



To Hon David Parker, Minister for the Environment			Tracking #: 2018-B-04174
<u>Security Level</u>	Unclassified	Number of Attachments	1
Date Submitted:	14 February 2018	Response needed by:	26 February 2018
MfE Priority:	Non-Urgent	Action Sought:	For discussion on 15 Feb

An integrated resource management work programme for 2018

Key Messages

1. We met with you on 28 November 2017 for a high level discussion on the Resource Management Act 1991 (RMA). At this meeting you requested further advice on an integrated resource management work programme.
2. You also noted that your primary focus in 2018 is advancing your priorities for urban and freshwater, and have recently indicated that you would like to progress a narrowly scoped set of amendments to the RMA to remove 'grit in the wheels'.
3. This briefing provides you with an integrated resource management programme that coordinates a suite of existing and proposed initiatives towards addressing your near-term priorities, while progressing background policy work to inform decisions in 2019 about the future direction of the resource management system.
4. We propose a 2018 work programme within the current RMA framework centred on:
 - Developing a coordinated and prioritised suite of national direction instruments and guidance material (2017-B-04009 refers)
 - Progressing the first set of National Planning Standards to improve plan consistency (2017-B-03953 refers)
 - Improving compliance, monitoring and enforcement, including establishing a unit to receive complaints and take prosecutions (2017-B-04073 refers)
 - Trialling the use of the Streamlined Planning Process (2017-B-03919 refers).
5. In addition, we have identified a preliminary list of potential RMA amendments to address procedural issues (ie 'grit') in line with the 2017 Labour Party Environment Manifesto. We propose to expand on and test these with stakeholders over 2018, to inform advice on a possible RM Amendment Bill in 2019.
6. We are also working with other agencies to progress key initiatives in your priority areas. Those with significant interactions with the resource management system are the Urban Growth Agenda (UGA), Urban Development Legislation, and Freshwater and Climate Change work programmes.
7. By 2019, the collective findings of these initiatives will give us a better understanding of the nature of change to the system that may be required to both address procedural issues, and improve the system's ability to address your desired urban, freshwater, and climate change outcomes.
8. We propose to report to you on the collective findings of these initiatives in 12 months' time to seek confirmation of the 2019-2020 work programme.
9. We seek your feedback on our proposed integrated work programme, its scope, approach, and stakeholder engagement at our meeting with you on 15 February 2018.

Recommendations

10. We recommend that you:

- a. **Note** that this briefing follows a high level discussion with officials about the RMA on 28 November 2017, and responds to your request for an integrated resource management work programme.

Yes/No

- b. **Note** that in early 2019 we will provide you with a comprehensive update on the collective findings of our 2018 work programme (including advice for an RM Amendment Bill).

Yes/No

- c. **Agree** to the core components of the work programme as outlined in this briefing.

Yes/No

- d. **Agree** that officials begin talking with external stakeholders to inform the scope of a narrow RM Amendment Bill.

Yes/No

Signature

Amanda Moran
Deputy Secretary, Resource Management

Hon David Parker
Minister for the Environment

Date

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Supporting material

Context

The resource management and planning system is underperforming

11. A well-functioning resource management and planning system is critically important for delivering your priority urban, freshwater, and climate outcomes. Decisions on land use are intrinsically linked to the environmental outcomes in these areas, and are a common theme in the environmental issues New Zealand is currently facing.
12. There is a broad consensus being reached that our current system is failing to adequately protect environmental bottom lines, while also failing to respond to the growing pressures of urban development. However, there is considerably less consensus on what should be done to address these issues.

The RMA is one part of a wider resource management and planning system

13. Resource management decisions are complex. Decision-makers need to consider and balance a range of economic, cultural, and environmental costs and benefits, as well as reconcile a range of community, business, and national perspectives and interests.
14. The RMA sets part of the framework for making these decisions, alongside the Local Government Act 2002 (LGA), the Land Transport Management Act 2003 (LTMA), and various pieces of special purpose legislation. Our framework is relatively unique internationally in that it integrates environmental management and planning decisions under the RMA, but considers many of the infrastructure and funding issues that give effect to our land use choices separately. Our system also provides for wide public participation, often repeated across multiple stages.
15. Interventions to improve the operation of the RMA will be most effective when considered as part of the wider resource management and planning system.

