

Regulatory impact and compliance cost statement

Background

The purpose of the Resource Management Act 1991 (RMA) is to promote the sustainable management of natural and physical resources. The RMA establishes a planning hierarchy, extending from the national through to the regional and district levels. This hierarchy consists of a series of instruments, including environmental standards, policy statements and plans, which govern the management of natural and physical resources. The RMA sets out processes for seeking approvals (such as resource consents, designations and heritage orders) to protect, use and develop natural and physical resources.

Decision making on the management of resources is largely devolved to 74 territorial and 12 regional authorities. Devolved decision making is based on the assumption that local authorities are better placed to make decisions about the use and development of natural resources at the local level.

Since its inception there have been several reviews of the RMA, including a review of its operation, and some improvements have already been made. For example, increased funding of the Environment Court and an improved case management system have reduced the time it takes to dispose of cases. A standard case can now be heard within six months (as opposed to 23 months). The Environment Court has also now halved the backlog of cases that had built up to a peak of 3,000 in 1996.

In May 2004 Cabinet gave the Associate Minister for the Environment the task of leading a review of the RMA, with the goal of making practical improvements to the RMA's processes and implementation. Although the review was to have a broad scope, Cabinet directed [CAB Min (04) 15/12] that the options and proposals be considered in the context of the following principles:

- *achieving good environmental outcomes in line with the purpose of the Act* – there should be a proper assessment of environmental effects so that adverse effects can be avoided and mitigated
- *certainty of process but not of outcomes* – resource consent applicants should have reasonable certainty about how long it will take to obtain a final decision, but the outcome must be determined by a proper assessment of environmental effects
- *certainty of costs* – resource consent applicants should have reasonable certainty about how much it will cost to obtain a consent
- *local decision making* – communities are well placed to make environmental decisions where appropriate in their areas, and should have the opportunity to plan and make decisions
- *public participation* – those affected by resource consent applications are best placed to identify the adverse effects on them, and should have the opportunity to put these before decision makers and to seek avoidance or mitigation of adverse effects
- *central government leadership* – central government should show leadership and give guidance to those involved in resource management.

A statement of the nature and magnitude of the problem and the need for government action

Research and feedback from stakeholders and the public have identified problems with delays, costs, inconsistencies, uncertainty, and a lack of national leadership relating to RMA processes and decision-making. These concerns relate to:

- expressing national interest
- approvals processes and decision making
- local policy and plan making
- iwi consultation and resource planning
- natural resource allocation
- best practice and implementation.

Expressing the national interest

The national interest is expressed in Part II of the RMA and through instruments such as national policy statements, national environmental standards, as well as Ministerial call-in of resource consent applications. The government can also submit on proposed planning documents and applications for approvals. However, there has been a lack of uptake of these instruments because they are seen as inflexible or overly burdensome. For example, the New Zealand Coastal Policy Statement is the only national policy statement that is operative under the RMA; it is also the only mandatory national instrument.

Local government and the courts are not best placed to determine the national interest, yet these bodies are often left with the task of interpreting and balancing the national interest with local concerns. This has led to uncertainty for those involved in the process and a disproportionate burden on some local authorities. As an example, some councils in the Waitaki catchment would have lacked the capacity to deal with applications for Project Aqua and other projects had central government not intervened.

Variations in the requirements between different districts or different regions can make applications for approvals that cross territories complex and costly. For example, the nationwide roll-out of mobile phone technology has encountered a raft of different requirements from district to district. Telecommunications companies indicate that they each face total regulatory costs in the order of \$1.5 to \$2 million for upgrading existing facilities across more than 70 districts.

As a result of regulatory failure, central government has borne the cost of intervening in particular resource management issues through the passing of special legislation. Examples of government intervention include addressing aspects of Auckland's transport problems, and water allocation in the Waitaki catchment.

Approvals process and decision making

Approval mechanisms under the RMA include resource consents, designations and heritage orders, plan changes, and certificates of compliance. Uncertainty and inefficiency in the process of obtaining approvals has led to high costs and delays for applicants in some cases.

Research on eight major projects has shown that it took approximately six to eight months for the council process, at an average cost of \$0.6 million to the applicant for the hearing process. This is in addition to an average period of two years, at an average cost of \$1.3 million, for the applicant to develop a proposal and prepare applications. All projects were appealed to the Environment Court, adding an average period of 16 months, at an average cost of \$1.4 million.

It should be noted, however, that recent improvements to the Environment Court have substantially reduced the delays on appeals, and are likely to have a flow-on effect for costs.

Applicants have expressed concern about third parties who delay consultation processes, make ill-informed submissions (eg, outside the scope of the application), make vexatious or frivolous appeals, and are not accountable for the cost or delay they cause to the approvals process.

Anecdotal evidence indicates that there are inconsistencies from council to council in their processes and decisions. There are perceptions that decision making can be biased, and that in some cases decision makers themselves lack the relevant skills and knowledge.

There is also concern that some appeals to the Environment Court duplicate processes by hearing evidence in full a second time (*de novo*), and that new evidence can be introduced that was not heard at the council level. Although the Environment Court has the powers to define the issues under dispute, and thereby limit the scope and length of an appeal, these powers are not often used.

Local policy and plan making

Local government is responsible for resource management planning through the preparation of planning documents such as regional policy statements, regional plans and district plans. There are concerns about the time and cost it takes to prepare such planning documents. The median length of time for preparing a plan is nine years. On average, 61% of that time is spent on the appeals process, 28% on preparing a plan for notification, and 11% on council hearings and decisions.

The total average cost of preparing a plan is estimated at \$1.8 million. Based on survey data, the average cost for local authorities in resolving all appeals to their plan was \$599,012 (the cost to other parties is not known). This figure can be compared to the average cost to councils of \$673,469 for the preparation of plans through to their notification, and \$646,042 for receiving, processing, hearing submissions and making and releasing decisions. In terms of unit costs, on average it costs \$775 per submission (at the council hearing stage), and \$15,177 per appeal (at the Environment Court).

Public feedback has indicated that plans are difficult to understand, such as when transitional plans, proposed plans, variations on proposed plans and other plans all need to be considered.

