

RESOURCE MANAGEMENT ACT RESEARCH PROJECT AUGUST 2008:

REVIEW OF SEPTEMBER 1998 REPORT OF THE MINISTER FOR THE ENVIRONMENT'S REFERENCE GROUP – THE 'HOLM REPORT'

1. INTRODUCTION

Purpose

To identify the recommendations of the 1998 'Holm report' that have not been enacted in subsequent amendments to the Resource Management Act 1991 (RMA).

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The report includes the following:

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2. BACKGROUND

In late 1997, Simon Upton, then the Minister for the Environment, appointed a Reference Group to review and recommend amendments to the RMA. This process was separate from a “think piece” commissioned by the Minister, which was written by Owen McShane and reviewed by Ken Tremaine, Bob Nixon and Guy Salmon.

The Minister directed the Reference Group to adopt a practical perspective and to recommend changes to the RMA which would help:

- Improve existing practices and procedures
- Reduce duplication and uncertainty
- Reduce the cost of compliance and delay
- Assist in developing practical solutions to issues arising from the implementation of the legislation over the last seven years.

The Reference Group was chaired by Mike Holm and its report (henceforth referred to as the ‘Holm report’) generated a series of options and recommended changes to the RMA. In addition to drawing on the experiences and opinions of its members, the Reference Group considered the issues presented in the McShane think piece and public submissions on that work. The Reference group did not intend to achieve consensus and instead sought to generate constructive suggestions for change arising from its deliberations.

The Minister considered the Reference Group’s recommendations alongside those of the McShane report, and generated a set of proposals for amending the RMA. Public submissions were called for and, after reviewing these submissions, the Minister refined the proposals for amending the RMA and translated them into the proposed Resource Management Amendment Bill 1999. The 1999 Bill was subsequently revised by the incoming Labour Government and, although it did not progress, elements of this Bill found their way into subsequent amendments.

In the context of needing to provide policy advice on potential future amendments to the RMA, it will be useful to have a clear understanding of the fate of the Holm report’s recommendations

The tables in section six of this report set out the issues and recommended changes to the RMA identified in the Holm Report, and the fate of those recommendations in light of subsequent amendments to the RMA.

It is noted that the Reference Group often raised and considered a number of options for addressing particular issues but that, in many cases, not all these options made their way through to Simon Upton’s 1999 RMA Amendment Bill.

3. KEY ISSUES IDENTIFIED BY THE REFERENCE GROUP

The perceived issues identified by the Reference Group and addressed by its recommendations are generally characterised by one of the following:

- A desire to simplify the criteria for making decisions on plans and applications.
- A strong emphasis on the preservation of private property rights.
- A lack of confidence in the ability or capacity of local councils.

Key issues are presented in précis and under subheadings below:

Part II

- The pre-eminence of Part II means that it will influence the effectiveness of any changes made to the RMA.
- Section 5 is clear but the balance of Part II is open to varying interpretation and application.
- Given the broad purpose (and mandate) provided by section 5, sections 6 and 7 are arguably unnecessary.
- Sections 6 and 7 do not mention other equally important environmental or resource management objectives or considerations that might well be relevant under section 5.
- The RMA explicitly states that resource consent decisions are to be made subject to Part II. This provides submitters or appellants with a potentially potent range of legally relevant environmental (and other) arguments with which to oppose consent applications. It has also unnecessarily complicated decision making on resource consent applications by requiring exhaustive consideration of numerous, sometimes conflicting, criteria (when these matters have already been considered when setting plan provisions).

Effects based planning

- Despite an apparent emphasis on environmental effects, prescriptive planning has persisted under the RMA
- An effects based approach does not appear to have been the main objective of many policies, plans or decisions and the vague wording of Part II provides an avenue for councils to justify this position.

Accountability of Councils

- As at 1998 there has been no effective or enforceable obligation upon councils to clearly justify the rationale for, or scope of, particular policies, plans or rules.

- This issue is particularly relevant when private property rights are removed or restricted solely to provide a public benefit (e.g. where heritage or landscape controls impose unrealistic or unreasonable restrictions on the use of land or buildings).
- The RMA lacks an effective mechanism for considering compensation, or other methods of implementation, where the use of private property is restricted in order to provide a “public good”.
- The lack of accountability on the part of local government to justify the scope of regulation provided in plans, or to be financially responsible for the effects of such plans on private property rights, can be exacerbated by the fact that Councils sit as both judge and jury in considering individual consent applications. The safeguard of a rehearing before the Court is expensive and time-consuming. One option for remedying this situation is for councils to continue to hear submissions and make decisions on plans and policy statements but to no longer perform the quasi-judicial function of determining resource consent applications.
- Introducing a degree of contestability in the processing of resource consent applications would likely also improve the efficiency of dealing with consent applications.

Environment Court processes

- Amending the RMA so that independent commissioners make decisions on first order hearings should improve the quality of decisions. The Environment Court would then normally hear appeals on points of law only – with the potential for *de novo* hearings in special circumstances.

4. SUMMARY OF APPENDIX TO THE HOLM REPORT – “RATIONALE FOR INTRODUCING COMPENSATION FOR LAND USE CONTROLS”

As noted, the recommendations of the Holm report generally reflect a strong emphasis on the preservation of private property rights. This emphasis is underscored by the inclusion of an appendix that constructs a logical/legal case for amending section 85 of the RMA. The paper defends the rights of private property owners to use their land ‘efficiently’ and seeks to build an argument against so-called ‘planning loss’, or ‘injurious affection from planning’ (removal of private property rights which doesn’t involve taking or the intention to take land). The argument appears to hinge on three assumptions:

- landowners should be able to maximise the efficient use of their land in any way they see fit, provided it doesn’t contravene a rule in a plan or the purpose of the RMA.
- In accordance with section 32, incentive and compensation payments should be considered whenever considering alternatives, benefits and costs associated with plan or policy development.
- whether or not a particular land use outcome is efficient should be established in terms of economic efficiency.

New Zealand law does not enable compensation for planning loss

- The compensation law in New Zealand has developed around the taking of land by the Crown for public works. Because law has focused on the acquisition of land, injurious affection from planning, which didn’t involve taking or intention to take land, was not subject to compensation.
- This was based on the premise that if councils were required to pay for a reduction in development potential upon rezoning, planning could become prohibitively expensive. Hence section 85 ‘Compensation not payable in respect of controls on land’.
- This rationale was deficient as there was no apparent regard to whether compensation for compulsory acquisition of property use rights could promote the purpose of the RMA.

Some categories of rules justify compensation as they restrict private land-use rights

- Amenity rules (e.g. heritage zones, front yard setbacks, off street parking etc) restrict land use rights with the aim of promoting amenity values. They are the equivalent of compulsory land acquisition in the Public Works Act and excesses with amenity rules are probably one of the main causes of dissatisfaction with the performance of the RMA. The right of affected property owners to claim compensation for costs associated with loss of land use rights should go a long way to addressing this problem. However, compensation is difficult in this area and further thinking is required.

- Site specific rules (designed to lock-in a positive externality associated with specific properties for the benefit of the common good such as a listed historic building or site, or a natural feature) are highly discriminatory and deny land use rights that are conferred on adjacent property owners. The opportunity cost of such rules may be high and inflict considerable welfare losses on the property owners. Rules that force landowners to provide free services to the community with public good characteristics (preservation of historic sites), increase the size of the public estate (preservation of indigenous bush) and/or spend money regardless of financial circumstances (restrict stock access to bush or streams on private land) distort allocative efficiency. Compensation, including the right to demand purchase of the land that is affected, should be claimable.

Compensation need not result in a cost to the community

- Regulation always generates an opportunity cost. Compensation does not in itself generate any additional cost to the community (excluding the cost of assessing and addressing claims), rather it crystallises the opportunity costs that regulation generates. The only issue, therefore, is who pays, the regulator or the regulated.

Comment: Regulation may well generate an opportunity cost, but it is also important to acknowledge the potential for market failure. Uncontrolled urban sprawl is one example of an activity that can generate significant infrastructure costs and externalities that are borne substantially by third parties. A move to introduce private compensation for 'planning loss' would also need to be complemented by a move to ensure private land owners were responsible for the full cost of their activities. The significant political, social and economic implications of this are not discussed in this report.

