource consent and a concession. By providing a consistent approach, applicants will have more certainty around the two processes. In addition, it will enable an applicant to undertake the processes concurrently.

## N. Alignment of decision-making for discretionary marine consents under the EEZ Act and for Nationally Significant Proposals by Boards of Inquiry under the RMA

95. In considering Batch 1 of the Resource Management Reform proposals in February, Cabinet agreed to changes to the composition of BOIs under the RMA. These changes made optional the current requirement for a Board to be chaired by a current, former or retired Environment Judge or a retired High Court Judge, and introduced a requirement for the Minister for the Environment to consider including legal expertise when appointing a Board [Cab Min (15) 5/11 refers].

96. I am now seeking your agreement to a further package of reforms aimed at ensuring the decision-making process for notified discretionary marine consents under the EEZ Act is aligned with the Board of Inquiry (BOI) decision-making process for Nationally Significant Proposals (NSPs) under the RMA. Greater consistency between the EEZ Act and the RMA will ensure decision-making is more efficient and cost effective, and will enable the EPA to make efficiency gains by standardising business processes.

97. These changes will require further legislative amendments to the RMA as well as amendments to the EEZ Act, as outlined below.

*Marine consent decision-making model*

98. I propose to align the decision-making model for marine consent applications for notified discretionary activities with current or proposed provisions for NSPs under the RMA. I seek your agreement to amend the EEZ Act to require:

    a. the Minister for the Environment to appoint a BOI consisting of three to five members to conduct a hearing and make a decision (unless the application is a joint application for an activity that crosses the boundary between the EEZ and coastal marine area, in which case the BOI will be appointed by the Minister for the Environment and the Minister for Conservation)

    b. the EPA to provide administrative support to the BOI and may provide technical advice, in line with the agreed provision for NSPs that the EPA may provide planning advice to BOIs [Cab Min (15) 5/11 refers]. The EPA will remain the decision-maker for non-notified activities and all other decisions under the EEZ Act

99. I propose to adopt the current requirement for NSPs that in appointing BOI members the Minister for the Environment must consider the need for the board to have available to it, from its members, knowledge, skills and experience relating to:

    a. the EEZ Act

    b. the matter or type of matter that the BOI will be considering

    c. tikanga Māori

100. I propose to adopt the provision to make it optional for a BOI to be chaired by a current, former or retired Environment Judge or retired High Court Judge [Cab Min (15) 5/11 refers].

101. I propose to extend the agreed provision to introduce a requirement for the Minister for the Environment (or the Minister for the Environment and the Minister for Conservation in the case of a cross boundary application) to consider including legal expertise when appointing a BOI [Cab Min (15) 5/11 refers].

102. I am proposing to explicitly allow BOIs to direct expert conferencing (consistent with NSPs under the RMA) to encourage BOIs to use this tool in the pre-hearing stage and enable hearings to focus on points of contention.

103. I propose the following to align the EEZ Act process with recently agreed changes to the RMA aiming to improve the cost efficiency of the NSP process [Cab Min (15) 5/11 refers]:

    a. enabling the EPA to direct the proceedings of a BOI deciding on an application

    b. requiring BOIs to have regard to cost effective processes when carrying out their duties

    c. requiring that BOIs must have specific regard to the estimated level of processing funding set by the EPA for the consideration of an application

    d. improving the ability for electronic provision of and access to information related to marine consent applications

e. enabling the EPA to pursue commercial avenues for unpaid debts

f. providing the EPA discretion to suspend processing of an application where there are outstanding debts, provided the EPA has:

   i. made written demand for payment of the outstanding amount and

   ii. given the applicant 20 working days' notice of its intention to suspend processing if payment is not made

*Composition of a Board*

104. I am seeking your agreement to introduce a requirement in both the RMA and the EEZ Act that the Minister for the Environment (or the Minister for the Environment and the Minister for Conservation in the case of a cross boundary application under the EEZ Act) must consider the need for BOI members to have relevant technical expertise when appointing a Board. In the RMA context, 'technical' refers to skills pertaining to applied and industrial sciences as opposed to an alternative interpretation of 'technical' as 'planning' expertise.

105. To strengthen accountability and assist in improving consistency, it is also my intention to appoint an EPA Board Member to BOIs, where appropriate. At my request, the EPA will be able to nominate one or more Board members to consider when making the BOI appointments.

*Removal of the requirement to release a draft decision*

106. I propose to align the draft decision and technical correction stages of the two processes. Currently, participants in the RMA process are invited to comment on minor and technical aspects of a draft decision, such as the wording of conditions, or omissions. There is no draft decision stage under the EEZ Act, and decision-makers can only amend consents to correct minor errors for up to 15 working days after the consent has been granted.

107. A general power for BOIs to correct minor and technical mistakes is also present in the RMA. BOIs may, at any time during their appointment, issue an amendment to a decision or an amended decision that corrects minor mistakes and defects in any decision of the BOI.

108. I propose to remove the draft decision stage from the RMA process and amend the current general amendment power to allow for BOIs, at any time during their appointment, to issue an amendment to a decision or an amended decision that corrects omissions as well as minor mistakes and defects in any decision of the BOI.