There is a view that regional policy statements are failing to provide direction, and lack the strength to achieve their purpose of integrating the management of natural and physical resources. Also, there is no onus on plans to implement regional policies (plans are only required to be 'not inconsistent' with regional policy statements).

The fact that regional plans are optional has resulted in a lack of plans to manage specific natural resources, such as the allocation of water in water-short regions.

Iwi consultation and resource planning

Some applicants have indicated they have had difficulties with iwi consultation and participation in the approvals process, in particular with identifying which group or persons have a mandate to represent a specific iwi or hapu. In some cases this has led to delays; for example, when agreements reached with one party do not hold with other iwi and hapu members. In some cases every effort has been made to consult, but iwi or hapu groups have not engaged in the process.

On the other hand, iwi groups can be inundated with consultation on all types of matters and are not always resourced to deal with them. Anecdotal evidence has indicated that iwi groups are concerned that their views are not being incorporated into resource management planning.

Natural resource allocation

There is legal doubt that the allocation of natural resources is a function of regional councils under the RMA. There is also a lack of mechanisms for allocating resources. Holders of resource consents (and potential applicants) face uncertainty about the renewal of consents and therefore whether their investment will be 'stranded'. The 'first-in-first-served' approach means a new entrant could potentially apply for a consent ahead of an application to renew an existing consent to use resources.

Best practice and implementation

Local government practice in implementing the RMA has been steadily improving. However, there is still variability in the capacity and capability of councils to respond to resource management issues, and some councils fall short in their performance.

A statement of the public policy objectives

The public policy objectives are to:

- enable central government to better express the national interest so as to provide decision makers with clear guidance on how to take these matters into account
- enable approval processes to be undertaken in a manner that is effective and efficient, and that provides certainty of process for applicants while ensuring appropriate public participation and the meeting of environmental objectives
- improve the effectiveness of planning documents, and enable their timely development
- provide certainty over the processes for allocating natural resources
- further improve the implementation of the RMA by local authorities and ensure that decision making is of a high quality.

A statement of feasible options (regulatory or non-regulatory) that may constitute viable means for achieving the desired objective(s)

This section examines four options for achieving the public policy objectives.

Option A: Status Quo

The status quo involves a combination of existing legislative provisions and programmes to support best practice in implementing the RMA. Existing legislative provisions are outlined below.

Expressing national interest

National policy statements

- A board of inquiry inquires into a proposed national policy statement.
- A national policy statement must specify whether or not the first schedule to the RMA (formal plan-making process) should be followed in order to give effect to its policy in plan provisions.

National environmental standards:

- The Minister for the Environment sets national environmental standards.
- National environmental standards apply throughout New Zealand, and district or regional rules may be stricter.

- National environmental standards can set a minimum (bottom-line) requirement. For example, a minimum standard for air quality would allow a higher level of air quality to be achieved through local government setting stricter rules.
- There is no provision for national environmental standards to be developed for the subdivision of land (reflecting the current lack of flexibility in national environmental standards).
- A local authority is required to conduct a cost–benefit analysis (under RMA section 32) of any proposed rule (or other provision) in a plan, including a rule that is stricter than a national environmental standard. The section 32 analysis of costs and benefits is required to be made available to the public.

Departmental submissions

- Central government departments can, individually or together, make submissions on a proposed planning document or application for an approval. A submission can either be in support or opposition to a proposal. The submission is considered, with no extra weighting, alongside any other submission. There is no administrative process in place for an inter-departmental government submission to be prepared.

Approvals processes and decision making

Council-level processes and decision making

- Applicants for resource consents are required to identify in their application those persons affected by the proposal, the consultation undertaken (if any) and any response to the views of those consulted.
- A consent authority (ie, the district or regional authority processing the application for approval) may make any number of requests for further information from an applicant.
- There is no requirement to have any particular skill set (other than being elected to council) for making decisions on notified resource consents, private plan changes, or in making recommendations on designations.
- A hearings panel made up of councillors or commissioners has certain existing powers to conduct a hearing (eg, to summon a witness).

Environment Court processes and decision making

- The Environment Court has some inquisitorial powers (eg, to question witnesses). However, hearings tend to be conducted in an adversarial style; ie, the parties define the dispute and the decision maker acts as an impartial and ‘passive’ arbiter (except on questions of law).
- The Court is empowered to conduct a *de novo* hearing (ie, cases can be heard anew).
- The Court does not have the power to require the preparation of an independent expert report.
- The Court has processes to define the issues under dispute at an early stage (prior to the hearing).
- Decisions on whether to publicly notify an application or to process it as non-notified can be judicially reviewed by the High Court.

Non-local decision making and central government engagement (through Ministerial call-in of applications)

- If the Minister for the Environment considers an application for resource consent is of national significance, the application may be called in for the Minister to decide whether to grant

consent. In contrast, applications for designations or plan changes cannot be called in. The call-in process has the following features.

- Parties can only make informal requests for the Minister to call in an application for resource consent.
- There are specified factors that a Minister considers in determining whether a proposal is of national significance.
- The Minister appoints an *ad hoc* board of inquiry to hear any applications for resource consent that are called in and to make recommendations for the Minister's consideration and decision. The board of inquiry is not required to have a minimum skill set.
- The Minister's decision can be appealed to the Environment Court (and the Court could substitute its decision for that of the Minister).

Local policy and plan making

- The Minister has the power to appoint persons to perform the functions, powers or duties in place of a local authority. However, the Minister does not have the power to direct a council to develop a plan.
- District and regional plans must 'not be inconsistent' with the regional policy statement (ie, a plan that is silent on a matter contained in a regional policy statement is 'not inconsistent' with that statement).
- District and regional plans must state (in summary):
 - issues for the district or region respectively
 - objectives
 - policies
 - methods (including rules) for achieving the objectives or policies
 - principal reasons for adopting the objectives, policies and methods
 - the information to be included with an application for a resource consent
 - environmental results anticipated from the policies and methods
 - processes to deal with issues that cross territorial authority boundaries
 - the procedures to monitor the policies, rules and methods
 - other information (eg, monitoring requirements).
- Regional policy statements are required to address similar matters to plans, as listed above, as well as other issues, such as the adverse effects of hazardous substances.
- The process for developing a planning document involves the following.
 - Local authorities would generally apply the principles of consultation under the Local Government Act 2002 when developing a planning document under the RMA.
 - Local authorities conduct a separate process for consulting people on the development of planning documents under the RMA to that used for consulting on other (non-RMA) planning documents.
 - Local authorities do not have the explicit power to convene pre-hearing meetings with submitters to narrow the issues to be heard on planning documents.