- Concerns over the complexity of identifying which rules to which compensation should apply are unfounded. It is only proposed to introduce compensation for site-specific rules and in instances where consents have been declined, therefore the circumstance in which compensation is payable is unambiguous.
- Concerns over rent-seeking behaviour leading to large sums of public money being paid out for the preservation of vegetation, heritage buildings and general amenity that were never under real threat are unfounded because it is proposed to restrict compensation to those instances where a genuine resource consent application has been declined.

Comment: The report tends to underplay the potential massive public cost of compensation to protect vegetation, heritage and amenity that could come under real threat.

In order to support a resource consent application the applicant may need to go to considerable expense and employ professional assistance.

Only bona fide consent applicants are likely to go to this trouble. The transaction cost of obtaining resource consents and/or proving losses should discourage frivolous and/or dubious claims.

Comment: It is expected that the author would argue for the proposed quantum of compensation to be commensurate with the opportunity cost identified. In this case a rational decision-maker would go through the planning process if the opportunity cost exceeded the cost of seeking consent.

5. SUMMARY OF MINISTER'S EXPLANATION OF KEY POLICY DECISIONS TAKEN IN DEVELOPING THE RESOURCE MANAGEMENT AMENDMENT BILL 1999

Prior to releasing the Resource Management Amendment Bill 1999, The Minister for the Environment (Simon Upton) circulated an explanation of the rationale that lay behind the amendments proposed by the Bill. This explanation provides useful political insight and may assist consideration of the fate and merit of the Holm report's recommendations.

The consideration of social and economic matters in decision-making

- The Minister considered the place of social and economic considerations to be perhaps the most fundamental question addressed through the proposed amendments to the RMA.
- Functionaries' role under the RMA is to enable activities while safeguarding the environment. The 'environment' is defined to include social and economic matters that affect or are affected by ecosystems, natural and physical resources and amenity values. It is unclear what social and economic matters are excluded by this definition, and it opens the door to the sort of social and economic planning that the RMA was designed to leave behind.
- In order to sharpen the focus of the RMA, it was proposed to amend the definition to read:

"Environment" includes –

- (a) Ecosystems and their constituent parts; and*
- (b) All natural and physical resources; and*
- (c) The health, safety and amenity values and cultural values of people and communities.*

- This raised two sets of concerns:
 - (i) Applicants were concerned that economic and social benefits should continue to be relevant. It was never intended that such considerations should be irrelevant and it was proposed to insert the following additional clause into section 104 to address this potential:

(3)(a)(ii) "Any economic, social, cultural or environmental benefit."

This proposal raised considerable concerns as submitters thought this could be interpreted as providing statutory support for environmental versus economic tradeoffs in the resource management process. This, thought submitters, could encourage applicants to maximise claims about the social and economic benefits associated with particular projects at the expense of efforts to avoid, remedy or mitigate adverse environmental effects.

The Minister concluded that the proposed amendment to section 104 would create fresh legal uncertainty where none presently exists.

- (ii) Social and economic matters are integral to concepts of sustainable and integrated management. It would be artificial to divorce social and economic consequences from environmental outcomes.

The Minister found this argument unpersuasive because:

- if we're to avoid decision-making quagmire in which everything must be considered then the RMA needs a clear sense of purpose and that involves establishing clear boundaries around what is and isn't relevant.
- the proposed definition of 'Environment' is broad enough to allow consideration of a vast range of social matters.

Public participation in decision-making

- A second emotive issue addressed by the proposed amendments relates to the opportunities available for public participation in decision making. The amendment Bill proposed including provision for limited notification. This proposal sought to achieve two objectives:
 - (i) cost-effective consideration without undermining legitimate rights of participation.
 - (ii) Limit rent-seeking (greenmail) behaviour of affected parties and submitters.
- There was widespread support for the proposal, with the exception of environment and community NGO's and Maori/iwi groups who strongly made the point that the accuracy with which affected parties were identified would take on added importance.
- The Minister considered that more flexible notification procedures should be accompanied by enhanced opportunities to scrutinise and review decisions not to notify applications. This led to a proposal to allow the Environment Court to review a notification decisions by way of a declaration.

Contestable processing of consents

- This proposal prompted significant debate throughout the review process; debate that was characterised by misunderstanding of what was proposed. The Minister had to reiterate what was proposed and chose to underscore that "at no time was it suggested that decision making itself should be contestable ... it was always intended that the substantive decision remain with the consent authority".
- Many submitters opposed contestable processing on the grounds that it would allow applicants to engage processors that were sympathetic to their applications – in short an opportunity to buy their way through the process.

- Maori/iwi were concerned that the amendment significantly exacerbated existing concerns over the level of maori input into resource management processes – a private processor might have weak incentives to consult iwi.
- Councils indicated a lack of faith in the impartiality and professionalism of independent processors, and considered they would inevitably be required to “double check” their work.
- There were particular concerns about the notification of applications under a contestable system. Superficially it would appear that there would be an incentive for a processor to process as many applications as possible non-notified. However, the potential for review of poor notification decisions (by the consent authority or the Environment Court) was considered sufficient to counteract this potential.
- The Minister could not ignore the concerns of Maori and proposed to instruct the Ministry for the Environment to provide detailed guidance to local authorities on the appointment of consent processors to (amongst other things) encourage the appointment of individuals with the skills necessary to take into account Maori/iwi concerns.
- After considering submissions, the Minister proposed to retain the element of choice for applicants but to amend the proposal so that:
 - Councils maintain considerable control over the application and the conduct of all processors
 - External processors will be paid by the councils and not by the applicant – the responsibility and allegiance of the processor is to the council.

Commissioner hearings

- There was little support throughout the review process for removing provision for *de novo* appeals to the Environment Court.
- Suggested requirements for mandatory use of commissioners for all first-order hearings drew strong opposition from local government and cost analysis indicated that such a requirement was likely to be more expensive for applicants. This proposal was, therefore, dropped and the Bill was amended to allow an applicant or a submitter the option of requiring that commissioner be appointed in place of a council hearings committee.
- Amendments to section 36 were proposed to allow councils to charge any submitter who requested a commissioner hearing – noting that the submitter would be required to pay the difference between a council and a commissioner hearing (or part of the cost in consultation with the council).
- This proposal was designed to address allegations that council decisions reflected:

- inconsistent quality
 - bias or pre-determination
 - lack of appropriate separation between policy making and policy implementation roles.
- To avoid manipulation by councils appointing only commissioners with sympathetic opinions, commissioners were to be registered nationally by the Secretary for the Environment and appointed to individual cases by the Chief Executive of the relevant local authority.
 - Many Maori/iwi supported commissioner hearings on the basis that Maori would be appointed as commissioners. The Minister considered it inappropriate to limit the Secretary for the Environment's discretion to appoint commissioners to only those with Maori skills or knowledge or some arbitrary number of Maori commissioners. The Secretary for the Environment will only make appointments following consultation with other departments, including Te Puni Kokori, and this was considered sufficient to safeguard Maori interests.

Direct Referral

- The Minister proposed to amend the RMA allow for applications for resource consent and notices of requirement for designations to be referred directly to the Environment Court. This raised two major sets of concerns:
 - (i) local authorities feared dilution of local democratic processes and the principle that decisions should be made locally.
 - (ii) Community and environment groups feared increased costs and difficulty for submitters wanting to participate in the hearings process.
- The Minister considered these concerns seriously, but ultimately discounted them for the following reasons:
 - (i) The criteria for direct referral were set, and would be applied, in such a way as to capture only those applications that would almost certainly be appealed to the Environment Court anyway.
 - (ii) Because these hearings would be 'first order', it was significantly less likely that submitters would face the prospect of costs being awarded against them.