109. I consider that the risk of removing the formal draft decision stage from the RMA is low and the change would further align the two processes.

*Timeframes*

110. I propose a number of changes to the statutory timeframes under both the RMA and the EEZ Act. I am seeking your agreement to:

a. extend the submission period from 20 working days to 30 working days to provide additional time for submitters to consider an application and make more comprehensive submissions

b. remove the 40 working day timeframe between submissions closing and the start of the hearing. This will provide greater flexibility for decision-

makers to scale the decision-making process according to the nature and circumstances of each application. This will also provide more time for applicants to respond to further information requests, for decision-makers and submitters to consider this information, and for undertaking evidence preparation, exchange, and expert conferencing.

111. These changes are likely to require consequential amendments to other statutory timeframes, including to time limits for the provision of evidence prior to a hearing, and to the timeframes for making minor corrections to consents. I am therefore seeking Cabinet's agreement to make further decisions on timeframes as required, to accommodate any consequential amendments arising from the change in timeframe for submissions and for the period between the close of submission and the start of the hearing.

112. I propose a number of changes to align the statutory timeframes for notified marine consent applications with current NSP provisions. These aim to address concerns expressed by applicants and submitters that the decision-making timeframes for discretionary activities do not allow for adequate consideration of a large amount of information. Combined with the other proposals, I expect these changes to reduce the time and costs associated with the hearings process by enabling some matters to be more fully addressed in the pre-hearing stage.

113. I propose to:

a. introduce a maximum timeframe of nine months for BOIs to make decisions on notified marine consent applications

b. remove the maximum timeframe of 40 working days for notified discretionary marine consent hearings

c. remove the 20 working day timeframe for deliberation on notified discretionary marine consents in the EEZ Act

*Appeals*

114. I propose to amend the EEZ Act to align appeals on decisions made by BOIs under the EEZ Act with the appeals process for Nationally Significant Proposals (NSPs):

a. appeals to the High Court on questions of law only will remain

b. no appeal may be made to the Court of Appeal from a determination of the High Court

c. a party may apply to the Supreme Court for leave to bring an appeal to that court against a determination of the High Court

d. the Supreme Court can grant or deny leave, or remit the appeal to the Court of Appeal

115. This will ensure that appeals beyond the High Court can only be taken when there are clear grounds justifying the further appeal, and will reduce the time taken to achieve certainty.

*Determining if an application is complete*

116. I recommend amending the current provisions of the EEZ Act for the EPA to determine if an application for marine consent is complete (the completeness

test) in the EEZ Act to better align it with Schedule 4 of the RMA (as amended in 2013), by:

a. expanding the information required so that the information relevant to making the decision (ie, the relevant criteria in section 59(2)) is required when an application is lodged

b. allowing the EPA to return an application if it does not include information in sufficient detail for the purpose for which it is required. Note this will not change the current situation where the applicant can resubmit their application with additional information included

117. Amending the completeness test would ensure an appropriate incentive is established for applicants to provide a sufficient level of information at the beginning of the process. The EPA would encourage applicants to work with its staff before an application is formally lodged (during the voluntary pre-lodgement process) to ensure applications contain sufficient information. In turn this would potentially reduce the number of further information requests post-lodgement, while preserving the ability of the EPA or decision-makers to request further information later in the process (for example following submissions).

## O. Changes to the EEZ Act

118. The purpose of the EEZ Act is to promote the sustainable management of the natural resources of New Zealand's EEZ and continental shelf. Under the EEZ Act, the EPA makes decisions on applications for consents, and enforces and monitors the regime.

119. While I consider that the EEZ Act's fundamental balance between managing the environmental effects of activities in the EEZ and maximising responsible economic opportunities is positioned correctly, early experience with the regime has highlighted some discrete issues in the legislation, which I am seeking your agreement to below. Treasury, MBIE, the EPA and industry have all expressed views that more substantive changes are needed to the regime, however these would be better considered through a longer-term review.

Decommissioning

120. There is currently a gap in the EEZ Act relating to decommissioning structures once they reach the end of their productive life. The EEZ Act is not specific enough that operators need to engage with agencies to plan for decommissioning and conduct decommissioning as a comprehensive but separate activity within a specific timeframe. In addition, the EEZ Act does not provide sufficient confidence about an operator's liability for costs associated with decommissioning. Note that decommissioning is a complex area and doesn't necessarily involve the complete removal of a structure in all cases.

121. I propose a two-stage approach to addressing decommissioning:

a. In the short term, I recommend amending the EEZ Act to require any existing and future operators to conduct decommissioning, by including a provision that the EPA has the authority to require operators to apply for consent to undertake decommissioning activities

b. In the longer term, a detailed approach to decommissioning will be developed through regulations under the EEZ Act. The power to make such regulations already exists in the EEZ Act, including the ability to specify financial security requirements.