There are a range of problems, requiring a range of interventions

16. Successive amendments to the RMA, which have individually aimed to improve system agility and reduce procedural costs and timeframes, have collectively made the Act longer, less coherent, and less accessible for all users.
17. There are a number of problems contributing to the system's current underperformance, many of which can be attributed to the RMA and how it is being implemented.
18. Problems vary from procedural 'grit' to more substantial and systemic problems. Addressing these issues will require a range of initiatives, many of which are already underway. However, further work may also be required to deliver the shift in longer-term outcomes you are seeking.
19. This briefing responds to your request to provide an integrated work programme that addresses both your immediate and longer-term priorities for the resource management system.

Analysis and Advice

Overall approach

20. The short-term aim of this work programme is to deliver positive outcomes on your priority areas of urban and freshwater, and to inform a future amendment to the RMA in line with the Labour Party's 2017 Environment Manifesto. The programme's longer-term focus is to understand the scale and scope of change that may be needed to unblock deeper-seated issues that are holding back system performance, through background policy work and findings from short-term initiatives.
21. Making progress in your priority areas requires a mix of utilising the existing levers in the system, and making changes to the system itself where existing tools cannot fully realise desired benefits. Our proposed work programme includes initiatives that do both.

Work programme for 2018

22. The bulk of our proposed 2018 work programme will focus on a suite of initiatives to deliver your urban and freshwater priorities, and improvements in the resource management system more generally. These initiatives are already underway.
23. The purpose of these initiatives is to address issues across the system by better utilising existing levers. These will help to reveal the extent to which changes are needed to continue to improve system performance. Table 1 summarises these.

Table 1 – Initiatives within the current RMA framework:

Initiative	Description	Role in programme
National direction	Targeted to improve local government implementation of freshwater and urban as your top priority areas.	<p>There are a range of nationally significant environmental and planning issues that require central government direction to ensure they are appropriately and consistently managed by local government decision makers.</p> <p>We have a suite of national direction instruments and non-statutory guidance that require regular maintenance, as well as new and emerging issues.</p> <p>You have agreed to a prioritised national direction programme for 2018 (2017-B-04009 refers).</p>
Planning Standards	Standardising and simplifying resource management plans and their definitions to improve consistency for councils and end users.	<p>Resource management plans do not have a consistent structure, format, and set of definitions. This creates unnecessary costs for users of multiple plans who have to navigate these differences.</p> <p>A first set of standards will address issues with plan consistency, and will be gazetted in April 2019 (2017-B-03953 refers).</p>
Compliance, monitoring and enforcement	Using a range of levers to address non-compliance, including	Councils are not adequately complying with their RMA requirements, or monitoring compliance with resource consent conditions within their areas. This is leading to adverse environmental outcomes, as

Initiative	Description	Role in programme
	establishing an enforcement oversight unit (subject to budget bid).	there is a lack of deterrence or incentives on the public and others to comply. If budget approval is given to set up the enforcement oversight unit, this unit will respond to public complaints with the potential for independent prosecutions to increase levels of compliance, monitoring and enforcement by councils (2018-B-04143 refers).
Statutory processes	Judicious use of your Ministerial powers to influence or expedite specific decisions or outcomes (e.g. Streamlined Planning Processes, s24a investigations).	The Minister for the Environment can have a significant influence on the direction of the resource management system through a range of statutory powers. You can better utilise these powers to improve how councils implement of the system, and to make use of processes (such as the SPP, Boards of Inquiry, Call-in powers, Making Good Decisions Programme) to better guide decision making in the system. We are currently discussing use of the SPP with you (2017-B-03919 refers).