Reference to Part II in sections 104 and 105

- Sections 104 and 104 have been criticised for being unnecessarily complicated and confusing, and for prompting an inefficient decision-making process.
- Particular concerns were:

- It is unnecessary to consider part II in each application as Part II matters would have already been considered when setting objectives, policies and rules (including activity status) during the plan making process.
 - relitigation of plan provisions when considering applications undermines the purpose of having the plan at all.
 - it is nonsense to restrict discretion to specified matters (controlled and limited discretionary activities) then to effectively require a fundamental re-assessment of all matters against Part II.
 - removing a requirement to consider Part II would not preclude its consideration as decisions makers would still be able to consider it as an “other matter” where appropriate.
- To address these criticisms, the Minister proposed to remove the requirement for decision-makers to take Part II matters into account when considering applications for controlled and limited discretionary matters.
 - The Minister fielded concerns from submitters who considered that the removal of a requirement to consider applications against Part II would undermine sustainable management and reduce environmental safeguards. The Minister found these arguments unpersuasive.

Plan Quality – changes to section 32

- The effectiveness of section 32 has been criticised. The existing wording of the section is convoluted, contradictory and difficult to apply. It is also unclear what documentation is required to demonstrate that the analysis has been undertaken to an adequate level.
- The following proposals were made in response to these criticisms:
 - simplify language
 - directly require an analysis of alternatives
 - the efficiency test for objectives, policies and methods should be defined as referring to ‘economic efficiency’
 - insert a requirement to take into account the risks of acting when information is incomplete
 - require a regulatory impact statement
- Submissions generally agreed with the need for amendment but concerns were raised as follows:
 - It is important to avoid a bias against including rules in plans
 - the regulatory impact statement will introduce an additional tier of bureaucracy with little added benefit
 - the proposed changes didn’t simplify the sections adequately
 - defining efficiency as ‘economic efficiency’ is too narrow
- The Minister altered the proposed section 32 amendments as follows:

- abandoned the requirement to prepare a regulatory impact statement
 - abandoned the requirement to assess the effectiveness and necessity of objectives and instead required that the costs and benefits of objectives be assessed against the purpose of the RMA
 - the 'effective and efficient' test was to apply to policies, rules and other methods only
- The Minister also noted that criticism of the proposal to define efficient as meaning economic efficiency betrayed a misunderstanding of the concept. The Minister considered defining the term economic efficiency in the RMA but ultimately decided against it on the grounds that case law was emerging that established a sufficient guideline for councils.

Subdivision

- The Minister noted that, strictly speaking, the act of subdivision is a legal process with no environmental effects but that subdivision is one means of managing adverse effects of land use activities.
- In theory, the Minister opined there should be no reason why district plans need to continue to allocate development rights in the way they currently do. However, the convention is well established and would be extremely difficult and disruptive to overturn.
- Currently under the RMA territorial authorities are required, as one of their functions, to control subdivisions and section 11 includes a presumption against subdivision. The Minister considers that a clear statement of the rationale for subdivision controls is required in order to improve practice. As such, the objective of the proposed amendment was to reinforce the message that controlling subdivision should be seen as a method available to councils for managing the adverse effects of land use activities. To do this the amendment proposes:
 - Removing the control of subdivision as a separate function of territorial authorities and list it as a method
 - Reverse the presumption in section 11 so that subdivision is allowed unless controlled by a rule on a plan
 - Remove the prescriptive provisions in section 106 to allow councils greater flexibility to manage the risks of natural hazards as they see fit

Functions of regional councils

- Single activities are, at times, subject to control from both territorial authorities and regional councils – confusing jurisdiction and raising the potential for inconsistency. Many have argued, with some justification, that such an overlap hardly constitutes integrated management.

- Most problems can be addressed by minor changes to sections 30 and 32 of the RMA. However, of greater importance were the overlapping policy functions and the question of whether local government should be seen as a hierarchy of, in descending authority, central, regional and local tiers? Or should territorial authorities and regional councils be equal partners with separate and complementary functions?
- The Minister preferred the latter and proposed amendments to remove the sweeping powers of regional councils as they extend to land use issues. The objective was to promote a partnership model with regional councils managing bio-physical resources (water, soil, air, the coast and biodiversity), while territorial authorities would primarily manage land use activities.
- Submitters raised four major concerns:
 - this could lead to ad hoc decisions and a loss of consistency
 - the proposals would result in duplication of policy by districts, which often don't work together - regional overview is necessary to facilitate integration
 - districts need guidance on issues of regional importance and don't have the necessary expertise in some areas to address these issues
 - a regional overview is needed to address issues which cut across district boundaries, especially biodiversity and regional growth
- The Minister generally found these concerns unconvincing because:
 - inconsistency between territorial authorities reflects local differences. Where it undermines efforts to address genuinely regional issues (for example water quality and quantity, and harbour siltation) then regional councils would have the power to step in.
 - regional councils could still manage growth where it threatens valued catchments and locations relating to their core functions.
- The Minister, however, proposed to amend section 30 of the RMA to give regional councils the explicit function of managing terrestrial biodiversity and for establishing processes to deal with cross boundary issues.

6. ISSUES, RECOMMENDED OPTIONS AND SUBSEQUENT AMENDMENTS TO THE RMA

The following tables set out the issues and recommended options for addressing these issues as set out in the Holm report. The fate of these recommendations is traced by comparing them against amendments made to the RMA in 2003 and 2005. Key recommendations of the Reference Group include:

- Amending the definition of “the environment” to clarify that councils should not be involved in social and economic planning.
- Strengthening section 32, requiring councils to more rigorously justify their policies and plans.
- Revising sections 104 and 105 to emphasise consideration of environmental effects when determining resource consent applications (with social and environmental effects being relevant factors).
- Requiring the use of appropriately qualified commissioners to conduct all hearings on resource consent applications and for appeals on these decisions to be limited to points of law (with exceptions for special circumstances).
- Improving procedures relating to the drafting of national policy statements.
- Allowing for contestable processing of resource consent applications.
- Provide for direct referral of resource consents applications to the Environment Court.

Table 1 – Scope and philosophy

<i>Issue</i>	<i>Recommended Options</i>	<i>RMA Amendment Act 2003</i>	<i>RMA Amendment Act 2005</i>
[1] Definitions of ‘Environment’ and ‘Amenity Values’ are exceptionally broad and, as a result, lack sufficient specificity to be understandable or practically applicable.	Amend the definition of “Environment” to read: “Environment” includes – Ecosystems and their constituent parts; and Natural and physical resources; and The health, safety and amenity values of people and communities.	Not implemented.	Not implemented.
	Amend the definition of “Amenity Values” to read: “Amenity Values” means those natural or physical qualities and characteristics of an area that contribute to peoples’ appreciate of its pleasantness and cultural and recreational attributes.	Not implemented.	Not implemented.
[2] A number of development proposals have been characterised by lengthy and costly delays, brought about by protracted debate and/or litigation in respect of tangata whenua concerns, aspirations, mandate to represent iwi and issues relating to the scale and timing of consultation. Maori cultural and spiritual values are given a special status in the RMA, by virtue of the inclusion of sections 6(e), 7(a) and 8 within part II. There are concerns that this adds weight to these aspects, over an above other effects on the environment that have note been given a special status by virtue of Part II. The Holm report considered a number of options but, wary of the potential for controversy and concern, did not reach a final view or recommendation on the above issue.	Do nothing – rely on case law to establish the weight to be given to “maori” instruments [not preferred].	Implemented by default.	No change.
	Remove section 6(e), 7(a) and (aa) and 8 from the RMA [not recommended].	Not implemented.	Not implemented.
	Combine sections 6,7 and 8 into “matters to have regard to” [recommended for further investigation].	Not implemented.	Not implemented.
	Clarify the provisions of section 8 so that it specifically excludes ownership and/or Treaty issues [not preferred].	Not implemented.	Not implemented.
	Move sections 6(e), 7(a) and (aa) to section 104, thereby removing the elevated status that it is currently afforded by its inclusion in Part II [recommended for further investigation].	Not implemented.	Not implemented.
	Limit the scope of section 6(e) to sites and resources owned by Maori and the Crown, thereby preserving private property rights when it comes to Maori matters. Protect Maori heritage sites on private property via amendments to the general heritage provisions [recommended for further investigation].	Not implemented.	Not implemented.

