» SUMMARY OF PROPOSALS

Resource Management
Summary of Reform Proposals 2013

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Minister’s Foreword

Since 2008 the Government has made significant improvements to ensure that our planning and resource management law enables economic growth as well as providing good environmental outcomes. An effective and efficient resource management system is an important part of our Business Growth Agenda.

It must always be remembered that the Resource Management Act is not just about environmental protection, it is also our planning law. It not only has to deal with managing water in our catchments and the quality of our air, it also needs to effectively deal with and provide for the functioning and development of our cities and towns, including public infrastructure like roads and schools.

In this respect the RMA has not been serving us well. House prices continue to rise at alarming levels due largely to the lack of land supply. The message to investors all too often seems to be not how can we help you to create opportunities in our community, but if you want to come here expect a long process, plenty of hurdles, and no notion of whether you will get there in the end. The provision of infrastructure often lags behind community need and the cost of consenting puts upward pressure on the cost of almost all the commodities we buy – power and food in particular. Much of that cost and uncertainty comes from the complexity of the planning framework that has built up and the fact that we find many of the same arguments being had time and time again, consent by consent, up and down the country.

The first phase of amendments in 2009 was aimed at simplifying and streamlining the Resource Management Act to reduce costs, uncertainties and delays. The 2009 changes established the Environmental Protection Authority which streamlined consenting for nationally significant proposals. It also introduced provisions to address the use of the Act by trade competitors to stymie development proposals. It also introduced a discount policy for late consents, encouraging councils to ensure consents were processed within timeframes. The changes were highly successful and produced immediate improvements.

The second phase of amendments involves the Resource Management Reform Bill 2012, which is currently before the House, and the reforms set out in this Summary of Proposals Document.

The reforms set out in this document follow the discussion document “*Improving our Resource Management System*” which I released in February 2013. The discussion document set out improvements focused on six main areas: greater national consistency and guidance; fewer, better resource management plans; an effective and efficient consenting system; better natural hazard management; effective and meaningful Māori participation; and working with councils to improve their RMA service performance.

Fundamentally, these reforms are about providing greater confidence for businesses to grow and create jobs, greater certainty for communities to plan for their area’s needs, and stronger environmental outcomes as our communities grow and change. These reforms will also provide benefits for housing affordability in the medium to long term by obliging councils to proactively plan for and manage urban growth.

Over 13,000 submissions were received on the discussion document. And over 2,000 people attended over 50 public meetings, hui and council meetings from Invercargill to Whangarei examining both documents. In addition to meetings held around the country officials from the Ministry for the Environment met with a range of stakeholders and industry representatives to gather their views and contributions to the early stage of the reform process.

In general terms, submissions showed support for integrated planning, the better consideration of natural hazards in resource management, improving iwi participation, and the development of council performance indicators. At the same time impassioned concerns were expressed about proposals to improve the clarity and operation of sections 6 and 7 of the Act, increased powers for ministerial intervention and about costs associated with implementation of the reforms. This feedback and input from the consultation meetings has now been considered and incorporated into the reform proposals which set out the most comprehensive set of reforms to our resource management system since its creation.

The reforms set out in this document will become a Resource Management Reform Bill to be introduced in 2013. Following introduction people will have a further opportunity to comment and submit on the reform proposals through the Select Committee process.

Hon Amy Adams

Minister for the Environment

Section one: Improving resource management planning

Why are changes proposed?

New Zealand's planning system needs to allow communities to make clear decisions in resource management plans about how they want their community to develop. These decisions should be clear for everyone involved and not made on a consent-by-consent basis, or re-litigated after they have been made. The ability to appeal council decisions on plans to the Environment Court has often resulted in effort being focused at the Courts rather than in the initial hearing or when the council consults with the community. This increases costs and leaves the Court as the default decision-maker on value judgements and policy matters that would more appropriately be made by the broader community and through its elected representatives.

Often there are multiple resource management plans operating within one district. These plans may have different approaches to the same issue, have inconsistent terms and definitions, and be difficult to use. Plans can be difficult to understand without expert advice, which means applying for a resource consent is more costly and time consuming than it should be.

Although the legislation allows councils to cooperate when developing plans, there are few incentives to do so. As a result, local and regional plans can be inconsistent and poorly integrated.

There are many examples of iwi participating successfully in resource management processes. However, engagement is inconsistent across the country and in many areas Māori values are not

always effectively recognised in resource management processes, or the decisions that come out of those processes.

In a number of areas there appears to have been differing expectations about the role of iwi in these processes and this has lead to uncertainty, costs, and delays while matters are debated in the Courts. Some iwi have also looked to Treaty of Waitangi settlements to ensure that their interests are considered.

⏩Plans can be difficult to understand without expert advice, which means applying for resource consent is more costly and time consuming than it should be.⏪

What changes are proposed?

A range of changes to the planning system are proposed to improve the ease of use of planning documents for applicants, improve engagement between councils and the community, and reduce overall costs for users.

National planning template

A national planning template will be developed for all RMA plans. The template will standardise planning documents, while still allowing for specific local issues to be addressed through locally-developed plan content. The national planning template will deliver improvements including:

- reducing the current high cost of preparing plans
- providing a common structure, format and definitions for plans to maximise consistency and, where appropriate, common content
- providing a mechanism for articulating national planning directions, encompassing National Environmental Standards, National Policy Statements and non-statutory tools.

The template will remove a good deal of unnecessary debate around decisions, such as how a rule is worded or how to measure ground level. It will provide national consistency, and allow councils to focus on working with their communities to identify their values and to use these as a basis for planning decisions. Plans and their intentions will then be much clearer and more certain for resource consent applicants. Use of the template will reduce the costs of the planning process for councils.

The Minister for the Environment will develop content for the template through a process that allows for public consultation. The Minister of Conservation will develop any content relating to the coastal marine area.

A single resource management plan per district (or other agreed area)

To increase the accessibility of plans, councils must compile all content from their relevant regional policy statement and regional and district plans into a single planning document (using the template). The public will be able to access this single plan through a website.

Plan development

Councils will have three planning tracks available when developing their resource management plans:

1. The existing Schedule 1 approach, with strengthened consultation requirements for parties who will be affected by the plan.
2. A Collaborative Planning Process for freshwater management. This is an alternative planning track available to councils for freshwater planning only.
3. A Joint Council Planning Process available for any plan content that is not directly related to fresh water. Under this process, councils will be required to consult with their community earlier. It will involve a rigorous hearing process by an independent panel, which will make recommendations to the relevant council. The council will then accept or reject these recommendations, with associated appeal rights limited to points of law if the council accepts the panel's recommendations.