Progressing an RM Amendment Bill 2019

24. You have stated that you would like to progress a Bill that would reverse certain recent changes to the RMA in line with Labour's 2017 Environment Manifesto and address minor process issues ('grit in the wheels') that are holding back effective decision making.
25. We have gathered a range of possible amendments, including recent proposals from Berry Simons (Appendix 1), other sources and our own internal thinking as regulatory stewards of the RMA (Appendix 2). These are a preliminary longlist only.
26. This list includes a green/blue rating. Green ratings have been applied to proposed amendments we consider fit the scope of a narrow Bill. These are primarily potential changes that would have a limited impact on other parts of RMA functioning (e.g. empowering provisions for regulation making powers). A green or blue rating does *not* reflect our position on the merits of the proposed change.
27. We have applied blue ratings to proposed amendments that we consider would add significant complexity to an amendment Bill. We have based this on:
- the cost to councils and other users to implement change – the costs of changing widely implemented processes could outweigh the benefits
 - the scope of the change – removing provisions in one area could impact system performance in another area (e.g. implementation of national direction)
 - degree of stakeholder interest – removing either widely supported or highly contested provisions could face opposition, causing delays to the amendment process.
28. Before committing to change, we recommend thoroughly testing proposals with affected stakeholders (including those who recommended them) and developing them further based on empirical evidence.

29. We propose that we work with stakeholders to add to and test these ideas over 2018, with a view to brief you on options for the scope of a narrow amendment Bill in 2019.

Background work to inform 2019 advice

30. Discussions on a narrow RM Amendment Bill are likely to lead to calls to consider more wide-ranging issues¹.

31. Background policy work to address some of these issues can better inform the longer-term view that will ground a 2019 Bill. Table 2 summarises this potential work.

Table 2 – Further initiatives for an integrated resource management programme.

Initiative	Description	Role in programme
Public participation and ensuring quality of decision making	Evaluating the effect of recent special purpose changes to improve the responsiveness of the resource management and planning system and advising on their applicability more broadly.	This initiative builds on our progress reviewing the Auckland Unitary Plan, the Christchurch plan experience, and Housing Affordability and Special Housing Areas Act 2013 to provide a different balance of flexibility and certainty in decision-making. It will look at the role of the courts, the use of independent hearings panels and mandatory consultation processes and provide advice on the appropriate mix of appeal rights, public participation, expert input and independent oversight in improving the quality of resource management decision-making more broadly.
Greater use of innovative tools and frameworks	Explores the use of new tools and frameworks to more effectively provide environmental bottom lines, including allowing for the greater use of economic instruments.	Considers what additional tools and frameworks could be introduced to the system.

32. It is likely that the UGA will also explore these two key areas, but with a specific focus on urban issues, particularly the provision of housing and infrastructure. We propose to develop whole of resource management system policy work on these two areas to ensure future advice on system change options also considers the system's ability to protect environmental bottom lines.

Fitting the initiatives together

33. This proposed work programme seeks to address the core parts of the resource management system that have the potential to make the biggest impact on overall system performance.

34. Work to progress short-term priorities in urban, freshwater and climate will also be able to inform advice about a future work programme to deliver better outcomes from our resource management system. For example:

¹ The likes of Resource Reform NZ, the OECD, Productivity Commission, and Local Government New Zealand have stated there is now a need to consider a significant review of the resource management and planning system.

- The **Urban Growth Agenda** and **Urban Development Authority** are designed to allow our cities to make room for growth and bring down the high cost of urban land. They will test a range of options for improving outcomes in urban areas, including approaches to strategic integrated (spatial) planning, decision making, allocation of planning and consenting roles, the mix of appeal and participation rights, and identify opportunities for greater alignment between the RMA, LGA, and LTMA. This work will also progress a cost model for better informing our land use and infrastructure planning decisions.
- The **freshwater programme** is setting our approach to restoring New Zealand's freshwater and waterways. It will take immediate action to stop degradation alongside longer term measures to fix the fundamental issues undermining the system. It is likely to touch on planning and consenting processes under the RMA, assess the effects of intensifying land use on our waterways, and consider participation in water allocation decision making, including arrangements for iwi/hapū to participate in these decisions, to reflect their rights and interests in freshwater.
- Our **climate change work** is setting our approach to the risks and opportunities presented by climate change. The RMA sets the framework for responding to natural hazards and adaptation to climate change, primarily by local government. This work will look at pathways for mitigating emissions, which may include path dependency created by our land-use decisions.