- Any person can make a further submission on any original submission made on a proposed planning document.
- Further submissions can be made, either in support of or in opposition to, the original submission on the proposed planning document.
- An adversarial-type approach is used at the council level to conduct hearings into proposed planning documents.
- Council decisions on any provision (objective, policy, method or rule) of a proposed planning document can be appealed to the Environment Court on either matters of law or merit.
- The Environment Court can hear all evidence *de novo* (anew) and replace the council's decision with its own.

Iwi consultation and resource planning

- There is no requirement for councils to hold information on iwi authorities, their rohe (extent of district or region), contact details and current iwi planning documents.
- A local authority may transfer its functions, powers and duties (under RMA section 33), except for the power, itself, to transfer.
- In preparing a planning document, a local authority must consult the tangata whenua of the area, and must take into account any relevant iwi planning documents. In addition, a regional policy statement is required to state the resource management issues of significance to iwi authorities in the region.
- An applicant is required to identify those persons interested in or affected by the proposal, including iwi (if relevant), any consultation undertaken, and any response to the views of those consulted.
- A consent authority must either serve notice of an application on affected parties or publicly notify an application for resource consent (unless the application is processed non-notified).

Natural resource allocation

- The allocation of natural resources is not an explicit function of regional authorities.
- Discharge permits are not transferable unless transfer is provided for as part of the permit (eg, a factory can not transfer a discharge permit from one site to another).
- A consent authority is not required to consider or give weight to existing investment when setting the duration of a consent.
- Consent authorities are not required to consider an application to renew an expiring consent ahead of any other application for the same or similar consent.

Best practice and implementation

Best practice programmes currently carried out by central government, particularly the Ministry for the Environment, include:

- monitoring local authority processes under the RMA
- guidance to promote best practice under the RMA
- workshops and training of local government (eg, the accreditation of decision makers)
- a pilot scheme for targeted council assistance

- award programmes for performance excellence
- guidance for iwi involvement in RMA processes
- public information brochures to educate the general public about the RMA and its processes (eg, the Environment Court)
- funds to support education and advisory services on the RMA, and to help groups with appeals to the Environment Court or High Court.

Option B: Combination of regulatory and non-regulatory approaches (preferred option)

This option involves a mixture of:

- legislative change to the RMA (including minor and technical amendments to both the RMA and the Electricity Act 1992)
- new and existing programmes to support best practice in implementing the RMA
- longer-term programmes to improve the RMA.

Proposed legislative changes to the RMA are outlined below.

Expressing national interest

National policy statements

- The board of inquiry process would be optional. As an alternative to appointing a board of inquiry, the Minister for the Environment would have a 'duty to consult' on the content of a proposed national policy statement with the public, and with agencies that have an interest in the matter.
- A national policy statement would be able to specify the provisions that a local authority shall include in a planning document without the need for normal notification and hearing processes.
- Network infrastructure would be a priority matter for the development of national policy statements.

National environmental standards

- National environmental standards could be set for the subdivision of land.
- A national environmental standard could set an 'absolute' standard (ie, one that no council could deviate from).
- A national environmental standard could specifically allow a district or region to set a more stringent standard.
- When carrying out a cost-benefit analysis (under section 32 of the RMA) of setting a more stringent standard (if allowed), local authorities would be required to take into account the necessity of being more stringent than the national environmental standard, and prove to the public that it is necessary to deviate from that standard.
- More national environmental standards would be developed to provide national direction, especially for land-use activities (such as network infrastructure).

Government submissions

- An administrative protocol would set out the procedure for developing government submissions, which could be in support of, in opposition to or neutral to the proposal.

Approvals processes and decision making

Council-level processes and decision making

- Councils would have a role to encourage applicants to consult with all affected parties. Local government would have no obligation to consult on applications other than to notify affected parties of the application.
- When requesting further information on an application, consent authorities would be required to give reasons for the request and to allow the applicant to proceed with the application on the basis of the information already provided. Councils would be able to reject applications on the basis of insufficient information.
- At the pre-hearing stage for consent applications, consent authorities would have the power to:
 - require attendance at pre-hearing meetings
 - issue sanctions for non-attendance at pre-hearing meetings (eg, not allow a person to present their submission at the hearing)
 - establish lists of issues that are agreed and outstanding, the evidence to be called, its order, and a timetable for hearing
 - use independent mediators to mediate conflicts.
- The role of a consent authority hearing is to inquire into and make decisions about applications for consents, designations, heritage orders and private plan changes.
- Twelve months after the commencement of the proposed RMA amendments, the chairperson of a hearings panel at the council level would need to be accredited to hear applications (as listed above). Twenty-four months after the commencement of the amendments, the majority of members on a hearings panel at the council level would need to be accredited to hear applications. The Ministry for the Environment would be responsible for developing and implementing the programme for accrediting members of council-level hearings panels.
- In addition to existing powers, any person or panel conducting a hearing would be empowered to:
 - require the applicant to circulate written briefs of evidence, including attachments, prior to a hearing
 - require that the evidence and attachments to evidence of submitters who intend to call experts be provided in advance of a hearing
 - organise the order of a hearing according to the subject matter of the submissions, or otherwise
 - direct that some issues be considered or reported on before others
 - limit the nature of the hearing, such as time limits, or limit submissions on matters not under dispute
 - allow evidence to be taken as read or limited to matters in conflict
 - enable expert evidence to be made available on council websites
 - require evidence to be recorded
 - seek evidence during the hearing

- strike out a submission if it is vexatious, frivolous, discloses no relevant case or would be an abuse of the process.
- Regulations would prescribe local authority use of the powers for hearings listed above, and councils would be provided with guidance on how and when to use the various new mechanisms.