These changes will ensure that the public is actively engaged early in the plan-making process.

A diagram outlining how these three planning tracks interact and providing more detail of the processes is included on page 10 of this document.

> **Links with the collaborative process for freshwater management**
>
> The collaborative process for freshwater management is an alternative planning track available to councils (for freshwater planning) in addition to the Joint Council Planning Process and the amended RMA Schedule 1 process. This process builds on the work done by the Land and Water Forum. The process will be available only for freshwater related plan content. For all other content, the Joint Council Planning Process will be able to be used.

Council planning agreement

Councils will be required to publish a council planning agreement. This will set the high-level framework for how councils will produce the single resource management plan per district (or other agreed area), including its geographic area, and the roles and responsibilities of the councils delivering it. The council planning agreement will also provide certainty to the community on which planning tracks they intend to use over the next three years.

Faster resolution of Environment Court hearings

It will be mandatory for all parties that lodge an appeal against a plan to enter into pre-hearing mediation (unless directed otherwise by the presiding Judge). This will provide an opportunity to resolve issues early and avoid costly Environment Court processes. All parties participating in mediation must have the authority to resolve the matters under dispute.

In the long run, the costs and time needed to develop plans are expected to be reduced.

Māori participation

The reforms include a number of provisions to achieve greater clarity on the role of iwi/hapū in local government resource management planning. The reforms will specify requirements for councils to involve iwi/hapū in planning, setting out a clear role for iwi/hapū early in the process.

While final decisions will always remain with councils, changes across all planning pathways will require councils to seek and have particular regard to the advice of iwi/hapū on a draft plan and report on how this advice was considered. New requirements for section 32 evaluations will ensure transparency for how this advice is considered. The changes also provide for hearing/review panels on plan processes to include members with understanding of tikanga and the perspectives of local iwi/hapū.

The changes aim to incentivise effective working relationships between iwi/hapū and councils. The critical mechanism to achieve this is the 'arrangement', which is both a trigger for councils to engage with iwi/hapū and a way to further clarify the role of iwi/hapū in the planning process.

Councils will be required to invite iwi/hapū to enter into an arrangement that details how iwi/hapū and councils will work together through the planning process. Council-iwi/hapū arrangements would add greater detail, potentially supplementing the statutory requirements, and be tailored to meet particular circumstances. There is no requirement for iwi/hapū to enter an arrangement with councils. However, there will be a requirement for councils to take into consideration all advice from iwi/hapū on draft plans and policy statements. The Crown will have the ability to step in to ensure an arrangement is followed and to facilitate arrangements where relationships between parties have broken down.

Existing arrangements under Treaty settlements will be maintained, and could work alongside or be supplemented by any other arrangements set up between iwi/hapū and councils.

The reforms are expected to provide greater certainty over the role of iwi/hapū in the planning system, and incentivise early engagement between iwi/hapū and councils. The changes support greater consideration of Māori interests in the resource management system, and ensure transparency over how these interests are considered. This is expected to reduce disagreement (and litigation) late in the planning process as issues are confronted and resolved early.

The changes support greater consideration of Māori interests in the resource management system, and ensure transparency over how these interests are considered

Changes since consultation

The timeframe for making the single resource management plan available has been brought forward from five years to three years from the legislation being enacted, and has been tied to the implementation of the national planning template.

Proposals for positive planning have been refined to focus on changes to the roles and responsibilities of regional and local councils. These changes require councils to ensure there is adequate land supply to provide for at least 10 years of projected growth in demand in their areas.

Proposals to empower faster resolution of Environment Court proceedings have progressed to focus only on strengthening existing provisions to require parties to undertake, and agree any outcomes of, alternative dispute resolution. Proposals to increase the Environment Court's existing power to enforce agreed timeframes, and make any law changes required to deliver the full potential benefits of electronic case management have not been progressed.

Changes proposed in the discussion document to the criteria for joint management plans and transfers of power are not being progressed.

The discussion document also proposed setting expectations on the structure, minimum content, and lodgement process of iwi management plans. In light of the feedback in submissions and hui, this proposal is also not being progressed. However, the reforms will provide guidance and support to improve the awareness and accessibility of iwi management plans.

Implementation

Central government will have a statutory obligation to deliver the first version of the national planning template within two years of enactment of the Resource Management 2013 Reform Bill.

The national planning template will be developed by the Minister for the Environment (and the Minister of Conservation for matters that relate to the coastal marine area), with input from iwi and key stakeholders including Local Government New Zealand, councils and RMA practitioners throughout the country.

Councils will be required to implement certain aspects of the template, such as standardised format, within one year of the template's enactment. This will be achieved through the single resource management plan. Full transformation to the national planning template content direction will be required within five years.