	Remove sections 6(e), 7(a) and (aa) and 8 from Part II and include them as mandatory requirements of plans and policy statements. These documents would then define the processes or conditions that an applicant must comply with in order to meet the requirements of the plan or policy statement [neither recommended nor discounted].	Not implemented.	Not implemented.
	Establish an iwi representation mechanism to aid identification of the appropriate party to consult with – include this within policy and plan documents [recommended for further investigation].	Not implemented.	Section 35A makes it the duty of local authorities to keep records of contact details of iwi and hapu. Section 36A establishes that there is no duty under the RMA to consult about resource consent applications and notices of requirement.
	Establish a limited notification procedure [captured by recommendations elsewhere in the report].	Section 77B amended to provide new definitions of activity types- including a definition of restricted discretionary activities.	
	Require the preparation of iwi management plans. Amend the RMA to require their preparation (by District and/or Regional Councils in partnership with iwi), and to prescribe their scope and/or contents. Use these documents to identify specific areas of ancestral lands, waahi tapu and other important sites [recommended for further investigation].	Not implemented.	
	Limit the use of section 92 notices requiring further information on the consultation undertaken with tangata whenua [captured by recommendations elsewhere in the report].	Implemented through the insertion of a new section 92 (addressed later in table).	
	Draft a national policy statement to clarify and improve tangata whenua provisions within the RMA [captured by recommendations elsewhere in the report].	Not implemented.	
	Establish a Maori constituency that would enable Maori to vote for representatives on regional and district councils [neither recommended nor discounted].	Not implemented.	Sections 36B – 36E provide local authorities with powers to make a joint management agreement with public and iwi authorities to exercise powers, functions and duties.
[3] Implication in wording of sections 11 and 31(c) that there is a 'special right' to control subdivision.	Reverse the presumption in section 11 so that subdivision is permitted unless controlled.	Not implemented.	Not implemented.
[4] Section 31(c) lists a function of Territorial Authorities as being 'the control of the subdivision of land' rather than referring to any actual or potential effects of subdivision.	Changes to section 11, 32 and 85 should address this.	Implemented in part by: <ul style="list-style-type: none"> repealing paragraphs (b) and (c) and substituting a new paragraph that refers to controlling the actual or potential effects of the use development, or protection of land. Inserting a new subsection (2) "The methods used to carry out any functions under subsection (1) may include the control of subdivision." 	No change.
[5] The RMA captures some leases, such as leases of space in commercial buildings, as subdivisions when there are no environmental effects and there is not even a need to have the lease registered on the title.	Provide that a district plan may exempt any lease from the subdivision requirements of the RMA and increase the minimum lease term that qualifies as a subdivision from 20 to 32 years (section 128).	Not implemented.	Not implemented.
[6] Five working days should be sufficient for the approval of survey plans if all the requirements of the section are met.	Introduce timeframes of 5 working days for the approval of survey plans (section 223).	Implemented in part by inserting subsection 1(A) "Within 10 working days after receiving a survey plan submitted to it under subsection (1), a territorial authority must either – <ul style="list-style-type: none"> (a) approve the survey plan; or (b) decline the survey plan. 	No change.
[7] The requirement to provide esplanade reserves without compensation on any lots of less than 4 ha created at the time of subdivision is unreasonable as the effects generated by many such	Provide in section 230(3) that a local authority may require an esplanade reserve of up to 20 metres with to be provided on allotments of less than 4ha.	Not implemented.	No change.

subdivisions do no warrant the reserve requirement.	Provide that any esplanade reserve that has been provided without compensation shall be taken into account in imposing financial contributions under section 108. This may be best achieved by treating an esplanade reserve as a financial contribution.	Not implemented.	No change.
	Remove the role of the Minister of Conservation in approving the waiver or reduction of esplanade reserves on lots less than 4ha.	The Minister of Conservation does not, and prior to the 2003 amendment did not, have a role in approving waivers or reductions of esplanade reserves under sections 232 or 77. I can't find the basis for this recommendation.	No change.
[8] The RMA still reflects the former prescriptive controls on subdivision in the Local Government Act	Repeal section 321 of the Local Government Act 1974 (road frontage) with an appropriate transitional provision.	Section 321 of the Local Government Act 1974 was repealed.	-
	Provide that section 328 of the Local Government Act 1974 not apply to rights of way created at the time of subdivision under the RMA.	Section 348 of the Local Government Act 1974 was amended by adding the following: Nothing in this section applies to a private road or right of way lawfully created as part of a subdivision under the Resource Management Act 1991.	-
[9] Section 106 of the RMA prohibits subdivision of hazard prone land except if certain conditions are met. This creates problems with minor boundary adjustments, can impose unreasonable liability on local authorities and is a matter that can be adequately dealt with in district plans.	Repeal section 106 of the RMA with a suitable transitional provision.	Partially implemented by: amending section 106 to remove the directive "a consent authority shall not grant a subdivision ..." replacing the above with wording to the effect that "... a consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions ..." including the new subclause (c) "if [the council] considers that sufficient provision has not been made for legal and physical access to each allotment to be created by subdivision".	No change.

Table 2 – Functions

Issue	Recommended Options	RMA Amendment Act 2003	RMA Amendment Act 2005
[10] Overlapping functions between Regional Councils and Territorial Authorities are causing confusion in relation to water bodies, land use consents for earthworks, vegetation clearance and soil conservation, discharges to land, natural hazards, hazardous substances, odour and activities in the coastal environment.	Enhance the transfer of powers by deleting section 33(1)(a) and 33(3).	Implemented in part by: <ul style="list-style-type: none"> repealing section 33(1) and replacing it with "a local authority may transfer any one or more of its functions, powers or duties under this Act, except this power of transfer, to another public authority [local authority, iwi authority, government department, statutory authority and joint committee] in accordance with this section". repealing sections 33(3) and (5) 	Further relevant changes made via: <ul style="list-style-type: none"> sections 36A-E regarding joint management agreements section 34A regarding delegation of powers and functions to employees and other persons

	<p>Amend local government functions in sections 30 and 31 so that the Regional Council functions are:</p> <ul style="list-style-type: none"> • Land use activities in the beds of rivers, lakes and the coast (including the surface of water) • Natural hazards and hazardous substances in beds of rivers, lakes and the coast • All water and discharge controls (including odour) • District Council functions are: • Land use controls, except in the beds of rivers, lakes and the coast • Natural hazards and hazardous substances for all other land areas 	<p>Amendments were made to sections 30 and 31. These amendments did not, however, implement the recommendations made here.</p>	<p>Amendments to section 30 to provide further regional council functions:</p> <ul style="list-style-type: none"> • Investigation of contaminated land, water, heat, energy, air and water discharge capacity, allocation • Allocation of CMA space (in conjunction with the Minister of Conservation) and taking of heat or energy from coastal water. • Strategic integration of infrastructure • Restrictions on allocation rules. <p>Amendments to section 31 to provide district councils with functions of preventing or mitigating adverse effects of development, subdivision or use of contaminated land.</p>
	<p>That the transfer of powers should be used to ensure the most appropriate authority in a particular situation has responsibility for activities on the surface of water.</p>	<p>Not implemented.</p>	<p>Amendments to sections 34 and 36 as discussed above.</p>
<p>[11] A gap has been identified in section 43 dealing with national environmental standards. This section allows for prescribing methods only for established technical standards that have been regulated.</p>	<p>Amend section 43(1)(a) to allow for national standards to prescribe technical standards and methods.</p>	<p>Implemented as recommended.</p>	<p>Substantial amendments to NES provisions:</p> <ul style="list-style-type: none"> • Added subdivision • Refined description of discharges • Added further powers to implement NES and power to incorporate material by reference • Set out relationships between NES and rules or consents, water conservation orders, bylaws.
	<p>Amend section 35 to provide that national environmental monitoring standards are to be monitored by all monitoring agencies.</p>	<p>Amendments were made to section 35 requiring every local authority to compile and make available to the public a review of the results of monitoring of the efficiency and effectiveness of policies, rules, or other methods in its policy statement or plan. Subject to the monitoring requirements stipulated in the NES the NES, this amendment effectively captures the general intent of this recommendation.</p>	<p>Further amended by adding a requirement to keep copies of material incorporated by reference and added the duty to keep records about iwi and hapu.</p>
<p>[12] The process for developing NPS is lengthy and uncertain.</p>	<p>Make the Board of Inquiry optional at the beginning of the process Remove the need to notify the intention to prepare a NPS Remove the further submission step Make hearings optional. Make the revocation of the NPS easier and without formality.</p>	<p>Significant amendments were made to section 45 – 55. The amendments require the Minister to:</p> <ul style="list-style-type: none"> • Seek and consider comments from appropriate persons prior to preparing a proposed NPS; the Minister is not required to publicly notify his/her intention to prepare a NPS. • Appoint a BOI. <p>Notably:</p> <ul style="list-style-type: none"> • The Minister is empowered to set the terms of reference for the BOI but hearings are still required. • No changes were made to the revocation process. • The mandatory further submissions step was removed. 	<p>Further amendments to sections 46 – 55:</p> <ul style="list-style-type: none"> • Consult with relevant iwi authorities • Minister to choose the BOI or alternative process • Incorporation of material by reference • Local authority recognition of NPS strengthened • Provide for direct incorporation of NPS without notification of plan change <p>Changes made to NZCPS (sections 57 – 58A) to allow use of alternative process, add objectives (maintaining and enhancing public access to and along the CMA and the protection of recognised customary activities) and to enable the incorporation of material by reference.</p>
	<p>Delete subsection 46(a)</p>	<p>Implemented.</p>	<p>No change. .</p>
	<p>Delete the word “shall” in subsection (c) and replace with “may”.</p>	<p>The word “shall” is replaced with the word “must” in the new subsection 47.</p>	<p>No change.</p>
	<p>Delete subsections 50(1), (2) and (3)</p>	<p>Implemented.</p>	<p>No change.</p>