Environment Court processes and decision making

- The role of the Environment Court would be to inquire into and make decisions on applications for consents, designations, heritage orders and private plan changes.
- The Environment Court would be required to have regard to the council's decision, and conduct a focused hearing process of the application (ie, the Court would have an increased obligation to ensure that appeals disclose a relevant case, and could limit the introduction of new evidence), rather than a hearing *de novo* (ie, where new evidence may be introduced, or 'old' evidence heard in full for the second time). *De novo* could be adopted only if:
 - evidence relied upon at the council hearing was unsafe
 - evidence relied upon was insufficiently tested at the council hearing
 - principles of natural justice were not observed at the council hearing
 - important new information has become available.
- The Court would have the power to order the preparation of an independent expert report (the cost of which may be covered by current Environment Court fees).
- The Court would be required to define the issues to be resolved at an early stage.
- Decisions on whether to publicly notify an application or to process it non-notified or on a limited notification basis can be appealed to the Environment Court (instead of judicial review at the High Court). This change would apply once the backlog of cases in the Environment Court had reached acceptable levels.

Non-local decision making and central government engagement (ie, alternative options to Ministerial call-in of applications)

- Local government or applicants (for consents, designations, heritage orders and private plan changes) could make a request to the Minister for the Environment to assess whether there should be governmental involvement in local decision-making processes.
- The Minister for the Environment would decide, based on an assessment of whether government should be involved in local decision-making processes, whether:
 - the local (standard) process is appropriate, or
 - the local (standard) process should proceed with central government assistance, or
 - the decision-making process should be at a national level (ie, Ministerial 'call-in').
- If a local standard process with assistance is adopted to process an application, the government would have the ability to:
 - provide a government-funded independent project co-ordinator (to work with the community, local authorities and applicant to run a smooth process)
 - direct that applications be heard jointly where more than one local authority is involved in a project (such as may be the case with a network utility)

- appoint a person on the locally led hearings panel (in the same way that the Minister of Conservation can appoint a member to a hearings panel to hear an application for a restricted coastal activity)
 - issue a government submission (using a whole-of-government process).
- If decision making should be at a national level, the modified Ministerial call-in process would involve:
 - extending the Minister's power to call in proposals to include designations and private plan changes (where a person seeks to change an aspect of a plan; eg, to make provision for an alternative land use)
 - establishing a new criterion to call in applications for matters involving cross-district issues
 - requiring appointments to a board of inquiry to have a minimum skill set and for members to be selected from a standing body of commissioners
 - empowering the board of inquiry (instead of the Minister) to make decisions on applications, including notices of requirement for designations (instead of making recommendations to the requiring authority)
 - limiting appeals on the board of inquiry's decisions to be made on points of law only to the High Court.

Local policy and plan making

- The Minister for the Environment would have a mandate to require regional councils to develop plans to address specific resource management issues (including a natural resource allocation plan).
- District and regional plans would be required to 'give effect' to regional policy statements.
- Regional policy statements could include policies about promoting sustainable urban form, timely and effective provision of infrastructure and its integration with land-use policies, or the allocation of natural resources. This would be in addition to matters already required by the RMA.
- The content of a plan would only be required to include policies and rules, with any other matters included at the council's discretion or contained in the cost-benefit analysis (under RMA section 32).
- The existing process for preparing or changing planning documents would be retained, but amended as below.
 - The consultation principles in the Local Government Act 2002 would apply to developing RMA planning documents (to the extent that these principles are consistent with the requirements of clause 3 of the first schedule of the RMA, which identifies who must be consulted).
 - Local authorities would have fulfilled consultation requirements for a planning document if people or groups have been consulted on the same matter during the course of preparing other local authority planning documents.
 - Local authorities would be required to undertake 'reasonable endeavours' to consult with persons (identified under clause 3 of the first schedule of the RMA) when preparing planning documents.

- Local authorities would have the power to convene pre-hearing meetings for the development of planning documents.
- Further submissions (on original submissions to a planning document) could only be made in opposition and by persons directly affected by the original submission and who were not already a party to the matter.
- An inquisitorial-type approach would be used at the council level to conduct hearings into proposed planning documents (as for applications for approvals).
- Council decisions on provisions of proposed planning documents could be appealed to the Environment Court. After hearing appeals on council decisions the Environment Court refers the matter back to the council to make the decision, but with guidance from the Court that local government would be required to follow.

Iwi consultation and resource planning

- Councils would (under section 35 of the RMA) keep a public register of iwi authorities and their rohe (districts/ regions), with contact details, and a list of current iwi planning documents. Te Puni Kokiri would provide material to local authorities on the rohe of iwi authorities.
- The RMA would explicitly allow co-management options (eg, so that an iwi authority and local authority could jointly manage a natural resource such as a lake).
- There would be a clear process for consulting iwi when developing national policy statements and national environmental standards.
- The first schedule of the RMA, which sets out the process for preparing or changing a planning document, would require a local authority to:
 - establish a consultative procedure with iwi authorities (similar to the requirements under the Local Government Act 2002)
 - identify matters that have a bearing on resource management issues (including the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga), and how they have been dealt with in planning documents
 - identify and take into account any iwi planning documents recognised by an iwi authority (as is already required by the RMA)
 - undertake 'reasonable endeavours' to consult with iwi authorities.
- On the basis that the processes listed immediately above have been carried out, in preparing or making decisions on applications (for consents, designations or heritage orders) Maori would have the same opportunities as any person adversely affected by the proposal. Iwi would be consulted on applications in the same way as any other affected party.
- As an applicant, the Crown would have the same obligations as any other applicant when dealing with iwi authorities / Maori who may be adversely affected by an application (subject to particular statutory acknowledgements).
- The responsibility of local authorities would be to notify affected parties, including iwi authorities, and to report on the effects as part of the decision-making process (having encouraged applicants to consult iwi authorities as affected parties).

Natural resource allocation

- The allocation of natural resources, such as water, would be an explicit role and responsibility of regional authorities.