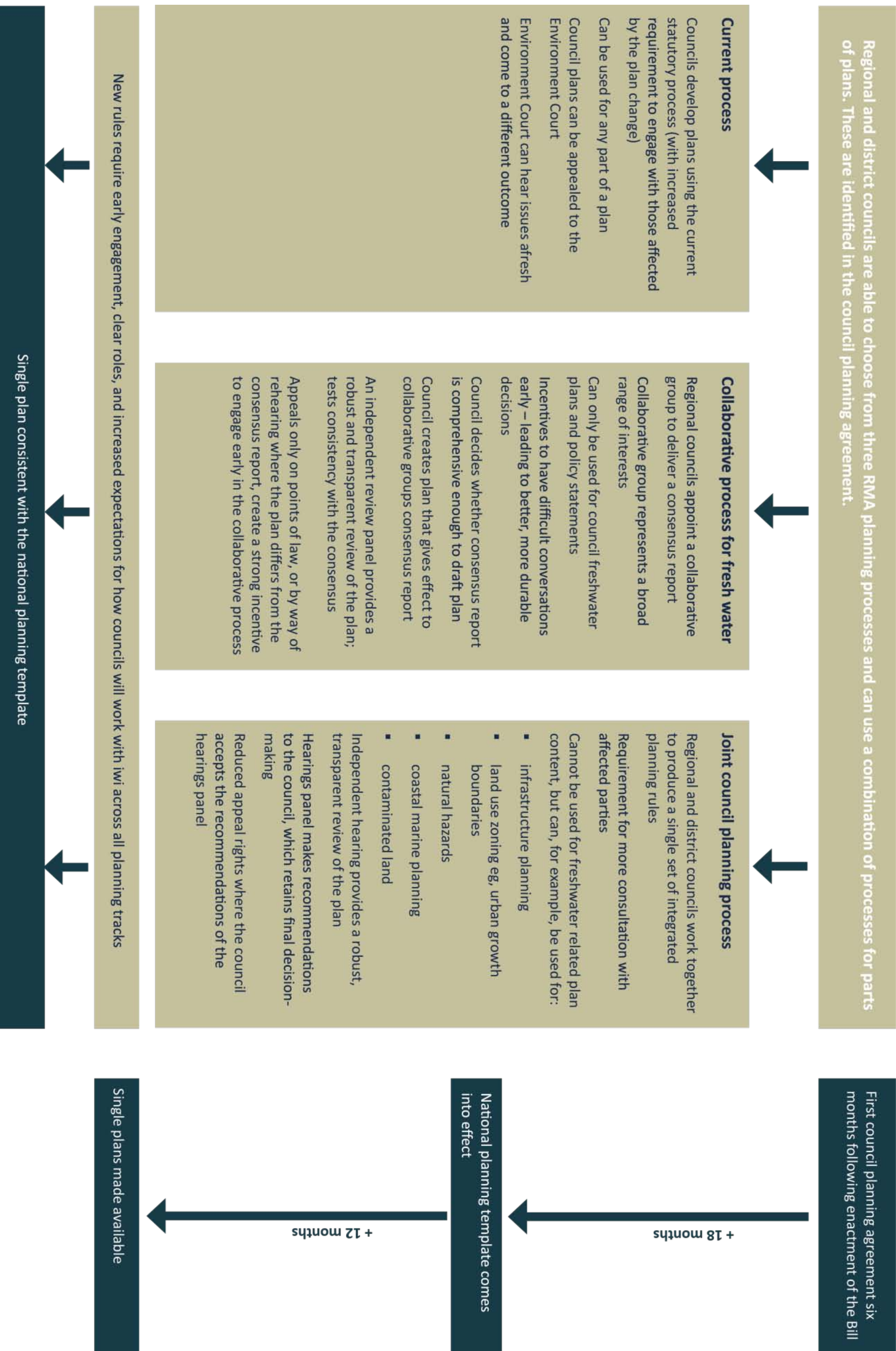
All councils will be required to enter into and publish a council planning agreement within six months of enactment of the legislation. Subsequent agreements will be updated no later than 1 March after each local body election.

The new statutory requirements for involving iwi in planning become effective from enactment of the legislation. The timeframes for setting up an arrangement will be clearly detailed in the legislation. Councils must invite iwi/hapū to agree to an arrangement within two months of a council planning agreement. This means that iwi/hapū would receive an invitation from councils to set up an arrangement within eight months of the Bill being enacted.

The Joint Council Planning Process and collaborative planning process are optional and implementation timeframes will depend on their uptake.

Changes to the functions of regional and local councils regarding land supply will be implemented immediately upon enactment of the legislation.

Figure 1: Council planning processes



Section two: National consistency and guidance

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

Why are changes proposed?

Sections 6 and 7 of the RMA set out the principles decision-makers must take into account when making decisions on resource management issues. These sections support section 5 which sets out the purpose of the RMA to promote the sustainable management of New Zealand's natural and physical resources. In the Act, sustainable management means:

> *"managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while:*
>
> *(a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and*
>
> *(b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and*
>
> *(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment."*

The Technical Advisory Group (TAG) set up to review the principles of the RMA recommended current sections 6 and 7 of the Act be merged to reduce duplication and provide decision-makers with a single list of matters that they should recognise and provide for in their decisions.

Sections 6 and 7 were also reviewed for their relevance and balance in regard to broader social, environmental and economic outcomes.

▸▸Collectively the changes to sections 6 and 7 will have flow-on effects for council planning and consenting decisions.◂◂

What changes are proposed?

The current sections 6 and 7 will be merged into one list of matters of national importance to be considered in decision-making. Some existing matters have been deleted, as originally proposed in

the discussion document. In addition new matters for decision-makers to take account of will be included. The new matters include:

- the effective functioning of the built environment, and the availability of land to support changes in population and urban development demand
- the management of the significant risks of natural hazards
- the efficient provision of infrastructure.

The revisions of some of directional wording in matters included in this new list are proposed:

- consider the *importance and value* of historic heritage rather than the *protection* of historic heritage
- require councils to *specify* in relevant plans and/or policy statements the outstanding natural features and landscapes in their community, and protect these.

In line with the discussion document, the new section 7 will be created which will set clear expectations of best-practice approaches to resource management decisions for stakeholders, including councils.

Also included in the new section 7 is a provision to improve the balance between public and private interests in local decision-making. This provision requires that councils ensure any restrictions imposed on the use and development of private land are reasonable in light of the purpose of the RMA to promote the sustainable management of natural and physical resources.

The proposed wording for section 6 and the new section 7 and new definitions to support these sections are on pages 13 and 14.

Collectively the changes to sections 6 and 7 will have flow-on effects for council planning and consenting decisions. They signal that councils must consider additional issues, and that plans should be accessible, timely and collaborative.

Natural hazards

A requirement for decision-makers to consider natural hazards in their deliberations is proposed to be added to the principles in the proposed new section 6 of the RMA. The wording of this clause has been refined from that included in the discussion document to better reflect all aspects of hazard risk (both likelihood and impact).

This change will give greater weight to natural hazards in decision-making and mean natural hazards are considered early and up front in resource planning. Ultimately this means planners will avoid granting resource consents for inappropriate developments.

Further work to consider what natural hazard guidance (either statutory or non-statutory) might be needed will take place following passing of the Bill.

Proposed section 6 and 7 revised wording

6 Principles

(1) In making the overall broad judgment under section 5 in order to achieve the purpose of this Act, all persons performing functions and exercising powers under the Act must, in relation to managing the use, development, and protection of natural and physical resources, recognise and provide for the following as matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use and development;

(b) the protection of specified outstanding natural features and landscapes from inappropriate subdivision, use and development

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers;

(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga;

(f) the protection of protected customary rights;

(g) kaitiakitanga;

(h) the efficient use and development of natural and physical resources, including the benefits derived from their use and development;

(i) the importance and value of historic heritage;

(j) the effects of climate change;

(k) efficient energy use and benefits of renewable energy;

(l) the effective functioning of the built environment, including the availability of land to support changes in population and urban development demand;

(m) the management of significant risks from natural hazards

(n) the efficient provision of infrastructure;

(o) the maintenance of aquatic habitats, including significant habitats of trout and salmon;

(p) the effective functioning of ecosystems.