	Amend subsection (4) by inserting: "The Minister or a Board of Inquiry may decide whether or not to hold a hearing. If a hearing is to be held section 39 to 42A ...etc	Not implemented.	Implemented via insertion of section 46A – the Minister can choose the process and can choose not to require a hearing.
	No amendments necessary to section 53 and earlier amendments will affect the ease of revoking a NPS	No changes made to revocation process. Does not give effect to intent of recommendation as thought by the Reference Group as the hearings process has been retained.	Not implemented.
[13] Administrative and process issues hamper the effectiveness of call-in provisions.	Remove reference in section 146(3) to the Board of Inquiry being a statutory Board, or change the Board to a Ministerial Committee or other similar group.	Not implemented.	Substantial amendments to the call in process: <ul style="list-style-type: none"> Extended the process to the coastal marine area and the Minister of Conservation Enabled applicants and local authorities to request call in on consents designations and private plan changes. Added powers to make Crown Submissions, appoint project coordinators, additional hearings commissioner and to require joint hearings. Provided the Board of Inquiry with additional hearings powers. Provided for the Board, not the Minister, to determine the matter and produce a draft report for further submissions. Enabled direct referral to the Environment Court as an option. Provided that appeals can be made to the High Court on questions of law only.
	Make the administrative charges in section 36 apply to call-ins.	Implemented via amendments to section 141 to make reference to sections 36(3A) – estimates - and 36(4) – fixing charges.	
	Amend section 146(1) to include a time limit.	Not implemented.	
	Amend section 146 'Board of Inquiry' to refer to section 253. Amend section 253 to include Board of Inquiry members.	Not implemented.	
	Amend section 148 "Board to report to minister" by adding a time frame for completion.	Not implemented.	

Table 3 – Resource consents

Issue	Recommended Options	RMA Amendment Act 2003	RMA Amendment Act 2005
[14] Councils differ in the criteria they use to judge when to formally 'receive' applications. There is a great deal of variance with some councils delaying formal receipt until up to 10 working days after physical receipt.	Include a new definition of "receipt".	Not implemented.	Inclusion of new sections 88B and 88C which clarify processing timeline periods notably relating to further information requests, efforts of the applicant to obtain approvals from affected parties, commissioning of reports, referral to mediation.
[15] Councils can request further information, or commission a report, at any reasonable time before the hearing of an application. Section 92 is sometimes used by councils to gain extra time before an application is notified or processed, since the sections which set the timelines for progressing (95, 101 and 115) start on the receipt of further information.	<p>Change section 92, 93, 95, 101 and 115 to ensure that time limits apply to applications from the date of receipt, and that applications cannot be held up for further information before processing begins.</p> <p>Require that decisions to delay the determination or hearing of an application are in writing, and can be objected to by the applicant.</p> <p>Revise section 92 along the following lines:</p> <p>(1) <i>A consent authority may, within 10 working days of receipt of an application, by written notice to an applicant for a resource consent, require the applicant to provide further information relating to the application.</i></p> <p>(2) <i>Where the consent authority is of the opinion that any significant adverse effect on the environment may result from an activity to which an application for a resource consent relates, the consent authority may commission a report to audit any matters raised in relation to the application, including a review of any information provided in any application under section 88(4) or under this section. A consent authority may charge under section 36 of this Act the applicant for the cost of a report requested under this section if the consent authority has advised the applicant first.</i></p>	<p>Implemented in part as follows:</p> <ul style="list-style-type: none"> Removed sub-section (3)(a) – ability for a consent authority to postpone notification determination or hearing. The amendment also provides an avenue for objection by making sections 357 and 358 apply to requests for further information. Amended so that notification is required within 10 working days from lodgement [rather than receipt]. Reference to the provision of information requested under section 92 was also removed. Removed subsection 101(2A) which allowed delays until information requested under s92 was received, tagged hearing deadlines to "receipt" of the application and to the "receipt" of written approval of all adversely affected parties. Inserted a new requirement to commence a hearing no later than 25 working days after the date the application was first lodged with the consent authority. 	<p>Section 92 was substantially revised:</p> <ul style="list-style-type: none"> Consent authorities may <u>request</u> information Sets out criteria for commissioning a report and when it, or further information, must be made available Enables the applicant to provide the information, agree to provide it or refuse to provide the information. Consent authority is able to decline the application on grounds of insufficient information. This decision is appealable to the Environment Court. The Court must decide whether or not there was sufficient information and either decline or hear the appeal.

	<p>(3) <i>Where a consent authority seeks further information under subsection (1) ...</i></p> <p>(a) <i>It may postpone the notification of the application; and</i></p> <p>(b) <i>It shall make that information available for public inspection at its principal office at least 15 working days before the hearing; and</i></p> <p>(c) <i>It shall, upon receipt of any report that it commissioned, send a copy of the report to the applicant at least 15 working days before the hearing</i></p> <p>(4) <i>Further information may be required under this section only if the information is necessary to enable the consent authority and any submitters to better understand the nature of the activity in respect of which the application for a resource consent is made, and the effect it will have on the environment.</i></p> <p>(5) <i>Sections 357 and 358 (which deal with rights of objection and appeal) apply to subsections (1), (2) or (3).</i></p> <p>Insert an additional clause to section 92 to allow for further requests that would not stop the processing clock:</p> <p><i>A consent authority may, at any reasonable time before the hearing of an application, by written notice to an applicant for a resource consent, request further information relating to the application.</i></p> <p>And include clarification in clause (3) if necessary that the clock cannot be stopped.</p>		
<p>[17] The use of section 92 can also lead to abuses of the “renewal” of consent process by applicants who can lodge a pro forma application for a new consent 3 to 6 months before consent expiry, and then delay their response to inevitable requests for further information. Applicants can continue to operate under the prior resource consent.</p>	<p>Close the loophole created by pro-forma applications as a result of section 124.</p>	<p>No changes were made to section 124, however, earlier changes to section 92 should address this problem.</p>	<p>A new section 124 has been inserted which allows applicants to continue their activity at the discretion of the Council of lodged between 6 and 3 months prior to the lapse of the consent.</p>
<p>[18] Variability in the proportion of notified applications between different local authorities.</p>	<p>Repeal section 93 and replace with a new section which sets out when applications must be notified. The new section would need to ensure that:</p>	<p>Implemented in part by amending sections 93 and 94 to require the following:</p>	<p>Further minor changes to section 94A (forming an opinion as to whether adverse effects are minor or more than minor) to add ‘must disregard any effect on a person who has given written approval to the application.’</p>
<p>[19] There is anecdotal evidence that notified applications take too long to process and that the process is very costly.</p>	<ul style="list-style-type: none"> • Applications are notified if the effects are more than minor (except for controlled and limited discretionary activities), or • Applications are notified if written approval is not obtained from affected persons (unless a plan provides otherwise). Notification in this circumstance is limited to those who have not given their written approval. • Applications for subdivision for controlled activities need not be notified (as is currently the case). 	<p>93</p> <ul style="list-style-type: none"> • Notification unless a controlled activity or effects are minor. • Public notification and service on every person prescribed in regulations. • Removed reference to “persons likely to be directly affected.” 	
<p>[20] Wording in sections 93(1)(e) and 94(1)(c)(ii) is inconsistent. One says “persons likely to be directly affected” and the other says “persons who may be adversely affected”.</p>	<p>Repeal section 94 and replace with a new section 94 that specifies how an application is to be notified, along the following lines:</p>	<p>94</p> <ul style="list-style-type: none"> • Service on all persons who, in the opinion of the consent authority, may be adversely affected (including those who have given written approval). • Notice is not required if all potentially affected parties have given written approval. 	
<p>[21] The notification provisions are unnecessarily complicated and section 94 is repetitive.</p>	<ul style="list-style-type: none"> • Subsection (1) similar to the current section 93(1) dealing with serving copies of applications, public notification and affixing signs. However this new subsection would only apply to those notified as a result of new section 93(1). • (2) A consent authority shall ensure that notice of every application for a resource consent notified as a result of section 93(3) is served on those persons who may be adversely affected whose written approval has not been obtained. • (3) this would be similar to the existing section 93(2). <p>Amend sections 68 and 76 as a consequence of the amendments to sections 93 and 94.</p>	<p>68 and 76</p> <ul style="list-style-type: none"> • Amendments to remove references to rules stating whether an application may be considered without notification or the need to obtain written approval of affected parties. • Minor wording changes to shift emphasis away from activities to effects. 	