- Consent authorities would be required, when considering applications to allocate resources following expiry of consents for the use of resources, to recognise existing investment as a factor in their decisions.
- Regional plans would be able to specify that discharge consents can be transferred (in a similar way that water and coastal permits can be transferred), and that discharge or water consents can be transferred in part or full.
- A default rule (subject to replacement by specific provisions in a plan) would apply to any consent that is about to expire for the use or take of a resource. The rule would allow an existing consent holder to apply for a new consent before a competing applicant, but on the basis of the following criteria (in addition to meeting the requirements of the Act):
 - compliance with any plan
 - compliance with consent conditions (including consideration of the track record for enforcement action)
 - whether the applicant operates under current industry good practice
 - national interest criteria.

If these criteria are met other applications will not be considered. If the incumbent fails to meet the criteria, then the next application in the queue will be considered.

Best practice and implementation

- The Minister for the Environment would have the ability to:
 - request information relating to the Minister's functions from a local authority without being charged for that information
 - direct a council to undertake a specific action relating to the local authority's functions under the RMA
 - invoke existing powers (under section 25 of the RMA) if a local authority fails to comply with the Minister's directives.
- To address the performance of RMA practitioners, roles under the RMA would be clarified (in particular so the public are aware of these roles), and better co-ordinated with the work of the Minister and Ministry for the Environment as follows:
 - Office of the Ombudsman – complaints on council practice
 - Office of the Auditor General – review council performance
 - Parliamentary Commissioner for the Environment – investigate environmental outcomes.

In addition to existing programmes to support best practice in RMA implementation (under the status quo), the preferred option would:

- provide commissioner and councillor training to support the mandatory accreditation of decision makers
- extend the pilot programme to provide targeted one-on-one council assistance
- provide resource management user awareness and education
- provide best practice support for iwi in preparing robust planning documents and on consultation costs.

Note that best practice support is also being considered as part of work on the Foreshore and Seabed Bill and Aquaculture Reform Bill.

Longer-term programmes to improve the RMA

- The Environment Court would develop practice notes on the use of commissioners sitting alone and for the consistent application of alternative dispute resolution processes.
- The Ministry for the Environment would investigate how the RMA could be improved to provide greater recognition of other government statements and strategies in resource management decision making.
- The government would investigate how to improve linkages between RMA planning documents and plans under other legislation, such as Long Term Council Community Plans (required by the Local Government Act 2002).
- The government would report on establishing work programmes to address geothermal energy allocation and airshed allocation (to complement the Water Programme of Action).

Option C: Strong regulatory approach

Option C would significantly increase the level of prescription provided in the RMA. In addition to the proposals for improving certainty and central government leadership under the preferred option, this option would require mandatory plans and other provisions in place of best practice guidance. For example, this could involve:

- allowing the costs of the process to be awarded to the successful party at the council level
- providing for direct referral of applications to the Environment Court
- requiring Ministerial sign-off of all plans
- establishing a new Environment Protection Authority.

This option would reduce inconsistency and provide increased certainty in resource management practice. However, a solely regulatory option would potentially constrain innovation and be inconsistent with the ethos of local decision making. It would also be inconsistent with a partnership approach with local government, and would reduce public participation. Therefore, although some regulatory components have merit and are included in the preferred option, without a balanced approach offering guidance and support this option would be inconsistent with the principles of the review. Furthermore, this approach would not necessarily result in improvements in the implementation of the Act, and so Option C was discarded.

Option D: Comprehensive best practice support

This option would involve a strong emphasis on ensuring best practice in the implementation of the RMA, and on making the public aware of how the Act works. That is, there would be no changes to the legislation. Instead, the existing best practice programmes would be retained, and there would be a significant increase in programmes such as those identified in Options A and B.

Although it is recognised that ongoing support for certain best practice initiatives is needed to meet the public policy objectives, these objectives would not be met by guidance and education alone. It is particularly evident that the objective relating to improving the expression of the national interest would not be achieved, nor would improved consent processes. The option of having no legislative amendments was therefore discarded.

A statement of the net benefit of the proposal, including the total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of the proposal, and other feasible options

Expressing the national interest

It is an assumption of the net benefit analysis that the proposed amendments to the RMA will result in greater use of instruments to express the national interest (through national policy statements, national environmental standards and government submissions).

Government

More flexible instruments will improve central government's ability to express the national interest in terms of resource management, including providing the flexibility to address different matters, such as subdivision of land. Central government will be able to express the national interest up front, rather than have it determined through the decisions of councils and the courts. Government will, therefore, have more control over expressing the national interest rather than leaving this exercise up to local decision makers or the courts. As a result, national interest should be applied more consistently by the various decision makers. This will particularly benefit specific matters such as the development of essential services.

There will be a cost for central government in using the instruments to express the national interest. The average cost per instrument is likely to be similar to, or less than, the status quo, because the instruments should be more flexible to develop or use. However, it is intended that there will be greater uptake of the instruments, and this will result in greater overall expenditure. Therefore, additional funding will be required. The estimated cost to prepare a national policy statement is \$1.2 million, and approximately \$200,000 to \$400,000 to prepare a national environmental standard – depending on complexity. The estimated cost of preparing government submissions is discussed under 'RMA approval process and decision making' in relation to non-local decision making.

Local government

Increased use by central government of instruments to express the national interest will provide greater clarity for local government on these matters, and will therefore ease the burden of interpreting and applying the national interest.

There would be additional costs to local government if they were required to review their planning documents to give effect to new national policy statements, or to justify deviating from national environmental standards. Consent authorities would have to take account of any national instrument when making decisions. It is difficult to predict the potential cost to councils in advance of the instruments being developed, because the costs will depend on the number of instruments developed, how prescriptive they are, and their content.

Applicants (including business)

Applicants will benefit from having more clarity about the national interest. This is likely to be of greatest benefit to applicants for projects that are large-scale or involve multiple districts or regions. There will be greater certainty about the requirements covered by national environmental standards (although some local variation could still remain). Government submissions will provide applicants with certainty about central government's position on applications for approvals.

Society

Better expression of the national interest will enable communities to meet society's broader environmental goals; for example, on matters that relate to day-to-day living, such as transport, energy or the allocation of natural resources.

Some parts of society may oppose the establishment of 'absolute' national environmental standards, because this would prevent them from seeking stricter standards being imposed locally. However, absolute standards can be set so that they do not compromise environmental bottom lines, but do provide greater certainty in reducing potential costs and delays associated with approvals.