This wording is subject to final drafting requirements.

7 Methods

In order to achieve the purpose of this Act, all persons performing functions and exercising powers under it must endeavour -

a) to use timely, efficient and cost-effective resource management processes; and

(b) in preparing policy statements and plans, -

(i) to include only those matters relevant to the purpose of this Act

(ii) to use clear, concise language; and

(c) to promote collaboration between or among local authorities on their common resource management issues; and

(d) to 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.

This wording is subject to final drafting requirements.

Proposed definitions

To increase certainty in the interpretation of the new matters included in section 6, the following definitions are also proposed to be included in the Act:

- "specified outstanding natural features and landscapes" means outstanding natural features and landscapes that are identified in a relevant:
    - Operative plan
    - Regional policy statement
    - National policy statement
    - New Zealand Coastal Policy Statement, or
    - National environment standard.
- "Provision of infrastructure" means planning, design, construction, maintenance and functioning of infrastructure
- "effective functioning of ecosystems" means the biologic and genetic diversity of ecosystems and the essential characteristics that enable the proper functioning of an ecosystem.

The wording is subject to final drafting requirements.

Changes since consultation

The existing matter "intrinsic values of ecosystems" initially proposed for deletion has been retained and moved to section 6 in a revised form. The new wording "effective functioning of ecosystems" is supported by a new definition within the Act and will therefore be more easily considered in decision-making.

It was originally proposed that councils be required to specify significant habitats and areas of indigenous vegetation in their plans. Further work has determined that this provision would be impractical, and create an unreasonable risk of reducing protection for these areas. As a result, this proposal has not been taken forward.

Implementation

With the exception of the requirement for councils to specify outstanding natural features and landscapes in their plans, all changes to sections 6 and 7 would come into effect when the Resource Management 2013 Bill is passed.

Improvements to national policy statements (NPSs) and national environmental statements (NESs)

Why are changes proposed?

NPSs and NESs currently differ in how they are prepared, their content, and how they are given effect to in certain circumstances. At present, an NPS can specify policies and objectives, but cannot provide more direct guidance on how it should be implemented by councils. This can lead to inconsistent implementation by councils.

The process for developing tools that define national priorities in resource management is often ambiguous and time consuming. It is not clear when a national tool is needed and why particular issues have an NPS and NES and others do not. A lack of responsiveness limits the ability of Government to give timely direction about emerging issues of national interest.

As a result of these barriers and uncertainties few national tools have been developed and there is a lack of clarity on where our national priorities lie.

Councils, businesses and other stakeholders will have greater certainty about national priorities.

What changes are proposed?

A number of small changes have been made to provide more specific direction about when and how national direction tools can be used and to create a clear process for the identification and development of these tools.

These changes include:

- Allowing an NPS to provide direction on delivery to ensure councils understand expectations for implementation, even where the direction is not technical in nature, or otherwise not suitable to include in an NES. This new approach for NPSs will be tested on the NPS for Freshwater in late 2013.
- NPSs and NESs will be able to be targeted to a geographical area or region that has a resource management issue of national significance.
- Development of NPSs and NESs can be combined. It is intended that NPS and NES content will be provided through the national planning template.

Another proposed change relates to the process by which NESs are created and the way iwi are engaged in this process. The Government will consult with iwi authorities in the development of these standards, in the same way that iwi are consulted during the development of an NPS. This is expected to achieve greater consistency in how iwi are involved in national policy decisions.

These changes will ensure more national direction is provided. Councils, businesses and other stakeholders will have greater certainty about national priorities and this will drive local plan requirements. This clarity will enable parties to be more proactive and develop more effective plans.

Changes since consultation

There are no significant changes since consultation to proposals regarding NPSs and NESs.

Implementation

Work will start on a list of items for the provision of national direction with a full agenda of issues ready within two years of the Bill being enacted. Other proposals in relation to NESs and NPSs would take effect from the time the Bill is enacted.

Section three: Efficient and effective resource consents

Why are changes proposed?

Significant issues for communities relating to the management of their local resources are often resolved at the last possible stage through individual resource consent decisions. This makes it difficult for councils to plan proactively and creates a disincentive for the community to fully engage in planning processes. Substantive planning decisions are, however, best made in plans rather than through consent decisions. The plan making process provides a more proactive, robust, transparent and consultative process for determining community values across a range of issues.

Users of the consenting system are also faced with significant costs, delays and uncertainties associated with the consenting process. In addition, the scale of the administration and decision-making procedures on consents are not always proportional to the complexity or effects of the developments at hand. For example, relatively small or simple proposals with minor environmental effects can often be subject to disproportionately large and expensive decision-making processes.

There is often a lack of clarity and predictability for applicants about the total likely cost of an application before they apply. This can include the cost of the council's time working on the application, and any requests for further information or expert advice. Submissions and appeals on consents can currently focus on almost any aspect of a proposal (regardless of its effects). This poses significant risk to applicants and may be a strong disincentive to investing in new projects. Appeals can also attempt to re-litigate and undermine key planning decisions that have already been made by the community.

What changes are proposed?

A suite of changes are proposed to ensure the resource consents process is proportional and the notification, submission and appeals process is effective in delivering robust decisions. These changes are outlined below and in more detail on pages 23 and 24.

Providing more proportionality to the process

There will be a reduction of the regulatory requirements for minor and less complex projects, to better reflect their scale and environmental impact.

Two new options will be available for simple projects. The first of these is a new 10-day consent process (a fast-track process) that applies to applications for the simplest and most straight forward project types that have the least significant environmental effects, such as alterations to residential properties.

The second is a new tool allowing councils to exempt projects from the need to obtain resource consent on a case-by-case basis. This is where a development breaches a plan rule in a technical or marginal way (triggering the need for a consent), but the effects on the environment and people from the rule breach will be so minor as to be effectively indistinguishable from those allowed without a consent.

Certainty around the time and cost

Councils will be required to set and publish a list of fixed fees for many consent application types and to report on consent charges and costs. This means, for many consent applications, applicants will know the cost of the council's work in advance, and will know what any additional costs of consent processing may be.