<p>[22] If one or more affected parties does not give their approval, for whatever reason, the only option available to the council and applicant is full public notification.</p>	<p>Amend section 96(1) along the following lines:</p> <p><i>Any person may make a submission to a consent authority about an application for a resource consent that is notified as a result of section 93(1)</i></p> <p>Insert a new section 96(1A) along the following lines:</p> <p><i>Any person who may be adversely affected whose written approval was not obtained may make a submission about an application for a resource consent that is notified as a result of new section 93(3).</i></p>	<p>Not implemented. Amendments were made to section 96. These amendments, however, simply clarified the submissions process and did not address the issue raised in the report.</p>	<p>Section 96(3) amended to add the words 'or is neutral' (submissions must state whether in support, opposition or neutral).</p>
<p>[23] Public notices are costly and the RMA is not sufficiently flexible to allow public notices to be targeted to the community of interest rather than the whole region or district.</p>	<p>Amend the definition of 'public notice' in section 2 by deleting subsections (b)(i) and (b)(ii) and replacing them with words along the following lines:</p> <p><i>One or more newspapers circulating in the region or district of the local authority, or that part of the region or district which the consent or requirement relates.</i></p>	<p>Implemented by amending the definition to read "public notice means a notice published in a newspaper circulating in the entire area likely to be affected by the proposal to which the notice relates."</p>	<p>No change.</p>
<p>[24] There is considerable variability in council charges.</p>	<p>Amend section 36(3) to provide that the quotations for processing of resource consents ought to be given.</p>	<p>Implemented by inserting a new subsection (3A) which reads "A local authority must, upon request by any person liable to pay a charge under this section, provide an estimate of any additional charge likely to be imposed under subsection (3)."</p>	<p>Section 36 further amended to add charges for new existing use certificates (139A) and for reviewing consent conditions.</p>
<p>[25] The processing of all applications and the making of decisions is a function of local government agencies. There is concern that the quality and timeliness of processing and decision making is not of suitable standard.</p>	<p>Section 34 should be amended along the following lines:</p> <ul style="list-style-type: none"> • Subsections (1) and (2) to remain as is; • Insert a new subsection (3) as follows: <p><i>On the request of an applicant for or a submitter to a resource consent a local authority shall delegate to any hearings commissioner or commissioners appointed by the local authority for this purpose, who may not be a member of the local authority or any of its community boards, the hearing and determination of the application for a resource consent"</i></p> <ul style="list-style-type: none"> • Insert a new subsection (3A) as follows: <p><i>Any additional costs which the consent authority incurs as a result of it receiving a request in terms of subsection (3) of this section shall be charged to and payable by the person making that request.</i></p> <ul style="list-style-type: none"> • Renumber (3) as subsection (4) and insert the following words at the beginning; <p><i>Except as provided by subsection (3) of this section a local authority ... (etc).</i></p> <ul style="list-style-type: none"> • Renumber subsection (4) as subsection (5) and add the words "subject to section 34(a)". • Make subsequent numbering and referential changes to subsections (5) and (6). • Renumber subsection (7) as subsection (8) and add the following words "Any delegation under subsection (2), (3), (4) and (5) may be made ... (etc)." <p>Insert a new subsection 34A along the following lines:</p>	<p>The concept of 'contestable consents' was not implemented in the 2003 amendment. Changes were made to section 34, however, by inserting a new section 34A which provides local authorities with the ability to delegate:</p> <ul style="list-style-type: none"> • to an employee or hearings commissioners and powers, functions and duties under this Act except the approval of a policy statement or a plan, or this power of delegation. • To any other person any functions, powers or duties under this Act, except those above and the ability to make decisions on an application for a resource consent or a recommendation on a requirement for a designation. 	<p>New sections 39A-C inserted to establish a new process of accreditation hearings commissioners (independent or council) by a qualification approved by the Minister. Designed to improve the quality of decisions in combination with the requirement in section 113 for council decisions to be detailed in writing and the requirement in 290A for the Environment Court to have regard to the decision that is subject to appeal.</p>

	<ul style="list-style-type: none"> • Delegation of functions, etc, under section 88 to 98 inclusive by local authorities: <ol style="list-style-type: none"> (1) Notwithstanding section 34(4) of this Act, for the purposes of this section of the Act, a local authority shall delegate its powers, functions and duties under sections 88 to 98 inclusive of this Act to any person who applied and is able to demonstrate that they have appropriate experience and expertise in the practice of resource management. For the avoidance of doubt a local authority shall be entitled to delegate its powers, functions and duties under this section to its officers. (2) A local authority shall keep a register of all persons that it delegates its powers, functions and duties to under this section. (3) An applicant for a resource consent may choose from the register referred to in subsection (2) of this section which person will be responsible for processing the application for resource consent. (4) The applicant must send a copy of their application for resource consent to the consent authority and the processor. 		
[26] Uncertainty over consultation requirements is leading to confusion, delay and unnecessary costs for applicants and the community.	That the words "if any" be inserted in clause (1)(h) of the Fourth Schedule after the words "consultation undertaken" and in section 92(2)(ii) to clearly indicate that consultation on resource consents is not mandatory.	Implemented by amending the Fourth Schedule as recommended and removing reference to "consultation undertaken" in section 92.	Addressed via insertion of new sections 35A and 36A.
[27] The categories of consent are unduly complicated. There appears to be little need for the non-complying activity category. Likewise, prohibited activities have limited use. There also appears no reason to have a special restricted coastal activity category.	<p>Repeal the definition of non-complying activities in section 2 of the Act.</p> <p>Repeal the definition of restricted coastal activities in section 2 of the Act.</p> <p>Delete reference in sections 68(3) and 76(3) to non-complying activities.</p> <p>Delete the reference to restricted coastal activities in the Act.</p> <p>Repeal section 105(2A).</p> <p>Insert a new transitional provision along the following lines: Non-complying activities deemed to be discretionary activities <i>Any activity which was previously a non-complying activity in terms of any district or regional plan or proposed district or regional plan shall be deemed to be a discretionary activity.</i></p> <p>Include a transitional provision that allows councils to amend their plans to give effect to this amendment, along the following lines: <i>A local authority may make an amendment, without further formality, to its plan to give effect to section [X] of this Act.</i></p>	Not implemented – the types of activities were defined clearly, but non-complying activities, restricted coastal activities and prohibited activities were retained.	No change to non-complying activities, but controlled activities can be declined on the basis of insufficient information (section 77(b(2)))
[28] The limited discretionary activity category, which is widely used, is not defined.	<p>Insert a definition of limited discretionary activity in section 2 of the Act along the following lines:</p> <p><i>"Limited discretionary activity" means an activity which:</i></p>	Not implemented.	No change.