RMA approval process and decision making

In summary, proposed amendments to council-level decision making include:

- requiring local authorities to encourage applicants to consult with affected parties
- requiring local authorities to give reasons for requests for further information, and to allow applicants to proceed without responding to such requests
- providing local authorities with additional powers to control both pre-hearing and hearing processes
- requiring decision makers to be trained
- clarifying the role of consent authority hearings.

In summary, proposed amendments to decision making at the Environment Court level include:

- requiring the Court to have regard to council decisions and to use a focused hearing approach as the default
- enabling the Court to conduct a more inquisitorial-type hearing
- allowing appeals to the Environment Court on notification decisions.

It is an assumption of the net benefit analysis that the proposed amendments will result in the use of new non-local decision-making processes (ie, funding an independent project co-ordinator, directing joint hearings of applications, appointing a person to the hearings panel, issuing a government submission, or modified Ministerial call-in or applications for approvals).

Central government

Central government has an interest in council decision making being of a good quality in terms of the implementation of the RMA, so there is a benefit in having more robust processes and more skilled decision makers at the council level.

The cost of accrediting local government decision makers includes developing a qualification and delivering a training programme. However, the programme will build on an existing voluntary scheme, merely extending it to include the new hearing processes. The estimated cost to central government is approximately \$1 million per annum.

Tightening the focus of appeals heard by the Environment Court will benefit central government by reducing the average cost of each hearing, because hearings may be shorter. As a result, the Court's current funding could be used more efficiently. However, there will be some additional costs (between approximately \$100,000 and \$300,000 per annum) to prepare new Environment Court practice notes, and to obtain independent expert reports as required on a case-by-case basis.

Non-local decision making will benefit central government through improved leadership on resource management matters (particularly when these relate to matters of national interest) or the quality of processes and decision making.

The cost of administering non-local decision making will depend on the options that are selected (including government submissions) to process applications in this way. The estimated total cost per annum is \$1 million. Each option necessitates varying degrees of central government involvement and will therefore incur different levels of cost. For example, a project co-ordinator could cost approximately \$10,000 to \$80,000, depending on the application.

Currently, the only way to challenge decisions on whether or not to notify a resource consent is to seek a judicial review by the High Court. The judicial review procedure in the High Court is expensive and time-consuming for all the parties involved. The Environment Court is better placed as a specialist court to deal with challenges on notification. Dealing with these challenges could, however, put pressure on the Environment Court's workload. Although delays at the Environment Court have reduced, the delays would need to reduce further to allow this function to be added to the Court. However, the impact is minimised by the fact that the change would only come into effect once the Environment Court's backlog of cases had reduced.

Local government

Local government will have more clarity about their responsibilities relating to consultation and any requests for further information on applications for approvals. There may be a cost for some councils to adjust their practice. However, for many councils the proposed amendments reflect – or could be adapted into – current practice. Guidance on enhanced inquisitorial processes will be provided through regulation.

Accreditation of decision makers will help councils to make better-quality decisions. Hearings panels will be able to conduct more robust pre-hearing meetings and hearings as a result of greater skill levels and greater powers to control these processes. Councils will benefit in terms of their functions being carried out more effectively.

Local government will need to cover the cost of running more robust hearings processes. Accreditation is estimated to cost councils \$1,500 per decision maker in course fees, plus any additional cost of travel or accommodation.

Most councils had indicated they would have undertaken councillor training on a voluntary basis. However, the mandatory course will cost more, particularly when the majority of a hearings panel must be accredited. Around 20 councils also indicated that they would have had difficulty meeting the costs of accrediting a small number of councillors under the voluntary scheme. Some central government assistance may be available to contribute to the course costs of such councils.

There will be an opportunity cost to councils from councillors being unable to carry out their normal duties while attending the training course. Councils that have a higher turnover of councillors following elections may face relatively higher training costs.

Any savings in cost or time that result from more focused hearings at the Environment Court will benefit local authorities when they are a party to an appeal.

For non-local decision-making processes, local government will be able to have direct input into which option or options should be used (such as the project co-ordinator, joint hearings or a government appointment to the hearings panel). If a local authority does not have sufficient capability to deal with an application, they can seek assistance from central government. This may help to lessen the disproportionate burden on some local authorities that can arise in

certain circumstances (eg, when a major project is proposed that involves a council with few resources).

Local government may become more risk averse if decisions on whether to notify consents (including on a limited basis) can be appealed to the Environment Court. Appeals to the Environment Court will be less of a hurdle than appeals to the High Court, so there is the potential for more decisions on notification to be appealed. However, it is not known how many more appeals are likely to be pursued. There will be the additional cost for local government in being party to any additional appeals at the Environment Court.

Applicants (including business)

If an applicant considers that a request for further information is unreasonable, they will not need to comply with it. This could reduce the potential for delays during the processing of their application and the cost of gathering additional information. However, if the information is not provided, the applicant risks having their application declined. Applicants can choose to take this risk on that basis.

There may be some transfer of, or potential increases and decreases in, the costs to businesses as a result of more robust council-hearing processes and more focused Environment Court hearings. This is discussed further in the Business Compliance Cost Statement below.

At the level of both the consent authority and the Environment Court there is potential for any costs that arise from seeking additional evidence to be passed on to applicants. The level of cost will depend on how these bodies administer this power.

If a non-local decision-making process is being adopted, the applicant will be able to have input into which options are used to process their application. This may result in processes being better suited to the type of application, potentially reducing the time, cost and stress for applicants. There are also potential savings in time and costs for applications called in by the Minister, because decision-making processes will be of a high standard and appeals will be restricted to points of law.

Applicants for approvals of consents that are on the borderline of being notified may factor into their project planning the potential for appeals to the Environment Court on notification decisions. For notification decisions that are appealed there will be additional costs and delays from the appeals process. For applications that are notified on the basis of a local authority being more risk averse of appeals on notification decisions, there will be additional costs and delays of notifying the application.

Society

Some groups in society (eg, iwi and environmental groups) may consider that their ability to participate in the approvals process will be reduced as a result of consultation focusing on 'affected parties'. However, the amendments will codify existing good practices within local government that encourage consultation, so it is unlikely that meaningful consultation will be reduced.