Several changes will also be made to reduce the cost and complexity of the Environment Protection Authority's (EPA's) processing of applications for nationally significant proposals. These changes include:

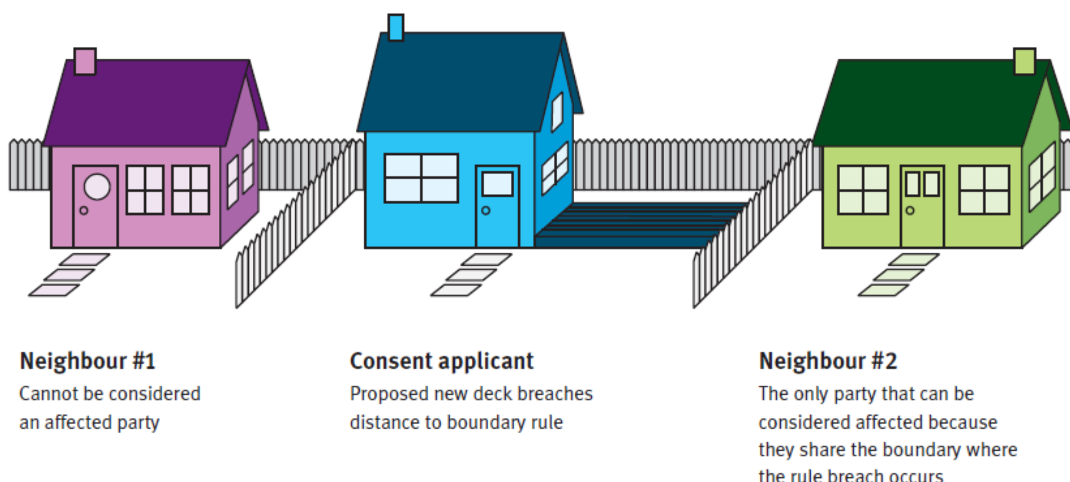
- simplifying the requirements for public notification
- requiring boards of inquiry to have regard to cost effective processes when determining their procedures
- improving the ability for electronic provision of information related to the proposal of national significance
- enabling the EPA to stop processing a proposal where there are unpaid debts and clarifying the EPA's ability to recover debts.

Clearer rights and responsibilities for participants

The submissions and appeals processes will be amended to ensure that they are focused on the key aspects of contention in the consent application. These changes will mean that public debate around consent applications will be limited to the most significant issues and those that were not anticipated in the plan. These changes will increase certainty for all parties and avoid time and money being unnecessarily spent by applicants, submitters, and the courts by dealing with matters that are not substantive. The changes are discussed below.

- For some application types, the definition of an 'affected party' is being refined to include particular parties only. Where minor side and rear inter-boundary rule breaches occur (for example, caused by a new deck, see figure 2), the only parties who can be considered affected are those who share the boundary where the rule breach occurs. For subdivisions anticipated by underlying plan rules or zoning, the only parties who could be considered affected are the owners of affected infrastructure assets (for example stormwater and waste water systems or connecting roads), or government agencies that have an interest in public health and safety (for example the medical officer of health and the Fire Service).

Figure 2: Notified parties for inter-boundary rule breaches



- When processing notified applications, councils will be required to include both the reasons the consent is required and the particular effects on the environment that mean the application is being notified in the public notice regarding notification of a consent. The content of submissions must be limited to these matters and councils will be required to strike out submissions that are irrelevant to those matters or have no evidential basis. After the close of submissions, pre-hearing meetings will be required for most notified consent applications. Pre-hearing meetings allow clarification of the contested issues among parties, and provide an early opportunity for resolution.
- Following some council decisions, applicants will now be able to object to either the decision or the conditions to an independent commissioner rather than back to the council, as an alternative to proceeding to a full appeal.

In cases where the consent decision is appealed to the Environment Court, further changes will resolve these appeals more quickly, and without having to resort to costly and time consuming Environment Court hearings.

- The Court will be required to consider using a judicial conference to help parties negotiate a settlement.
- The Court will also be given the ability to require parties to participate in alternative dispute resolution, such as mediation.
- To allow better use of Environment Court resources, the powers of Judges sitting alone and Commissioners will be extended so that they can make a wider range of orders without requiring a full hearing.

These changes are outlined in figure 3.

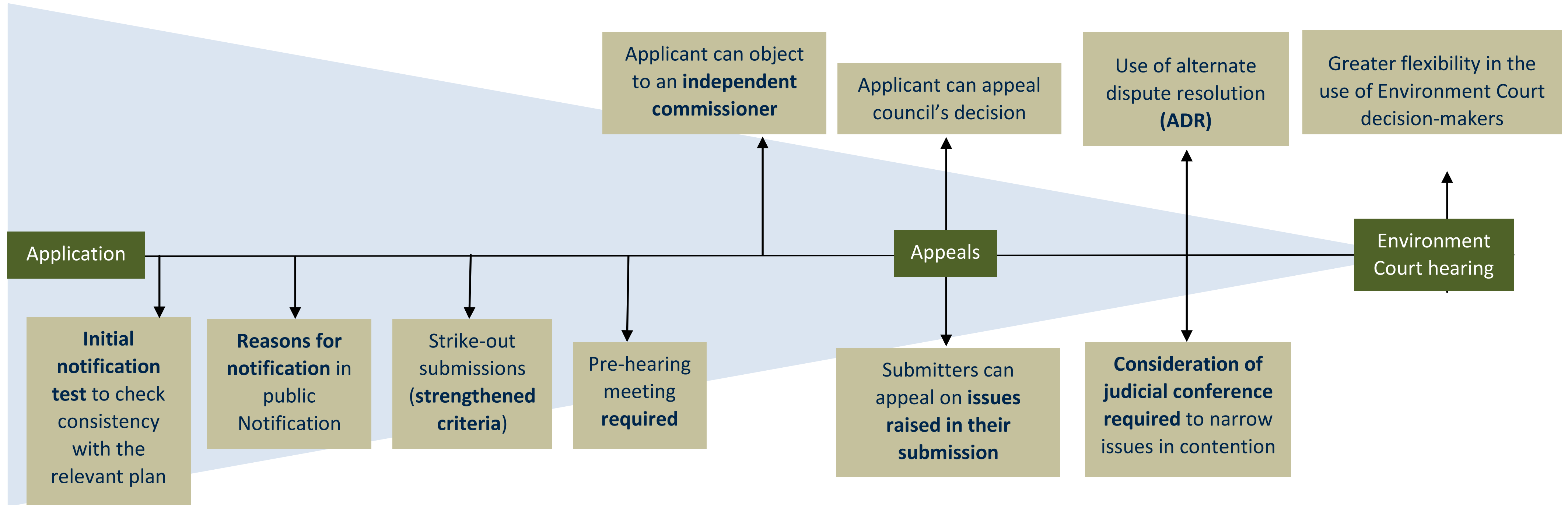
Incentivising a greater emphasis on plan making

Currently, the notification test for resource consent applications is based on the effects of the proposal. This is a decision that is made without necessarily considering whether or not the plan anticipates that activity. Therefore, the notification test for resource consents will be changed so that, before considering the environmental effects, the application must be assessed against the policies and objectives of the plan. This will provide a pathway for non-notification of proposals where that type of activity and its effects have already been planned for and anticipated by the regional or district plan.