	<p>(a) <i>Is provided for, as a limited restricted discretionary activity, by a rule in a plan or proposed plan; and</i></p> <p>(b) <i>Complies with standards and terms specified in the plan or proposed plan for such activities; and</i></p> <p>(c) <i>Is assessed according to matters specified in the plan or proposed plan for that activity that the consent authority has restricted the exercise of its discretion over.</i></p> <p>This will required consequential amendments to the definition of discretionary activity.</p>		
<p>[29] Sections 104 and 105 set out the matters which are relevant to making decisions on resource consents. These sections are expressly subject to Part II, which makes the matters in section 5,6,7 and 6 relevant to any decision on resource consents.</p> <p>It may not be necessary to reconsider Part II of the Act, regional policy statements etc when the plan that requires the resource consent has been developed pursuant to relevant parts of the RMA.</p>	<p>The Act should be amended to:</p> <p>(a) simplify and clarify the relevant legal criteria in determining consent applications.</p> <p>(b) Emphasis that environmental effects are the key consideration in determining a consent application</p> <p>(c) Ensure that social and economic effects are a relevant factor in consent decision-making.</p> <p>(d) Give clearer indication as to the role of Part II in determining a consent application.</p> <p>(e) Ensure that only the specifically relevant provisions of plans and proposed plans are to be considered in determining a consent application.</p>	<p>Implemented in part by:</p> <ul style="list-style-type: none"> replacing section 104 with a more focused and clear set of provisions establishing a clear hierarchy of factors to be considered, with adverse environmental effects at the head of that list <p>The “subject to Part II” is, however, retained and decision-makers’ consideration is not restricted to relevant portions of plans etc.</p>	No change.
	<p>Limit consideration in section 104 to:</p> <p>(a) only those relevant matters in Part II</p> <p>(b) environmental effects</p> <p>(c) social and economic effects</p> <p>(d) the relevant provisions of a plan or proposed plan which for limited discretionary and controlled activities means those matters a consent authority has restricted the exercise of its discretion of reserved the exercise of its control to.</p>		No change.
	<p>Amend section 105 to:</p> <p>(a) remove any reference to non-complying activities</p> <p>(b) transfer sections 104(5), (6), (7) and (8) to section 105.</p>	Not Implemented.	No change.
<p>[30] The lapsing of consents after two years is considered by some to be particularly onerous as it places an unnecessary burden on consent holders.</p>	<p>Amend section 125 as follows:</p> <ul style="list-style-type: none"> Delete subsections (1)(b)(ii) and (1)(b)(iii). Amalgamate the remainder of subsection (1)(b)(i) into subsection (1)(b). 	<p>Implemented by repealing subsection 125(1) and replacing it with a clause that sets a default lapse period of 5 years and provides for objections via sections 357 and 358.</p>	Now refers to sections 357A and 357C – 358.
<p>[31] A consent authority may cancel a resource consent if it has not been exercised for a continuous period of two years. This provision can come into pla at a time somewhat removed from the granting of consent. For example, if the consent is exercised for 10 years, but then is unexercised for two years, the council could cancel the consent in year 12.</p> <p>As with section 125, there is no particular reason for the 2-year period.</p>	<p>Repeal section 126(b).</p>	<p>Implemented by repealing section 126 and replacing it with a new clause that enables a consent authority to cancel a resource consent by written notice served on the consent holder if the resource consent has been exercised, but not in the last 5 years. Provision is made to expressly provide otherwise and objections are enables through reference to sections 357 and 358.</p>	Now refers to sections 357A and 357C – 358.

Table 4 – Environment Court

<i>Issue</i>	<i>Recommended Options</i>	<i>RMA Amendment Act 2003</i>	<i>RMA Amendment Act 2005</i>
<p>[32] The workload of the Environment Court is heavy, which can result in significant delays in relation to the hearing of references and appeals. Some have argued that the uncertainties, costs and delays associated with the prospect of appeals are acting as a major disincentive to new investment in projects or activities which are likely to require resource consents.</p>	<p>Shift the function for deciding resource consent applications from Council's to Independent Commissioners appointed by the Minister from a nationally based list of suitably qualified and experienced persons. Except in special circumstances rights of appeal to the Environment Court would be limited to questions of law.</p>	Not implemented.	See accreditation amendments and requirement of the Environment Court to have regard to the decision subject to appeal. Attempts to limit <i>de novo</i> hearings in the Environment Court were not enacted.
	<p>Make provisions for direct referrals of resource consent applications to the Environment Court. This would be as an alternative to (a) or as an additional option in combination with (a).</p>	Not implemented.	Section 150AA enables direct referral to the Environment Court on call-in.
	<p>As a means of reducing overall workloads of the Court, and the costs of hearings to all parties, explicitly broaden the existing powers of the Environment Court to:</p> <ul style="list-style-type: none"> (a) inquire into and strike out vexatious or irrelevant appeals (b) grant priority fixtures on applications by any party when the Court is satisfied it is in the public interest to avoid delays in making final decisions. (c) Require parties to define any factual or legal issues in contention prior to appeal hearings. (d) Encourage mediation. 	The Environment Court already has these powers.	Section 278 was amended to give the Court the power to commission independent reports.
	<p>Amend sections 271(a) and 274 of the Act to remove the majority of third parties who have not been submitters or remove consent applications to become parties to appeals.</p>	Implemented by repealing section 271(A) and substituting a new section 274 to clarify who may be party to proceedings before the Environment Court.	Section 274 was amended to require section 274 parties to call evidence only within the scope of the appeal or inquiry, except a submitter 'party' may raise matters arising out of that person's earlier submissions in previous related proceedings or on any matter which that person could have appealed.

Table 5 – Designations

<i>Issue</i>	<i>Recommended Options</i>	<i>RMA Amendment Act 2003</i>	<i>RMA Amendment Act 2005</i>
<p>[33] Statutory tests for designations in section 171 do not align well with the tests recommended for resource consents. In particular, the tests in 171(a), (b) and (c) appear to reflect tests in the Public Works Act 1981 for compulsory acquisition of land.</p>	<p>Apply the same tests to considering notices of requirement as those proposed by the group for resource consents where the requiring authority owns the land or has an equivalent interest in the land. The tests in section 171(1)(a)-(c) would also apply where the requiring authority does not own or have an equivalent interest in the land.</p> <p>This would require consequential amendments in terms of the information to accompany notices of requirement.</p>	<p>Implemented in part by substituting new sections 168A and 171 to align with section 104.</p> <p>Section 168(3) is repealed [Information to accompany a notice of requirement] and reference is made to this information needing to be "in the prescribed form".</p>	Section 168(3) is repealed and reference to it is removed from clause 4 in schedule 1.
<p>[34] There is no link between sections 171(2) and 168A(2) – relating to conditions on designations – and section 108 – dealing with conditions on resource consents and plan rules.</p>	<p>Provide that section 108 limits the conditions that can be imposed on designations.</p>	Not implemented.	No change.
<p>[35] There is some debate about what the roll-over provisions under the First Schedule of the Act mean for an unmodified designation and also a modified designation. There is a question of whether long standing designations should be able to be revisited or whether they are more like resource consents.</p>	<p>Clarify that rolled-over designations cannot be the subject of consideration and conditions only insofar as these relate to the modification.</p>	Not implemented.	No change.