122. I have considered whether to include a specific bonding requirement in the EEZ Act as a tool to provide financial security for decommissioning. The EEZ Act currently allows the EPA to impose a bond as a condition on consent (section 65) but this is not mandatory and does not specifically provide for decommissioning. I recommend against including a specific bonding requirement in the EEZ Act at this stage, because:

a. A key part of the proposed regime for decommissioning will be about how much of a structure has to be removed, which will have a significant impact on the cost of decommissioning and the type of financial surety needed

b. The likely high cost for decommissioning even for relatively small and straightforward installations means that any bonding requirement imposed on existing operators in the short-term is likely to be inconsequential in comparison with the actual cost of decommissioning

c. Requiring a bond in the near future (whether a lump sum or paid off over the next 5-10 years) would likely be very contentious with existing operators, as indicated by the response to the proposal to increase the public liability insurance requirement for offshore installations to $300 million under Part 102 of the Marine Protection Rules

d. The risk of existing operators defaulting is low as operators have been in New Zealand a long time and have a lot of social capital invested here.

123. I consider a more effective approach will be to work with operators and other interested parties to develop a comprehensive decommissioning regime through regulations. Consideration of a financial security requirement will form part of that work.

Transitional arrangements – rulings for minor alterations to existing structures

124. Under section 162(2) of the EEZ Act, minor alterations to existing structures can only occur if the EPA provides a ruling that the adverse effects on the environment or existing interests of the alterations are likely to be minor or less than minor.

125. Industry and the EPA have raised concerns regarding the scope of activities that require a ruling, and the associated burden on both industry and the EPA should the section be interpreted broadly so that any minor alteration to an existing structure would require a ruling, even if the activity has no adverse effect.

126. I propose to amend section 162 to clarify that rulings are only required for activities that have an adverse effect on the environment or existing interests. This will provide greater clarity and certainty for industry and the EPA. It will also minimise the costs and administrative burden associated with the rulings process, while ensuring for adequate consideration of any adverse effects.

Enforcement

127. I propose the following improvements to strengthen the enforcement provisions in the EEZ Act:

    a. clarify the provisions relating to search and seizure in section 141 of the EEZ Act, to remove any doubt that EPA enforcement officers have the power to seize in line with the provisions of Part 4 of the Search and Surveillance Act 2012

    b. extend the limitation period for taking enforcement action in section 137 from 6 months to 12 months after the detection of the offence. This will allow the EPA additional time to detect non-compliance in light of the challenges associated with the isolation of offshore industries and the difficulties with identifying whether effects have occurred.

National Direction

128. Under the EEZ Act, the Environmental Protection Authority (EPA) is the decision-maker on marine consents. The EEZ Act decision-making framework consists of matters that must be taken into account or had regard to, and there is broad discretion for the EPA in considering and weighing the matters.

129. There is consensus among industry and agencies that central government direction would be a useful tool to support decision-makers, applicants and submitters to better understand the detailed policy of the EEZ Act and apply this consistently to marine consent applications. This direction could be either statutory or non-statutory.

130. I propose including an enabling provision in the EEZ Act for a tool to develop national direction that would allow the Government to propose national direction that states objectives and policies for matters that are relevant to achieving the purpose of the EEZ Act. National direction could apply to all or part of the Exclusive Economic Zone and the continental shelf.

131. I consider this would be useful to support decision-makers, applicants and submitters to understand the intent of the EEZ Act and apply this consistently to marine consent applications.

*Minor and technical amendments*

132. I propose to make a number of minor and technical amendments to provide clarification and improve the workability of the EEZ Act.

| Section | Description of amendment | Reason for amendment |
|---|---|---|
| 4 | Amend the definition of dumping to:<br>• exclude equipment relating to marine scientific research (MSR)<br>• clarify that the activities excluded from the definition of dumping under (b)(i) are in line with those excluded | The EEZ Act does not explicitly exclude MSR equipment from the definition of dumping. This is inconsistent with the London Protocol.<br><br>Under (b)(i), if a ship's normal operations include transporting waste for disposal, there is uncertainty about whether this is considered dumping. |

| | | |
|---|---|---|
| | under the London Protocol. | The proposed amendments will ensure compliance with international protocols and best practice. |
| 74(3)(b)<br>105(1)(b) | Amending the wording of the section to replace 'declined' with 'refused'. | To ensure consistency with the wording of section 62, which empowers the EPA to refuse an application for marine consent. |
| 93 | Clarify the meaning of the words 'during the processing of an application'. | To make it clear when a decision can be made on cross boundary applications. |
| 142(2) | Expressly state that the list of examples of functions and services for which the EPA must cost recover is not exhaustive. | To clarify that additional functions and services not listed in section (2) can be cost recovered by the EPA. |
| | Define 'treated'. | To make it clear when the EPA can decline an application for a marine dumping consent. |
| | Ensure that the information sharing provisions do not prevent the EPA from sharing information with WorkSafe. | To ensure the EPA and WorkSafe have the information needed in the exercise of their functions. |

## P. Remove financial contributions

133. The RMA currently permits financial contributions to be taken for a broad range of purposes. Territorial authorities can currently charge both a development contribution[4] and financial contribution[5] on a single development; however they cannot charge them 'in relation to the same development for the same purpose'[6]. The ability remains for councils to charge both forms of contributions in relation to the same development but for a different purpose. I consider that these two mechanisms have, in practice, been used for largely the same purposes. The overlap between the two charging regimes can be confusing and can lead to perceptions of councils double or unjustifiably charging.

134. I am seeking your agreement to a new proposal to remove the ability to charge financial contributions under the RMA. This will make it clear that the costs of servicing new growth should be met through development contributions.