More certainty around the content of consent conditions

To increase certainty for applicants, conditions applied to a consent will need to be directly connected to either the plan provision(s) breached, the adverse effects of the activity, or as otherwise agreed by the applicant.

Figure 3: Summary of changes to consent notification and appeals processes



What has changed since consultation?

The discussion document proposed changing consent appeals from *de novo* to merit by way of rehearing. Based on feedback from submitters and further work, a number of alternative changes are proposed (discussed above) to limit the scope of submissions and appeals on consent applications.

Instead of creating a lower cost tribunal or consent appeal or objections, it is proposed to require the use of pre-hearing meetings, create an independent objection process, and require councils to provide greater specificity around any issues in contention.

The discussion document also proposed to require councils to undertake memorandum accounting for resource consent activities. It is now proposed that councils be required to report on their consent process charges and costs.

The discussion document proposed that a Crown body be created to process consents. This is no longer being progressed through the resource management reforms. Proposed amendments to prevent land banking are also not being progressed, as many submitters considered amendments would not be effective.

In relation to subdivisions, a new proposal has been included to make subdivision consents allowed unless expressly restricted by rules in plans. This reverses the current situation where they are restricted unless expressly allowed. The notification of applications for sub-division consents will no longer be possible if the subdivision is already anticipated by the plan.

A new proposal has also been included that will require councils to determine inconsistency with relevant plan objectives and policies before making a decision to notify the application.

For many consent applications, applicants will know the cost of the council's work in advance, and will know what the additional costs of consent processing may be.

Implementation

The exact timing of the enactment of consenting changes are still being worked through.

Natural hazards

Section 106 of the Act will be amended so decision-makers can decline or place conditions on subdivision consents where there is a significant risk of a natural hazard as defined in section 2 of the RMA and to allow both the likelihood and magnitude of the hazard to be considered in subdivision decisions.

The current section 106 only applies to subdivision consents. The Government initially considered expanding section 106 to include all land-use resource consents and designations; however, this has not been pursued.

Links to proactive planning

Proposed changes to the consenting system will help reinforce other changes that will encourage proactive planning by councils. In particular, narrowing the scope of submissions throughout the consenting process will encourage upfront community engagement at the plan-making stage. It will help ensure the consent process is focussed on delivering the outcomes agreed and anticipated through the development of the plan. It will also ensure that public debate on consent applications is limited to those developments where the effects and issues were not anticipated by the plan.

Detailed outline of changes to the consenting, notification and appeals processes					
Benefit: Removal of very minor and unnecessary consent applications.		6-month consenting process (notified consents 2012 Bill change)	20-day process	**Exemption**	A new consent exemption for use where the rule breach is very minor and of a technical nature and there: • are no adverse environmental effects • is less than minor effect on other parties • has been sufficient information received by the council.
Benefit: Faster consent decisions for less complex consent applications.				**Fast track (10-day process)**	A new fast track (10 working day) process which will apply where the activity meets certain criteria, including that the activity is either: • a controlled activity (meaning that consent must be granted but may be subject to conditions) except subdivisions and directly associated applications, or • an inter-boundary rule breach, or • is a residential activity proposed to take place on a single residential site in a residential zone, or • listed in regulations as being an application to be processed in 10 working days.
Benefits: Increased certainty for applicants when an application will be deemed non-notified. Improved notification decisions by councils. Councils required to make decisions on the scope of notification.					Changes to notification • New approach to assessing notification, requiring councils to first assess if the activity is consistent with the policies and objectives of the plan, and if so the application must be non-notified. • Required non-notification for all controlled activities or applications identified as non-notified in a plan rule, national environmental standard, the national planning template or in regulations. • All subdivision applications anticipated by the zoning (eg, identified in plans) will be made without public notification and with the only affected party being the owner(s) of the asset(s) to which the proposed subdivision is to connect. • Applications for all inter-boundary rule breaches will not be publicly notified and the only person who can be considered an affected party will be the person who shares the boundary along which the rule breach occurs. • Require councils to state in the public notice the reason for notification, why consent is required for the activity (eg, which rule(s) it breaches). Limiting consent conditions to: • the provision which is breached by that aspect of the proposed activity that required consent • the adverse effects of that aspect of proposed activity on the environment, or • content that has been volunteered or agreed to by the applicant.

6-month consenting process (notified consents 2012 Bill change)		Proposal	Benefits
6-month consenting process (notified consents 2012 Bill change)		Submissions • Require councils to strike out submissions that are not related to the reason for notification or have no evidence. Pre-hearing meeting • Councils to hold a prehearing for all: ▪ limited notified applications where submitters wish to be heard ▪ publically notified applications where submitters wish to be heard unless it is impracticable to do so. • Require pre-hearing meetings to be attended by a person who has the authority to make a decision. Council hearing • Requiring councils to take into account at a council hearing, the report of the pre-hearing meeting's chair and limit the scope of the council hearing to only the issues that were not resolved at pre-hearing. Documenting decisions • Requiring councils, when writing up their decision on an application following a pre-hearing and council hearing, to outline which issues were resolved through the pre-hearing and council hearing meeting and which issues remained in contention, noting the council's decision on these areas of contention. Ability to object to council decisions or conditions to an independent commissioner (rather than the council), as an alternative to proceeding to full appeal.	Benefits: Reduce number of vexatious or frivolous submissions by requiring councils to consider the relevance of all submissions. Increase resolution at pre-hearing meetings and thereby reduce costs to applicants, councils and submitters.
	Environment Court	Environment Court process • Where appeals to the Environment Court are made by a submitter, limit the Court's jurisdiction to hear those appeals to the issues raised in the person's submission. • Require the Court to consider using a judicial conference on receiving an appeal. The purpose of a judicial conference would be to identify the issues in dispute and agree the facts. • Require the Court to take into account the council pre-hearing report and council hearing report and note whether applicants attended pre-hearing and the reasons for non-attendance. This would support the Court to establish the validity of an appeal (based on the limitations provided for by Section 99). • Amend the RMA to enable the Court to require alternative dispute resolution, such as mediation, in the first instance without the consent of all parties. Environment Court hearing • Extending the powers of Environment Court Judges and Commissioners to enable a wider range of orders to be made, such as hearing a case alone and assessing a case on the papers.	Benefits: Reducing overall Court time by ensuring that the decision to appeal is correct, confirming the scope of appeal and the involvement of all parties. Reduces costs and time of Environment Court, applicant and submitter by resolving issues before a full hearing takes place. Ensures all parties come prepared to reach an agreed decision.