35. In 2019, we will provide you with a single report back on the findings from the RMA specific initiatives in this brief as well as progress on your priorities in urban, freshwater and climate change. Our report will include an overview of the extent to which future reform may be required, and any gaps in our analysis requiring future research. It will also outline our advice for progressing with a narrow Bill, and potential options for broader amendments.

Next steps

36. We would like to discuss the structure of this work programme and options for progressing it with you at our meeting on 15 February.

37. Key issues we wish to discuss with you are:

- the scope and approach of the proposed work programme
- engaging with stakeholders, and
- your thoughts on an expert panel as proposed in the Labour Party Manifesto.

Risks and mitigations

38. Proposing legislative amendments to the RMA may present opportunities for groups to reiterate calls for more fundamental reform in light of broader critiques. Additionally, RMA amendments have tended to create significant transaction costs, particularly for local government and practitioners, as they interpret and apply the changes to their existing systems and practice.
39. Progressing an RM Amendment Bill will require resourcing and time on the Government's legislative programme. Depending on progress on your priority urban, freshwater, and climate work, progressing an amendment Bill could impact on our ability to deliver in these areas. We will include advice on resourcing and the Government's legislative programme in our report back in 2019.

Legal issues

40. No legal issues have been identified.

Financial, regulatory and legislative implications

41. Any proposal to amend the RMA would have resourcing implications for central government, including:
- policy development
 - support to legislation through House
 - support to implementation.
42. Financial implications would vary depending on the scope of proposed changes.

Appendix 1: Berry Simons suggestions for short-term legislative change with MfE rating

Ratings:

Berry Simons: *Green = Tranche 1 changes, Red = Tranche 2 changes, Orange = Minister's call*

MfE: *Green = Not so complex, Blue = Complex, requires further discussion*

Proposed Amendments			Berry Simons Rating	MfE rating (level of complexity of change)
#	RMA Provision	Purpose of proposed amendment		
Reverse ministerial power to inappropriately influence content of RMA planning instruments and processes				
1.	Repeal section 360D	Remove the ministerial power to override council functions and plan provisions by regulation	Green	Green
2.	Amend sections 58B-58J and consequential amendments	Rename "National Planning Standards" as the "National Planning Template"	Green	Green
3.	Repeal sections 58C(2), (3) and (4)	Remove the ability for National Planning Standards to: <ul style="list-style-type: none"> (a) Duplicate or stand in the place of National Policy Statements. (b) Specify objectives, policies, methods (including rules) and provisions (other than definitions) to be included in plans. (c) Specify objectives, policies and methods (but not rules) to be included in regional policy statements. (d) Direct local authorities to include specific provisions in their policy statements and plans (other than definitions) 	Green	Blue
4.	Repeal sections 87AAC(1)(a)(ii) and 360G	Removes the Ministerial power to make regulations identifying activities (in addition to controlled activities) that are to be subject to the fast-tracked consent process	Yellow	Green