135. Under this proposal it would still be possible to offset environmental effects under the RMA if financial contribution provisions are repealed. Currently the offsetting of environmental effects (not achieved through a financial contribution) has to be either volunteered or agreed to by the applicant, and this would continue.

[4] Development contributions are charged under the Local Government Act to recover the costs incurred by a territorial authority for the capital expenditure necessary to service growth. Regional councils cannot charge a development contribution.
[5] Financial contributions can be imposed (by both regional councils and territorial authorities) for wider purposes than development contributions, including the offsetting of environmental effects.
[6] Local Government Act 2002, section 200.

136. It is possible that more resource consents will be declined if an applicant does not agree to the offsetting requirements or where the offsetting offered by the applicant is insufficient to justify the consent being granted. Councils will not have the ability to impose conditions that take land or cash without the applicant's agreement. In practice, applicants sometimes agree to offsetting conditions (eg, planting, or habitat protection on another site) that are reasonable and necessary to ensure the consent is granted.

137. It is expected that the removal of the ability for local authorities to charge financial contributions will result in a drop in local authority revenue of an estimated $10 Million per year. Although some local authorities will be able to mitigate this through making greater use of development contributions under the Local Government Act 2002, where financial contributions were related to the provision of infrastructure or reserves, the narrower scope of development contributions means that it is likely the lost revenue will not be fully offset.

138. Financial contributions can be used to acquire esplanade reserves, esplanade strips and access strips. The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers is a matter of national importance under section 6(d) of the RMA. The RMA provides the ability for councils to require esplanade reserves, access strips and esplanade strips to, amongst other matters, enable public access to or along any sea, river, or lake. The removal of financial contributions will not affect the power ability for councils to acquire esplanade reserves, esplanade strips or access strips but may affect their ability to fund the acquisition of such instruments.

139. I recommend that the changes to financial contributions do not take effect for a period of five years. This transitional period will provide territorial authorities with an opportunity to amend or prepare their development contributions policies as part of their Long Term Plan processes. Sixty territorial authorities may have to prepare or amend their development contribution policy to ensure that they can still recover the costs of providing for new growth from any development that creates a demand for new infrastructure.

140. The changes will mean that any existing financial contribution provisions will need to be removed from Council plans. I recommend that rather than following the normal plan change public notification process to remove the financial contribution provisions, all that is required is a public notice informing stakeholders that the financial contribution provisions have been removed.

*Impact of these proposals*

141. Removing financial contributions will make it clear that the costs of servicing new growth should be met through development contributions and make charging more certain and transparent for applicants. However, it will also potentially remove a revenue source for councils.

## Q. Equal treatment of stock drinking water takes

Equal treatment of stock drinking water takes

142. Interpretation of the word "individual" in section 14(3)(b)(ii) means that in some regions two identical farms with identical water requirements for stock might be

regulated differently if one happens to be owned and operated by an individual and the other under a company or family trust structure.

143. I propose an amendment to the RMA to replace the word "individual" with the word "person", which is defined as including both natural and legal persons (companies and trusts).

144. The right to take water for a person's stock could be limited in plans based on:

    a. Reasonableness of the take; and

    b. Whether the take is likely to have an environmental effect; but not

    c. Whether a natural person, trust, or company owns the stock

145. The result would be regulation of stock drinking water takes in a way that considers environmental effects rather than the legal status of the stock's ownership. In some regions this is likely to mean a change in approach to the way regional plan rules provide for stock drinking water.

## R. Minor changes or clarifications of policy intent

146. In February 2015, Cabinet considered Batch 1 of the Resource Management Reform proposals [Cab Min (15) 5/11 refers]. Below are a number of small issues that I am seeking your agreement to, which either report back on outstanding issues or provide additional clarity of policy intent for drafting.

*Iwi participation arrangements*

147. The purpose of voluntary 'iwi participation arrangements' is to incentivise effective working relationships between iwi and councils in relation to all planning and resource consenting processes. Under this proposal, councils will be required to invite iwi authorities to form an iwi participation arrangement that details how iwi and the council will work together through all plan development and resource consenting processes.

148. Cabinet has previously agreed that IPAs would apply to the RMA Schedule 1 process only, not the resource consenting process [CAB Min (15) 5/11 refers]. This approach reflected the 2013 package of proposals which were focused on changes to planning processes, with fewer changes in consenting and other processes.

149. I am seeking your agreement to clarify that:

    a. a proposed policy statement or plan must be prepared in accordance with any applicable arrangements

    b. the pre-notification resource consenting process may proceed in accordance with any applicable arrangements.

150. The duty under the RMA to consult iwi (along with others) during the preparation of a proposed policy statement or plan is long standing. It is therefore appropriate that councils be obliged to comply with the requirements as to when and how iwi will provide advice to councils during the pre-notification planning process only in so far as specified in the applicable arrangements.

151. In comparison, there is no explicit obligation in the RMA to consult iwi (or others) during the pre-notification stage of the resource consent process. It is therefore considered not to be appropriate to require councils to comply with the requirements as to when and how iwi will provide advice to councils during the pre-notification resource consenting process set out in the applicable arrangements. Rather it is appropriate that the parties to the arrangement establish how and when iwi will provide advice to council during the pre-notification stage of the resource consenting process.