Submitters may be dissuaded from abusing the submissions and hearing process due to the new powers of consent authorities and the Environment Court to control these processes. There is a benefit to society in having more efficient and better-quality decision-making processes that impose fewer costs on ratepayers. More robust processes and councillor accreditation will also give the public confidence in local decision makers.

There will be a specific long-term benefit to iwi through the training of decision makers in iwi resource management issues.

Improvements at both the council and Environment Court levels will mean that important resource management issues can be resolved in a more timely and robust manner. The new options for non-local decision making will mean that significant proposals that impact on society can be processed with an appropriate level of skill, resourcing and representation.

There is likely to be a benefit to people appealing council decisions on whether to notify an application to the Environment Court, because judicial review at the High Court is likely to be seen as a greater hurdle. If councils become more risk averse and notify more applications, this would increase the ability for members of the public to participate in the process.

Local policy and plan making

In summary, proposed amendments to local policy and plan making include:

- empowering the Minister to direct a council to prepare a plan
- requiring plans to give effect to the regional policy statement
- enabling regional authorities to include certain matters in regional policy statements
- enabling local authorities to limit the content of plans
- clarifying consultation requirements in relation to plan making
- limiting the scope of further submissions
- enabling councils to convene pre-hearing meetings into planning documents
- giving local authorities more powers to conduct an inquisitorial hearing
- making the Environment Court refer matters back to the council for their decision, but with guidance.

Central government

Requiring the Environment Court to refer matters back to council for decision would likely tighten the focus of appeals before the Court, because it would remove the ability for the Court's decision to supplant that of the council. In the long term this will change practices and should enable the Court to hear appeals more rapidly and at a lower average cost. As a result, the Court's current funding could be used more efficiently, particularly in combination with other changes to the Court's powers.

There is a benefit to central government in strengthening the planning hierarchy and providing Ministerial powers to direct councils to develop plans – if required. These changes will likely reduce the need for central government to intervene in the planning process directly (eg, through special legislation).

Local government

Requiring the Environment Court to refer appeals on council policy matters back to the council for their decision will result in better-quality decisions at that level, but with council having more control over the final decision. This may prevent some appeals that lack merit from being made and avoid wasting the council's resources. There is a benefit to local government in having more control over the policy they set. This is in keeping with their role as elected representatives.

There are potential savings for councils through avoiding duplicating consultation processes on both RMA and on other (non-RMA) planning documents. There is also a potential for reducing the time taken in developing planning documents, and related costs, by limiting the scope of further submissions, and by controlling the way in which hearings are conducted.

In some circumstances, a council will incur costs if the Minister for the Environment requires it to prepare a new plan for a specific resource management issue. Territorial authorities may also incur costs as a result of needing to amend their plans to 'give effect' to regional policy statements. The extent of these costs cannot be readily predicted because it depends on the extent of the changes required.

Society (including applicants and business)

Some people may consider that their ability to participate in developing planning documents will be reduced as a result of limiting the scope of further submissions by possible dovetailing of consultation with other planning developments, or by referring appeals back to the council to decide. However, the opportunity remains for the public to participate fully in developing planning documents. People can still make an initial submission on any part of an RMA planning document. The right also remains for a person to respond to a submission that would directly affect them if it was accepted. There is an overall benefit to communities in having a more efficient submission process that enables public participation. There is also a benefit to society in preventing people experiencing 'consultation fatigue' through involvement in developing various planning documents.

The benefits and costs to society of more robust and focused hearing processes are discussed above in relation to the 'Approvals process and decision making'.

There is the potential for plans to be simplified so as to make them more accessible to the general public. This will enable the public to participate better in the planning process and provide greater certainty about planning requirements.

Iwi consultation and resource planning

In summary, proposed amendments to iwi consultation and resource planning include:

- requiring local authorities to keep a register, with material supplied by Te Puni Kokiri, of iwi authority details
- allowing for co-management
- clarifying obligations and requirements relating to iwi consultation on planning documents, consent processing, national instruments and applications for approvals.

Central and local government

There is a cost to central and local government of developing and maintaining a register of information on iwi authorities and their iwi planning documents, although some of this information is already on record. The estimated cost to central government is \$1 million spread over two years. The costs for local government are not known, but will vary depending on the number of iwi authorities and any complications arising from information gaps.

Better information will help local government to fulfil the requirements of the RMA. In some cases there may be a cost to local government from improved use of iwi planning documents as a tool for informing policy development and consent processing (affected persons).

There may be new costs (for some councils) in developing a procedure to consult with iwi authorities on planning documents. However, this cost may have already been covered through developing a consultative procedure under the Local Government Act 2002.

Overall, the obligations of both central and local government in relation to iwi will be clarified in relation to consultation – on national instruments, plan making, consent processing, and in preparing applications for approvals.

Applicants

Practices relating to consultation with iwi will be clarified for applicants (ie, encouraging consultation with iwi authorities who are adversely affected by a proposal). In deciding to consult, applicants will have better access to information identifying which iwi authorities to consult. As a result, any delays associated with consultation processes in respect of iwi authorities should be minimised.

Society

Iwi will benefit from having clearer processes for being involved in local policy and plan making, and the development of national instruments. Better expression of iwi values in planning documents and the opportunity to enter co-management arrangements will benefit iwi. There will also be complementary programmes supporting best practice in iwi resource planning.

Some iwi members may consider they will have less ability to participate in the consenting process as a result of consultation focusing on affected parties. However, the transition to the new regime may address these concerns because planning documents should reflect iwi values. Iwi and hapu will likely oppose any attempt by central or local government to define the boundaries of their rohe.

There will be an indirect benefit to communities more generally from improving how iwi matters are addressed in plans and the planning process.

Natural resource allocation

In summary, proposed amendments to natural resource allocation include:

- recognising the role of regional authorities for natural resource allocation
- recognising existing investment for applications to renew consents
- enabling applications to renew consents to be heard first
- enabling regional plans to allow transfer of discharge permits.