Proposed Amendments			Berry Simons Rating	MfE rating (level of complexity of change)
5.	Remove section 360(1)(da)	Remove the Ministerial power to prescribe the form and content (including conditions) of water permits and discharge permits		
Reverse objectionable limits to public notification and participation				
6.	Repeal section 41D(1)(d)	Removes ability for an authority to strike out submission on basis that it is supported by evidence that, though purporting to be independent expert evidence, has been prepared by a person who is not independent or who does not have sufficient specialised knowledge or skill to give expert evidence on the matter		
7.	Amend sections 95A to 95E and consequential amendments	Remove the restrictions on notifying applications for Boundary Activities, Residential Activities and Subdivision		
8.	Repeal section 360H and consequential amendments	Remove the ability to introduce regulations prescribing: (a) Activities which must be processed without notification; and (b) Who may be considered an “affected party” for the purposes of notification		
9.	Repeal sections 80A to 80C and Parts 4 and 5, First Schedule	Remove the Collaborative Planning Process (“CPP”) and		
		Streamlined Planning Process (“SPP”) as alternative plan making processes		
10.	Repeal or amend Part 6AA (Sections 140 to 150AA), in particular sections 149J(3)(b) and 149R(1).	Remove Part 6AA: Proposals of National Significance		
		or in the alternative and, as a minimum: (a) Require Boards of Inquiry appointed under Part 6AA to be chaired by a current, former or retired Environment Court Judge; and (b) Repeal (or extend) the 9 month time frame that applies to Boards of Inquiry.		

Proposed Amendments			Berry Simons Rating	MfE rating (level of complexity of change)
Restore appeal rights / mana of the Environment court				
11.	Amend section 120(1A) and consequential amendments	Remove the restrictions on appealing against decisions regarding Boundary Activities, Residential Activities and Subdivision		
12.	Repeal section 120(1B)	Repeal the restriction on appealing matters not raised in an original submission.		
13.	Amend section 251 and consequential amendments	Rename the "Principal Environment Judge" to "Chief Environment Judge"		
14.	Amend sections 120 and / or 310	Provide the Environment Court with jurisdiction to hear challenges to notification decisions by way of a merits appeal		
Reverse the introduction of novel, uncertain and confusing concepts				
15.	Repeal sections 87AAB, 87BA and 87BB and consequential amendments	Remove: <ul style="list-style-type: none"> • Deemed Permitted Boundary Activities; and • Deemed Permitted Marginal or Temporary Activities. 		
Protect environmental bottom lines				
16.	Amend section 11	Reinstate the presumption that subdivision can only be undertaken if expressly allowed by a rule in a District Plan or a resource consent		
17.	Amend sections 30 and 31 and consequential amendments	Reinstate previous sections 30(1)(c)(v), 30(1)(d)(v) and 31(1)(b)(ii) which provided for regional council and territorial authority functions relating to the control of hazardous substances		
18.	Amend section 44A	Remove the ability for a national environmental standard (NES) to provide that a plan rule can be more lenient than an NES standard		

Proposed Amendments			Berry Simons Rating	MfE rating (level of complexity of change)
19.	Amend section 104	<p>Insert a requirement that in considering a resource consent application, decision makers must 'give effect to' or 'implement'</p> <p>(a) A national environmental standard (b) Other regulations (c) A national policy statement (d) The NZ Coastal Policy Statement (e) A regional policy statement; and (f) A plan</p>	Yellow	Blue
Protect urban trees				
20.	Amend section 76 (4C)	<p>Insert the following into the definition of "group of trees":</p> <p>(f) All trees of an identified indigenous species in a defined area or specific planning zone (for example, all Pohutakawa with the coastal environment line); and</p> <p>(g) All trees in a named ecosystem, habitat or landscape unit, or ecotone (for example, all indigenous trees lining a stream corridor)</p>	Yellow	Blue
Miscellaneous RMA amendments				
21.	Amend sections 30 and 31 and consequential amendments	<p>Insert the following sections 30 and 31:</p> <p>(aa) the establishment, implementation and review of objectives, policies and rules to achieve the reductions in carbon emissions required to contribute to a target of holding the increase in global average temperature below 2 degrees above pre-industrial levels</p>	Red	Blue
22.	Amend section 36	<p>Insert (a) power to charge for monitoring permitted activities to any permitted activity; and</p> <p>(b) Criteria for determining when or which persons carrying out permitted activities will be subject to the costs of permitted activity monitoring</p>	Red	Blue