152. Any potential delays to planning processes will be minimised as, if an iwi authority does not respond to an invitation to enter into an iwi participation arrangement, the council is not required to suspend the preparation of a policy statement or plan, or suspend the processing of a resource consent.

153. The iwi participation arrangement is both a trigger for councils to engage with iwi authorities and a way to further clarify the role of tangata whenua, through iwi authorities, in all planning and resource consenting processes.

*Improving Ministerial intervention powers*

154. The RMA contains powers for central government to intervene where a council has failed to fulfil a statutory function, including directing a plan change. New powers and enhancements were agreed by Cabinet in June 2013 [Cab Min (13) 18/8 refers]. These would allow the Minister for the Environment to:

    a. intervene in a council policy statement or plan where a mandatory process step under the RMA has not been complied with;

    b. intervene in a council policy statement or plan where a mandatory national direction tool or regulation has not been included; or

    c. allow councils access to a 'truncated planning process' by request

155. Following further consideration of this proposal and its fit within the revised reform package, I recommend rescinding the proposal. The proposal may not address the underlying problem when a council's performance is not meeting expectations. The Local Government Act 2002 contains a graduated menu of assistance and intervention and may be used in relation to any enactment. I consider that these powers provide a practical and flexible framework for assisting or intervening where a council is experiencing a significant problem exercising its RMA responsibilities. In addition, the proposal for a truncated planning process has been superseded by the proposed streamlined planning process.

<u>Further decisions on collaborative planning</u>

156. The Minister for the Environment was invited to report back with detailed proposals about the stakeholders that councils must consider when appointing collaborative groups and the role of the Minister of Conservation in collaborative coastal planning.

157. These changes are necessary as the collaborative planning process is now to be available for any planning matter rather than freshwater planning only.

*Membership of collaborative group*

158. Cabinet has previously agreed a list of groups or sectors that a regional council must consider when appointing a collaborative group [Cab Min (13) 18/8 refers]. Identifying a narrow group of stakeholders was possible due to the initial narrow scope of the proposals (limited to freshwater related matters only). With the collaborative process now available for all planning matters, a list of groups or sectors will be too broad to be of any use to guide councils.

159. I am therefore seeking your agreement to instead require councils to appoint a collaborative group whose membership, collectively, reflects a balanced range of the interests and values of the community in relation to the resource management issue to be considered by the group.

160. This means that where Crown interests are impacted by a resource management issue, there may be a role for Crown representatives on a collaborative group (for example the Department of Conservation).

161. Previous decisions made by Cabinet also required a regional council (responsible for freshwater planning) to appoint persons nominated by territorial authorities and/or iwi authorities [Cab Min (13) 18/8 refers]. However, now that the process is more widely available and can be initiated by a territorial authority as well as a regional council, I propose to limit the territorial authority nomination process to situations where a collaborative group is used for a regional council planning function only. Where a territorial authority runs a collaborative process the authority itself will not nominate or appoint its own representative to the collaborative group. I am not proposing any change to the requirement for councils to appoint persons nominated by iwi authorities.

*Role of the Minister of Conservation in collaborative coastal planning*

162. Now that collaborative planning is proposed to be available for any planning matter, collaborative coastal planning is a possibility.

163. The Minister of Conservation currently approves all coastal plans prepared under the RMA. To maintain consistency across all planning tracks, I recommend that the Minister of Conservation approve coastal plans developed following a collaborative planning process, in the same way as for coastal plans developed under Schedule 1.

Align the National Planning Template's effect on resource management decision-making with NPSs

164. Cabinet has previously agreed to the establishment of a National Planning Template [Cab Min (15) 5/11 refers].

165. Some of the objectives and policies delivered through the National Planning Template will be of a similar nature to those delivered through NPS. Resource management decision-makers must have particular regard to NPS for resource consents, designations, heritage orders and water conservation orders regardless of whether a council has incorporated the NPS into their plan.

166. Under current Cabinet decisions, template objectives and policies affect resource management decision-making (for example resource consents) only once incorporated into council plans and regional policy statements.

167. This approach ensures that the requirement for councils to fully comply with the national planning template is staged across several years to avoid the significant costs associated with immediate compliance. However, this approach also means there would be a delay in the effect of policies and objectives in the template while councils changed their plans and policy statements.

168. I am proposing that mandatory template objectives and policies included in the template to address matters that the Minister for the Environment considers to be nationally significant (as opposed to requiring national consistency) must be had particular regard to in resource management decision-making for resource consents, designations, heritage orders and water conservation orders as soon as the template, or an amendment to the template, is in force.

Changes to improve the efficiency of the plan-making process

169. I am seeking your agreement to clarify the policy intent of this proposal that limited notification of a plan change would mean that only people served with a copy, or notice, of the plan change may make a submission or further submission on the plan change.

170. As only those persons who have a made a submission can appeal, limited notification would also in turn limit those who can appeal a council's decision on a limited notified plan change.