Central government

Clarifying the role of local government in managing the allocation of natural resources will mean that central government is less likely to need to intervene on these matters. For example, resources for work programmes are not going to be tied up with preparing special legislation.

The government would establish a consistent approach for re consenting the use of natural resources, rather than having a separate approach to re consent the occupation of space in the coastal marine area (as developed under the aquaculture law reform). There will be a benefit to government in providing an incentive for users of natural resources to perform well (in order for consent holders to be re consented down the track). Government will have the assurance that existing network infrastructure that relies on the use of natural resources will be provided for in the long term.

Local government

The amendments will provide regional authorities with additional tools for addressing natural resource allocation. Regional authorities will also have more clarity about their role in managing the allocation of natural resources. There may, however, be additional costs for some regional authorities in developing provisions for resource allocation that were not previously in place.

Local government will have a consistent approach for reconstituting the use of natural resources (including the allocation of space in the coastal marine area), which will assist with streamlining consent processing.

Applicants

There is a benefit to businesses and applicants being able to transfer discharge consents. This will provide more flexibility in moving consents from site to site, or to different activities.

Under the default rule, there will be greater incentive to maintain infrastructure as consents (to use natural resources) near the end of their life, because of the opportunity to have an application to renew the consent considered first.

Applicants seeking to renew existing resource consents for natural resources will have increased certainty about how their application will be considered. The amendments will provide greater investment certainty for activities involving the development of physical works or infrastructure. New entrant applicants may consider that it will be more difficult to obtain consents, although the proposal does not prevent regional authorities from altering the default rule, and does not prevent consents from being transferred.

Society

Better uptake by regional authorities of the responsibility to allocate natural resources will benefit communities generally. In particular, the management of natural resources is likely to be more effective, in terms of both environmental protection and the development of resources. Some communities will have the opportunity to participate in developing new planning provisions for the allocation of natural resources (including for the purpose of recreational uses) in their region.

There is greater certainty to society in having consistent processes for managing natural resources, including reconstituting the use of resources. Consistent processes will make it easier for the public to participate in the consent process.

Best practice and implementation

In summary, proposed amendments to assist best practice and implementation of the RMA include providing the Minister for the Environment with the ability to request information from local authorities and to direct local authorities to undertake a specific action.

Central government

The proposed changes will enable central government to have direct involvement in improving the operation of the RMA. This role will be carried out within existing baseline funding.

Local government

Reviewing practice under the RMA will also result in guidance being given to local government to improve their processes. However, there may be costs involved in co-operating with central government (eg, staff time to provide information to the Minister, or to undertake any specific action required).

Applicants

There will be improved processes for following up any applicants' complaints on RMA practice, with the potential outcome of improvements being made.

Society

Improvements in council performance will lead to more effective and efficient processes under the RMA.

A statement of the consultative programme undertaken

The preferred option was developed by: the Ministry for the Environment, Department of Prime Minister and Cabinet, the Treasury, Ministry of Economic Development, Ministry of Transport, Ministry of Agriculture and Forestry, Te Puni Kokiri, Department of Conservation, Department of Internal Affairs, and Local Government NZ. Other departments and agencies were involved in working groups or were consulted directly, including: the Ministry of Health, Land Information NZ, Ministry of Justice (including the Environment Court), Ministry for Culture and Heritage, Ministry of Fisheries and Housing NZ Corp.

Five independent people experienced in the RMA were appointed to a reference group to provide a sounding board for the Associate Minister for the Environment. Te Puni Kokiri obtained input from a group of experienced Māori RMA practitioners.

Local Government NZ held three workshops with local authorities on options to improve the RMA. Local government was opposed to establishing an independent review and complaints office in relation to practice under the RMA. This concern was taken into account and the option was refined to clarify, strengthen and better co-ordinate the existing functions of various offices.

Local government has also opposed the empowerment of the Minister for the Environment to direct a local authority to develop a plan. However, given that regional plans are optional, the power to require a plan will address the risk of specific natural resources lacking appropriate management.

Two meetings were held for those in industry with an interest in the RMA review, and one meeting was held with non-governmental organisations to discuss options to improve the RMA. Non-governmental organisations concerned with environmental matters are opposed to any changes to Part II of the RMA, particularly its purpose (section 5). No changes to Part II are proposed. However, it is a principle of the review to better express the national interest.

Business compliance cost statement

Any increase or decrease in compliance costs will depend on how councils and the Environment Court exercise their new powers. It is therefore not possible to estimate the level of impact the amendments will have. The only sources of compliance costs identified are the use of professional advice and the time spent by businesses to understand the regulatory changes.

More robust hearings at the council level may lead to short appeal processes and therefore a reduction in total compliance costs, since this is the area where more professional advice is sought. There is also potential for a reduction in costs if council hearing times are shortened through the exercise of certain powers (eg, if issues are narrowed through pre-hearing meetings and more control is exercised over submitters).

In some – but not all – cases there may be an increase in compliance costs as a result of councils exercising new powers and therefore conducting more robust hearings of notified resource consent applications. Business applicants may be required, or may consider it in their best interests, to present more detailed evidence at the council hearing. In these cases, council hearings could be longer and applicants may need to pay more for professional advice and the appearance of additional experts. However, for those cases that are appealed, any additional cost at the first hearing will be offset by a more focused process at the Environment Court.

Of the total number of resource consent applications each year, approximately 6% (about 3,000) are currently publicly notified and are therefore likely to go to a council hearing. The number of notified consents that involve business applicants is not easily identifiable, and this further complicates the ability to quantify the level of impact of increased council hearing powers on business compliance costs.

Currently, of the total number of resource consent applications, less than 2% are appealed. For business applicants in this category there is greater potential for overall costs to be reduced or transferred as a result of more focused hearings being conducted by the Environment Court. This is because less specialist time would be needed at this stage. The extent to which businesses go on to participate in appeal processes is unknown.

Primary industry and the construction and utilities industries are the business sectors more likely to be exposed to the RMA.

Increased compliance costs will be mitigated by a user education programme in relation to amendments to the RMA. Furthermore, the accreditation of decision makers will ensure that the chairperson of a council hearings panel will be able to exercise his or her powers so that a hearing is run more efficiently. This would help to minimise the time and costs spent in hearings.