[36] The Court of Appeal in <i>Watercare Services Limited v Minihinnick</i> [1998] NZRMA 113 determined that section 17 – the general duty to avoid, remedy or mitigate adverse effects – did not apply to designations. This is also potentially the case with section 16. This has led some Territorial Authorities to seek to impose more stringent conditions on designations in order to have enforcement proceedings available at least in terms of compliance with the conditions.	Make designations subject to the duties under section 16 and 17 in the same way resource consents and permitted activities in plans are.	Implemented.	No change.
[37] There is a need to provide councils with the opportunity to extend the submissions period for notices of requirement, which are often complex	Amend section 37 so a longer period for submissions can be set with the agreement of the requiring authority at the outset.	Implemented in part by extending the power of consent or local authorities to waive time limits (up to twice the maximum time limit specified in the Act, and more than twice the time limit with the agreement of the applicant or requiring authority).	No change.
[38] Section 181(3) means that alterations to designations that do not go through the process of public notification do not carry through into any proposed district plan.	Amend section 181(3) so that alterations to designations carry through into proposed district plans.	Implemented via minor amendments to sections 181(3) and (4) to widen the scope of these provisions to include “requirements” and alterations.	No change.
[39] The Act needs to be amended to make it clear that it is possible to withdraw a designation in whole or in part from a proposed plan.	Amend the Act to make it clear that it is possible to withdraw a designation in whole or in part from a proposed district plan.	Implemented in part – section 182 was left unchanged and the First Schedule was amended to include provision (Clause 4 (9)) for a requiring authority to withdraw a requirement for a designation in accordance with section 168(4).	No change.
[40] For consistency, the changes suggested in the monitoring group’s report should carry through to designations.	Make such amendments to further information requests and notification procedures as are necessary to align designations with resource consents, including making it clear that there is no need for consultation.	Implemented in part by including reference to section 93(2).	No change.
[41] The Act was amended in 1993 to provide that network utility operators could apply for approval as requiring authorities in relation to their network utility operations. Consequent amendments were not, however, made to Section 186, which still only relates to a project or work rather than to a project or work or network utility operation.	Amend section 186 to ensure that the reference to seeking compulsory acquisition of land in relation to a project or work also relates to a network utility operation.	Implemented in part by amending section 186(1) to reduce the specificity of the clause, such that: “a network utility operator that is a requiring authority in respect of a project or work may apply ...” becomes “a network utility operator that is a requiring authority may apply ...”	No change.
[42] Crown research institutes have an unreasonably favoured position under the RMA.	Repeal section 32 of the Crown Research Institutes Act 1992.	Section 34 of the Crown Research Institutes Act was repealed.	-

Table 6 – Plan/policy preparation

Issue	Recommended Options	RMA Amendment Act 2003	RMA Amendment Act 2005
[43] Weaknesses in section 32 may have contributed to the development of poorly justified objectives, policies and rules in plans and policy statements produced under the RMA. In particular section 32:	Include definitions in section 2 of “efficiency” as meaning “economic efficiency”.	Not implemented.	No change.
(a) is repetitious and over wordy (b) does not require councils to clearly demonstrate that they have fully assessed alternatives and can guarantee its obligations have been met (c) dilutes the main area of concern which is to ensure that regulation is not imposed without adequate justification (d) requires, in subsection (4), that a record should be prepared “in such form as that person considers appropriate of the action taken and the documentation prepared” in discharge of the duties under subsection (1). This is nonsense. (e) Does not define the terms “efficiency” and “effectiveness”.	Delete section 32(1) and replace with something along the following lines: <i>(1) in achieving the purpose of the Act and in relation to any function described in subsection (2) and any person described in that subsection no objective, policy, rule or other method shall be included in a plan or policy statement unless the person described in subsection (2) has -</i> <i>(a) performed an evaluation of the costs and benefits of that provision in relation to other alternatives (including taking no regulatory action); and, on the basis of the evaluation</i>	Implemented by repealing section 32 and inserting new sections 32 and 32A which, although they do not adopt the proposed wording, give effect to the recommendations.	Consequential amendments to section 32 provisions flowing out of changes to NES provisions.

	<p><i>(b) is able to demonstrate that it is satisfied that any such objective, policy, rule or other method (or any combination thereof)-</i></p> <p><i>(i) is necessary in achieving the purpose of the Act; and</i> <i>(ii) is the most appropriate means of exercising the function, having regard to its efficiency and effectiveness relative to other means, including whether the objective, policy, rule or other methods (or any combination thereof) would deny the reasonable use of natural and physical resources</i></p>		
	Include subsection 32(1A) which clarifies that “taking no action” includes removing all existing measures that apply to the achievement of a particular outcome.	Not implemented.	
	Amend subsection 32(4) by stating that in relation to any rule a regulatory impact statement shall be required in a prescribed form.	Not implemented.	
	Include new form in Regulations which sets out requirements for any provision that imposes a regulation. This would require a statement of the outcome sought, a statement of possible options, a statement of the net benefit of the provision, including the regulatory costs (administrative, compliance and economic costs including non-quantifiable costs) and benefits (including non-quantifiable benefits) of the provision and other possible options and a statement of the consultation undertaken.	Not implemented.	
[44] Policy and plan preparation has proven to be too time consuming. The First Schedule process is rigorous and amendments to particular phase may be required.	<ul style="list-style-type: none"> • Submissions are necessary and no particular problems have been identified. • The further submissions process is time consuming but enables democratic participation. No changes are recommended. • No statutory amendments are necessary to improve the hearings process. However, councils should apply section 39 more rigorously and establish hearing practices that are “appropriate and fair in the circumstances” to avoid the potential for vexatious submitters to slow or undermine the process. 	No changes required.	<p>Significant amendments made to the first schedule:</p> <ul style="list-style-type: none"> • Agreement on consultation in relation to policy statements to be included in triennial agreement under the Local Government Act • Council to make decisions within 2 years of notifying a plan or policy statement • Enabling councils to approve proposed policy statement or plan in respect of which it has initiate a variation • Defines consultation with iwi authorities and tribal runanga • Previous consultation under other enactments within the previous 12 months deemed compliance • Provision for pre-hearing meetings to resolve disputes • Referral back from Environment Court for reconsideration • Compliance with direction for specific provisions to be included from NPS
[45] Local authorities take different approaches to releasing decisions, with some releasing separate decisions on each section of a plan at different times. This has the potential to lead to inconsistent provisions.	More investigation is required.	No changes made.	See changes made to hearings process and schedule 1 discussed above.
[46] Local authorities are unable to make changes to plans outside suggestions made in submissions. This constrains local authorities from including in operative plans good ideas generated through the submissions and hearings process, but not specifically requested as changes by submitters. To do so local authorities are required to prepare and notify a variation, which adds further time to the process.	<p>Further investigation is required into the potential benefits of enabling local authorities to:</p> <ul style="list-style-type: none"> • Call independent witnesses • Negotiate directly with submitters to develop satisfactory changes • Mediate between opposing submitters to develop changes which may take into account the interests of both parties. 	No changes made.	
[47] Proposed district plans may be publicly notified with no community consultation, yet the provisions of the plan have immediate effect.	<p>Redefine the term “proposed plan” to link into the wording of section 19 or to where decisions have been made on submissions.</p> <p>If the effect of operative plans is to be limited once the provision of the proposed plan has effect it would be possible to simply redefine the terms “regional plan” and “district plan” and remove reference to proposed plans.</p>	Not implemented.	No change.

<p>[48] The 15 working day timeline for references on decisions is problematic for submitters that have made a large number of submissions covering all sections of a plan. It is likely to be time consuming to prepare references on complex plans where decisions influence each other. The 15 day timeline may impose significant costs on businesses, organisations and community groups, and may lead to the lodgement of pro form appeals before carefully considering the issues arising from each decision. This has implications for the workload of the Environment Court.</p>	<p>Amend clause 14(4) of the First Schedule so the appeal period is 40 working days.</p>	<p>Amended to extend the timeline to 30 working days.</p>	<p>No change.</p>
<p>[49] Regional policy statements , regional plans and district plans are sometimes large, cumbersome and difficult to use.</p>	<p>Potentially delete the requirement to produce a regional policy statement.</p>	<p>Not implemented.</p>	<p>No change.</p>
	<p>Remove from sections 65 and 75 the contents of plans which do not have statutory effect.</p>	<p>Not implemented.</p>	<p>No change.</p>

Table 7 – Miscellaneous

Issue	Recommended Options	RMA Amendment Act 2003	RMA Amendment Act 2005
<p>[50] The Christmas break is excessively long and should be reduced in order to reduce time delays and costs.</p>	<p>Reduce the statutory shut down period over Christmas to 25 December – 5 January.</p>	<p>Not implemented.</p>	<p>No change.</p>