171. If there are uncertainties as to who are directly affected, or there is a matter of wider public interest or argument, then a council should use the existing public notification process in schedule 1 rather than limited notification. It is anticipated that this process would only be used where the potential impact of the plan change is limited to easily identifiable and directly affected parties (eg, a site specific rezoning).

172. I am not seeking any amendments to the parties that are required by the Act to be served with a copy of the plan change.

Rescind planning decisions from 2013 that have now been superseded

173. In 2013, Cabinet agreed to a range of plan making proposals [Cab Min (13) 18/8 refers]. You recently agreed a new package of planning proposals, which were revised to better meet my objectives for the reforms [Cab Min (15) 5/11 refers]. However, recommendations to rescind a small number of 2013 Cabinet agreements were unintentionally omitted from this paper.

174. To allow drafting of the planning proposals as intended, I am therefore seeking your agreement to rescind previous Cabinet decisions regarding the provision of two alternative procedural tracks for plan making, the joint council planning process, and the council planning agreement.

Reconfirmation of previous recommendations

*Freshwater*

175. You have previously agreed to the following recommendations relating to freshwater management (Cab Min (13) 18/8, recommendations 18-23 refer):

    a. National Objectives Framework implementation

i. agree 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

ii. agree to amend the RMA to enable the Minister, in deciding whether a matter is a proposal of national significance, to have regard to whether a proposed plan gives effect to national direction

b. Additional regulation making powers

iii. agree to amend the RMA to enable the making of regulations that set out the technical specifications for use of models

iv. agree to amend the RMA to enable the making of regulations that prescribe the form and content of water permits and discharge permits

c. Water Conservation Orders

v. agree to a review of the Water Conservation Order process, including how it interacts with the regional planning process, beginning in 2016, alongside the 5-year National Policy Statement for Freshwater Management review

vi. agree to not amend the current Water Conservation Order process at this time

176. I am proposing to reconfirm these recommendations unchanged, to clarify that these are intended to be drafted as agreed.

*Mediation requirements for plan hearings*

177. You have previously agreed to a number of recommendations regarding alternate disputes resolution and mediation [Cab Mins (13) 15/8 and 18/8 refer]. You reconfirmed a number of recommendations relating to alternate disputes resolution for consenting processes in February 2015 [Cab Min (15) 5/8 refers] however the following recommendations relating to plan hearings were inadvertently omitted.

a. agree to amend the RMA to make mediation compulsory prior to plan appeal hearings, unless an exception has been granted by an Environment Court Judge [Cab Min (13) 18/8 recommendation 72 refers]

b. agree to amend the RMA 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 recommendation 73 refers]

178. I am proposing to reconfirm these recommendations unchanged, to clarify that these are intended to be drafted as agreed.

*Certain activities to be deemed non-notified and specify classes of person who may be deemed to be affected*

179. You have previously agreed to introduce a new regulation making power to allow certain activities to be deemed non-notified and specify classes of person who may be deemed to be affected [Cab Min (15) 5/11 recommendation 93 refers].

180. You have also previously agreed that any matters provided for through regulations made under this provision should prevail over any contrary provision in an operative or proposed plan or variation, including where a plan specifies that an application must be publicly or limited notified or must not be notifies, and/or specifies a class of persons who must be considered affected by an application [Cab Min (13) 18/8 recommendation 67 refers].

181. I am proposing to reconfirm these recommendations unchanged, to clarify that these are intended to be drafted as agreed.

*Additional parties who may be considered to be affected for a proposed subdivision*

182. You have previously agreed to require that for applications for subdivisions that are controlled, restricted discretionary or discretionary activities the only person or persons who may be considered affected shall be the owners of the infrastructure assets to which to proposed subdivision is to connect [Cab Min (15) 5/11 82.1.3 refers].

183. You have also previously agreed that affected party status should be extended to include regulatory agencies that have an interest for public health or safety reasons in the provision and functioning of infrastructure (or absence of infrastructure) [Cab Min (13) 18/8 recommendation 79 refers].

184. I am proposing to reconfirm these recommendations unchanged, to clarify that these are intended to be drafted as agreed.

## Appendix 3: Agency Comments

While there is general support for the proposed amendments, agencies have also provided the following additional comments:

a. **The Treasury** supports most of the elements of the reform package, which should improve the functioning of the overall resource management system. However, the proposed amendments to the previously agreed reforms are extensive and have been developed in a curtailed policy process with no public consultation. There is an associated risk of unintended consequences. The Treasury raises the following particular issues for Ministers' attention.

   *Enabling alternative consent authorities to provide resource consenting services in competition with local councils*

   No specific policy proposal for introducing alternative consent authorities has been developed. The matters of policy left undetermined at this point are significant, creating uncertainty about how the enabling provision will be used. It is therefore difficult to assess the potential costs and benefits of enabling alternative consent authorities. However, the enabling provision itself is unlikely to be costless. For example, it is likely to increase incentives for councils to tighten plans in undesirable ways in order to protect council decision rights. The Treasury therefore recommends the provision to enable alternative consent authorities is removed from the reform package unless a more specific proposal is developed for Cabinet agreement.

   If Ministers wish to proceed with an enabling provision, the Treasury supports the recommended approach in which alternative consent authorities are limited to processing consent types that involve limited discretion. This approach is broadly consistent with the Complying Development Scheme in New South Wales. Limiting the scope for alternative consent authorities in this way reduces uncertainty and the risk that councils respond in perverse ways.