Section four: Council performance

Why are changes proposed?

Information on how well councils perform in delivering their functions and duties under the RMA is limited, and inconsistently collected and reported.

While the Government provides guidance on how to implement the RMA, there is a lack of clear direction on what councils are expected to achieve and how performance will be measured.

In the absence of appropriate performance information, communities are unable to determine how their local authority is performing or to hold them accountable.

What changes are proposed?

Specifically, councils will be required to monitor how they are delivering their functions and duties under the RMA. This monitoring will include measures such as timeliness, cost and overall user satisfaction, and performance against environmental and economic indicators.

Expectations will be set of councils that will help show how well councils are meeting the needs of their communities. These expectations could include improved customer satisfaction, better environmental outcomes, improved community engagement and proactive planning that considers future housing needs and job creation. Over time council performance towards meeting these expectations will be reported to enable communities to determine the relative performance of their council.

One of the benefits of improved performance reporting is that councils will have a clear understanding of what they are expected to achieve and how their performance will be measured. They will be able to quickly identify areas of underperformance within their regions and respond with better customer service and a more efficient and effective planning and consenting system.

The Department of Internal Affairs (DIA) is working toward a broader performance monitoring and improvement regime for local government as part of its Local Government Act reforms. DIA and the Ministry for the Environment are working closely to make sure the two programmes are aligned.

Expectations will be set of councils that will help show how well councils are meeting the needs of their communities

What has changed since consultation?

The council performance proposal has not changed significantly since the discussion document.

Implementation

Initial expectations will be determined over the next 12 months. Regulations that will specify the methods and standards for this monitoring will also be developed once the Bill has been passed.

Central government intervention powers

Why are changes proposed?

A number of tools exist under the RMA including National Environmental Standards (NESs) and National Policy Statements (NPSs) to provide national direction and priority setting. There are also various powers that exist in the legislation that enable central government to intervene.

However, the outcomes trying to be achieved through NESs, NPSs or national direction may not be realised if national priorities are not clearly signalled. The legislation is also not clear on when or how central government is able to intervene if councils fail to adequately deliver on priorities.

Effective resource management requires government to have an active role in overseeing compliance with national direction, and similarly to provide support where it is sought and needed as a matter of urgency.

What changes are proposed?

Circumstances where central government could intervene will be clarified so the Minister can intervene more effectively. The circumstances for intervention will be:

a) On process – where a mandated requirement for a process step has not been complied with.

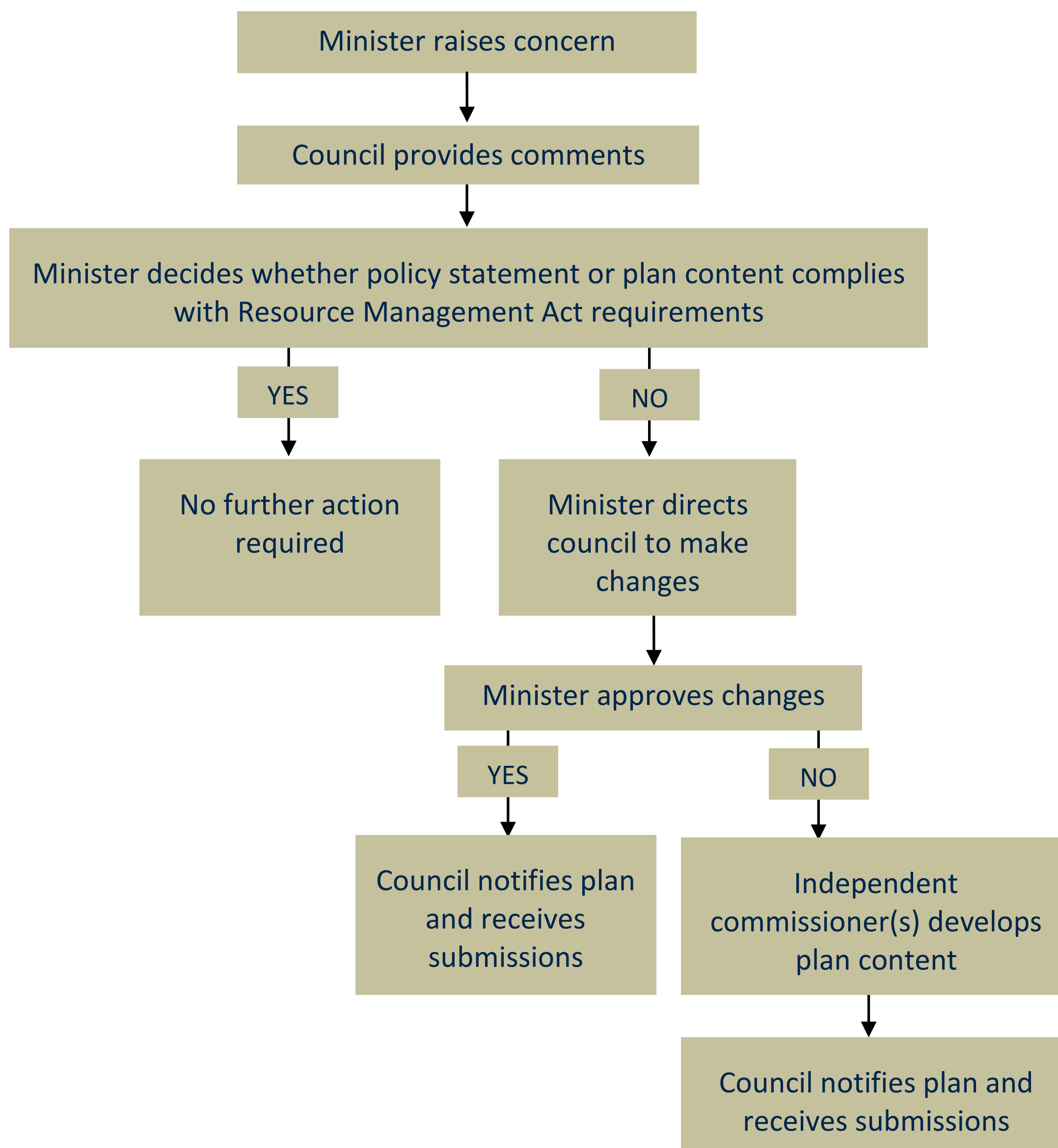
b) On plan content – where a mandated requirement for national direction has not been included in a policy statement or plan, and is therefore not acted on.

c) Where a council asks central government to intervene to develop plan content more quickly to address an urgent issue.