Proposed Amendments			Berry Simons Rating	MfE rating (level of complexity of change)
23.	Amend section 43A	Require that rules and standards in an NES must give effect to any relevant national policy statement	Yellow	Blue
24.	Amends 104(1)(ab), 168(3A) and 171(1B)	Define terms 'off set' and 'compensate' in (a) a biodiversity context and (b) in other circumstances as they are used in these provisions	Red	Blue
25.	Repeal sections 360A to 360C	Remove ability for the Minister to recommend the promulgation of regulations that amend regional plans in relation to aquaculture activities	Yellow	Blue
26.	Repeal or amend clause 5A, 6A and amend clause 7, First Schedule	a) Remove the ability for a proposed change or variation to a policy statement or plan to be limited notified.... b) Or, provide appropriate safeguards as to the use of the limited notification procedure, by providing a definition of directed affected and setting criteria for local authorities to use in applying that definition	Red	Blue
Regulations to be introduced under the RMA				
27.	Activate sections 87E(6A) and 360(1)(hm)	Set the threshold investment amount for a proposal, above which the consent authority must grant a request for direct referral	Red	Blue
Reverse RLAA amendments made to the Conservation Act 1987				
28.	Amend section 49 of the Conservation Act	Increase timeframe for interested party comments on concession applications from 20 to 30 working days	Yellow	Green
Reverse RLAA amendments made to Economic Zone and Continental Shelf (Environmental Effects) Act 2012				
29.	Amend sections 37A and 37G of the EEZ	Reverse amendment - Amend the process for initiating preparation of a national policy statement under the EEZ to mirror that for preparing a national policy statement under the RMA	Red	Blue

Proposed Amendments			Berry Simons Rating	MfE rating (level of complexity of change)
30.	Repeal or amend section 52 and associated provisions of the EEZ	<p>Require publicly notifiable section 20 applications under the EEZ to be heard by the Environment Court rather than a Board of Inquiry, or in the alternative and at a minimum:</p> <p>(a) Require Boards of Inquiry appointed under section 52 to be chaired by a current, former or retired Environment Court Judge</p>		

Proactively released

Appendix 2: Other potential short-term legislative changes

Proposed Amendments				
#	RMA Provision / Proposal	Purpose of proposed amendment	Proposed by	MfE Rating
1.	Amend section 88B	Amendment to include as clock stops on consenting applications: <ul style="list-style-type: none"> • Time awaiting for applicant to pay appropriate fee (as per s36AAB(2)). • Time between telling applicant that resource consent needs to be notified and applicant's response (before actually notifying consent). • Time to allow for applicant to review conditions of consent (with a specified timeframe) (in conjunction with s108AA). 	MfE Internal thinking and requested by local authorities	
2.	Amend section 91A	To allow for non-notified consents to also be suspended at applicant's request.	MfE Internal thinking and requested by local authorities	
3.	Schedule 4 clause 2(2)	Remove the requirements for resource consent applicants to assess their proposals against relevant provisions in RMA documents, including objectives and policies in their Assessment of Environmental Effects (schedule 4).	MfE Internal thinking	
4.	Pre-consultation	Consider including a new provision requiring the council to include issues raised in the pre-consultation stage as part of their plan/section 32 report at time of notification.	MfE Internal thinking	
5.	Improving CME	Increase infringement fines (the maximum infringement fine is currently \$1000 and has not been amended since 1999) <ul style="list-style-type: none"> • Remove ability to insure against RMA fines • Enable councils to recover costs for all types of compliance monitoring, including complaint response and permitted activity monitoring • Extend the limitation period for laying information (for prosecutions and infringement notices) from six to 12 months. 	MfE Internal thinking	
6.	Requiring authority status	Review process for approving a requiring authority and address issues with the requiring authority status tests, especially for public good test.	MfE Internal thinking	

Proposed Amendments				
7.	Emergency power timeframes after significant natural hazard events	That the timeframes that apply under the emergency powers provisions in the wake of a major natural hazard event could be extended, modelled on the Kaikōura / Hurunui Emergency Relief Act.	MfE Internal thinking	
8.	Building Act consent requirements	Aligning timeframes to process building consent applications (in the Building Act) with the recent changes to RMA resource consent timeframes and processes.	Housing NZ	

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