   *Preclusion of Environment Court appeals for residential activities in the residential zone*

   The costs of appeals have reduced in recent years because of the improved efficiency of the Environment Court and of greater use of pre-court resolution services. These costs will be further substantially reduced by other reforms in this package, including those to prohibit public notification, limit affected parties, and narrow submissions to the reasons for notification. Therefore the gains from removing appeal rights would not appear to be large. On the other hand, the removal of appeal rights will likely lead to nontrivial costs including that it will (i) create greater reliance on councils to make optimal decisions with the related issue of natural justice for both consent applicants and affected parties; (ii) potentially incentivise councils to become more conservative when making consent approvals to avoid public criticism; and (iii) incentivise any private consent authorities (accredited under proposal K) to adopt an approval bias in order to attract additional consenting business.

   *Remove the use of financial contributions*

   The financial contributions regime requires councils to specify in their plans the purpose of financial contributions and the manner in which they are calculated. This requirement helps to provide transparency and certainty for developers.

Removing the regime and relying on consent conditions or side agreements to offset environmental effects would reduce this certainty and transparency, with potentially negative consequences for the transparent pricing of externalities and for development. An alternative way to address confusion and perceptions of double charging would be to reduce the overlap of the financial and development contribution regimes. The financial contributions regime could also be improved by introducing criteria that require charges to be transparent, proportionate and directly related to the effects of a development. Such improvements would align with the Government's recent amendments to the development contributions regime.

*New regulation-making power*

This proposal would give the Minister broad powers to override primary legislation. It is therefore not consistent with good regulatory practice as specified by the guidelines of the Legislative Advisory Committee (LAC). The inclusion of (i) a sunset clause; (ii) consultation requirements; and (iii) a limitation of the power to override unnecessary council planning provisions to land-use restrictions for residential development; provides some constraints that will bring the proposal into closer alignment with the LAC guidelines. An additional requirement for cost-benefit evaluation under section 32 of the RMA for each exercise of the regulation-making power would further mitigate concerns about regulatory design.

b. **TPK** has concerns about the collective impact of the proposals which may cumulatively limit public participation and local decision-making in the interest of streamlining processes. In particular, TPK has concerns about the proposals to limit who may be considered affected for land-use activities and notes that the provision for iwi/hapū with statutory acknowledgements to be considered affected is inadequate and will not cover all circumstances where iwi/hapū are affected.

TPK also has concerns with the removal of appeal rights for residential activities and the provision for alternative consenting authorities, which may create issues for existing arrangements and consultation processes that iwi/hapū have developed with councils under the RMA. It is important that these arrangements are maintained or enhanced to ensure another key objective of the reforms, to improve Māori participation in resource management processes, is achieved.

TPK supports Treasury that the regulation-making power should be subject to a s32 evaluation, so as to ensure that any regulation is the most appropriate, effective and efficient thing to do.

c. **MBIE** generally supports most of the proposals in this paper as they will have an overall positive impact on investment and resulting development.

MBIE shares the concerns expressed by DIA and the Treasury in relation to the removal of financial contributions, particularly the removal of transparency and

certainty for developers and supports improvements to the regime to address the potential for duplication and improve transparency.

On EEZ Act matters, MBIE considers that the package of proposals represent an improvement on the status quo but are unlikely to go far enough to achieve the intended purpose of the EEZ Act, which is to balance the management of environmental effects of activities in the EEZ and the maximisation of responsible economic opportunities.

MBIE would prefer to see a more technical and scientific approach to both the assessment of marine consent applications and the decision-making process itself. This could involve the decision-making role being undertaken directly by the EPA (much like WorkSafe NZ for health and safety or the Commerce Commission for competition law) rather than delegated to a decision-making committee or a board of inquiry. It could also involve the development of statutory guidance as to how key concepts in the legislation are to be interpreted and applied. Finally, public participation could be moved to an earlier stage (such as at the exploration or mining permit stage under the Crown Minerals Act 1991).

This approach would involve legislative reform across a number of associated Acts. It would also have implications for resourcing within the EPA and the current funding of the EPA and have broader legislative implications

d. **Ministry of Justice** (MoJ) is concerned about a number of proposals in this package, including clarification of the notification test and changes to improve the efficiency of the plan-making process, because of their impact on natural justice and fairness. Some of the proposals will result in people not being informed of matters that affect them, and limiting or removing their means of contesting those matters. MoJ is concerned the effects of the proposals, individually and collectively, have not been able to be fully analysed given the timeframes for this paper. MoJ shares the concerns raised by Treasury around the preclusion of public notification and Environment Court appeals for residential activities in the residential zone and the new regulation making power.

e. **DIA** shares the concerns of The Treasury in relation to the removal of financial contributions. The Department considers the removal of financial contributions will reduce the flexibility of tools available to mitigate genuine adverse environmental effects or manage the impacts on, or requirement for, infrastructure to serve unexpected development. The likelihood that increased costs will be shifted onto the community from those who generate adverse effects is considered contrary to the "exacerbator pays" principle and risks distorting pricing signals that are important to economic efficiency.