A diagram outlining the process for intervention on circumstance b) is provided in figure 4.

Effective resource management requires government to have an active role in overseeing compliance with national direction.

Figure 4: Compliance with national direction under the Resource Management Act 1991



Changes since consultation

A Minister will be able to ask for a process step to be complied with.

A Minister will not be able to write plan content. As a last resort an independent commissioner may draft plan content after the council has had a minimum of three months to fix any problem. Any new plan content developed by an independent commissioner would be notified with the opportunity for public submissions.

Submissions from councils requested that a Minister be able to intervene if an important and urgent issue requires plan content to be developed very quickly. The Minister could allow dispensation from some of the process steps. The Minister would need to be satisfied adequate consultation with iwi and appropriate stakeholders has been provided for, as the circumstances dictate, and the plan meets other statutory requirements.

Implementation

These powers would be available when the Bill is enacted.

Section five: Freshwater reforms

The Government believes reform is needed to protect the value of water to the New Zealand economy and lifestyle, while managing it within environmental limits. To deliver this, we need more robust decision-making processes driven by quality information and with more community input.

Building on the recommendations in the three reports of the Land and Water Forum, and on ongoing advice from Iwi Leaders, the Government released a comprehensive and integrated package of proposals for freshwater reform in March 2013. *Freshwater reform 2013 and beyond* proposed a series of reforms to support communities to make better decisions, plan, set objectives and limits for their water bodies, and then manage land and water use within those limits.

The Government recently announced the following decisions on the water reform programme:

Collaborative planning

Allowing collaborative planning to be used as an alternative to the current Schedule 1 process will enable communities to develop a shared vision for their water bodies and balance their different aspirations. Getting early community buy-in in the planning process and changing appeal rights to incentivise collaboration will mean less litigation further down the track. This will increase certainty, and ultimately save time and money by ensuring water plans are future-focused and durable.

Iwi participation

Iwi/Māori views will need to be explicitly considered before decisions on fresh water are made, no matter whether councils choose the collaborative option, the joint planning process or the existing Schedule 1 process.

Central government support and direction

Central government will work closely with regional councils to provide guidance for implementing the changes. The Ministry for the Environment is working with regional councils and scientists to improve the quality and consistency of data for making sound decisions on freshwater use and management. National direction will continue to be provided for through the freshwater national policy statement, using the Environmental Protection Authority to consider nationally-significant projects, and tools such as water conservation orders.

Water conservation orders

Consideration of how the water conservation order process fits with regional planning will not be progressed.

Further work

Work is continuing on the details of other proposals signalled in the March paper *Freshwater reform 2013 and beyond*. The Government is amending the Resource Management Act to enable work to be progressed on accounting for water takes and contaminant sources and a National Objectives Framework that may include bottom lines for ecosystem and human health. The Government proposes to consult on the National Objectives Framework later this year, before decisions are taken.

Section six: Other matters

⏩These improvements will re-balance planning decisions towards enabling more housing to be built in the right locations to support economic and social well-being⏪

Housing affordability

Rapid house price inflation remains a major concern for the Government. The impact on housing affordability creates imbalances in the economy, carries large fiscal risks, and prevents young families from enjoying the benefits that home ownership brings. House prices rise when supply is constrained. Constrained housing supply is partly explained by the overly-restrictive zoning and development rules contained in many resource managements plans. The reforms contain a number of measures that together with other actions across Government will provide a long-term response to the housing affordability issue.

At the high level, a new matter of national importance will be added to section 6 of the RMA to place additional emphasis on effective functioning of the built environment, including managing land availability to support population growth. In addition, through changes to section 30 and section 31 councils will have an explicit function to plan for long-term land supply, and ensure that there is a minimum of 10 years zoned capacity to meet the demands of a growing population. These changes will be supported by new national direction as part of the template plan and measures that reduce the incidence of notified consent. Together, these improvements will re-balance planning decisions towards enabling more housing to be built in the right locations to support economic and social well-being.

Reversal of presumption for subdivision

The presumption that subdivision is restricted unless permitted in a plan is currently set out in section 11 of the Act. It is proposed that this presumption is reversed, so that subdivision can be undertaken unless it contravenes a national environment standard, or a rule in a plan or proposed plan, and is not authorised by a resource consent.

Hazardous substances and new organisms

The explicit function for councils to control hazardous substances and the ability for councils to control new organisms (GMOs) through the RMA will be removed. This is considered to be best managed under the Hazardous Substances and New Organisms Act 1996 and by the Environmental Protection Authority.

The removal of the explicit function for councils to control hazardous substances will not limit councils' abilities to use land use controls to avoid hazardous substances events where appropriate under the RMA, but it will remove the perceived need for RMA controls in all circumstances. The

functions for regional councils and territorial authorities, in combination with part 2 of the RMA, will still allow enough scope for councils to control hazardous substances where appropriate. This will be confirmed in updated guidance on hazardous substances management.

The removal of the ability for councils to control GMOs will mean council plans cannot be used to control new organisms and GMOs. A national level approach to managing GMOs ensures consistency throughout New Zealand and given the technical complexity of assessing GMO applications ensures that one agency (the EPA) is adequately resourced to provide this service. The EPA has the necessary risk assessment, legal, policy and scientific expertise required to consider GMO applications.

The proposal to restrict RMA controls on GMOs will not weaken the existing regulatory framework under the Hazardous Substances and New Organisms Act 1996, rather it will prevent duplication, confusion and the complication that would arise from controls being imposed on a council by council basis.

Published in August 2013 by the
Ministry for the Environment
Manatū Mō Te Taiao
PO Box 10362, Wellington 6143, New Zealand

ISBN:978-0-478-41206-2(print)978-0-478-41207-9 (electronic)

Publication number: ME 1119