DIA considers the financial contributions regime could be improved to make it better targeted, more transparent and reduce duplication and overlaps with development contributions under the Local Government Act 2002.

DIA shares The Treasury's concerns about the proposal to enable alternative consent authorities to provide resource consenting services in competition with councils. The matters of policy left to be determined by regulation are significant, which is inconsistent with the Legislative Advisory Committee guidelines. The enabling provision itself may have unintended negative effects on council decision-making, such as encouraging more prescriptive plan rules and dis-incentivising consent processing performance improvements.

If Ministers wish to proceed with an enabling provision, DIA would prefer that alternative consent authorities are limited to processing consent types that involve limited discretion. We agree with The Treasury that limiting the scope for competition in this way would reduce, but not remove, the risks relating to regulatory design and to councils responding in unintended ways to any perceived loss of decision rights.

DIA shares The Treasury's concerns about the proposal to remove appeal rights for residential activities on single residential sites. It is a significant curtailment of the existing rights of applicants and submitters under the RMA and removes an important safeguard against poor quality decision-making by councils, independent commissioners and any contestable consenting authorities established in the future (proposal K). Other proposals in the RMA reform package will reduce the number and cost of appeals relating to residential activities, including prohibiting public notification, limiting affected parties, and narrowing submissions to the reasons for notification. These proposals will also reduce the threat of an appeal, by reducing the number of potential submitters/appellants.

DIA is not suggesting an alternative recommendation for this proposal, as it accepts there are benefits in having a public discussion about appeal rights during the select committee process.

f. **NZTA** has raised issues around the clarification of notification test. Past experience has shown that a number of resource consents which have significant transport efficiency and safety issues were not publicly notified. At a practical level there are examples where local authorities do not always public notify proposals and this can have significant effects on NZTA. A reduction of "affected party" status for NZTA in relation to resource consents would have flow on effects on the ability to negotiate the mitigation of adverse effects on the

safety and efficiency of the transport network with applicants. If NZTA is not involved in certain applications there would be significant pressure on the National Land Transport Fund because we lose the ability to compel developers to meet the costs of infrastructure required to service their developments and/or ensure safety on the network. Instead the expectation would be that these impacts are fully funded from the NLTF. NZTA would prefer that the proposed criteria for "owners or operators of infrastructure on, under, or over that land" be amended to "affected infrastructure providers".

NZTA supports the move away from providing for "land supply" to providing for "development capacity" as this is consistent with integrated planning. Overall we support the proposed amendments.

g. **Ministry of Education** is generally supportive of the proposed changes. However, as the RMA policy has been developed in fits and starts it has been difficult to digest the impacts of the changes as a whole, so there is a risk that such extensive reforms may lead to undesirable outcomes. Providing greater efficiency for planning and resource consent processes comes at the expense of stakeholder and public participation. Therefore there is a risk of getting the balance wrong to the ultimate long-term detriment of New Zealand's natural environment. Enabling alternative consenting authorities (to councils) may add rather than reduce overall costs. Changes around the public notification test may serve to reduce public scrutiny at the detriment of the quality of resource consent decision-making.

h. **Department of Conservation** supports the inclusion of natural hazards in section 6.

The new duty for all persons exercising functions and powers under the RMA to ensure that restrictions on land are not imposed under the RMA except to the extent that a restriction is reasonably required to achieve the purpose of the Act has now been included in Part 3 of the Act . The obligation has been strengthened as the word "must" is being proposed in relation to the duty. It is unclear how this provision sits with s85 of the RMA and what the impact of this provision will be. It may impact on the ability of Councils to protect biodiversity on private land and to manage natural hazards.

DOC has raised issues around the clarification of the notification test. The proposal to limit affected parties to owners and occupiers of adjacent land and the site itself may preclude DOC from contributing information where there are significant adverse effects on important conservation values such as impacts on threatened species' habitat. Limited notification has at times been useful in this respect and the removal of the discretion of decision-makers to determine affected parties may create an incentive for increased public notification of consents, to ensure affected parties that are not adjacent landowners can participate in a consent and reduce the risk of challenge.

DOC supports the proposal to make processes under the Reserves Act and Resource Management Act more efficient, while achieving improved recreational opportunities for communities. DOC recommends that additional assessment is undertaken on the impact on Treaty obligations and that consultation with iwi occurs prior to any changes of the Reserves Act 1977.

DOC supports the proposed changes to the Conservation Act which align the concessions process with the resource consent process. These changes are consistent with the Department's earlier work looking at better aligning the concessions and consent processes.

DOC supports the amendments made to the "completeness" process but considers the EPA should have further time (an additional 10 days in addition to the 10 days already allowed) to determine if an application is complete in accordance with the new (extended) criteria. Applications for marine consent necessarily contain complex material on a wide range of issues and the Department's experience is that time spent at this stage can save significant time later in the process. Otherwise DOC supports the proposed changes to the EEZ Act.

## Appendix 4: RIS *Resource Legislation Amendment Bill 2015*

## Appendix 5: RIS *Alignment of the Decision-Making Process for Nationally Significant Proposals and Notified Discretionary Marine Consent*

## *Appendix 6: Policy decisions for an EEZ Amendment Bill 2015*