Review of the Resource Management Act: Phase 1 proposals

Purpose

This briefing outlines the proposals contained in the Cabinet paper on the Resource Management Act (RMA) Phase 1 proposals. MED has concerns about the proposals to address trade competition and recommends that further consideration is given to these matters either through Phase 2 of the Review or through the Select Committee process on the proposed Bill for Phase 1 proposals.

Date:	23 January 2009	**Priority:**	Medium
Security Level:	In Confidence	**File Number:**	P/005/TP002/004 M/001/BR007/004/003

Action Sought

	Action Sought	Deadline
Minister of Commerce	To note the contents.	No deadline

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Ministry of Economic Development
Manatū Ōhanga

File: P/005/TP002/004
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22 January 2009

Minister of Commerce

Review of the Resource Management Act: Phase 1 proposals

Executive Summary

As you are aware, the Government promised to introduce legislation into the House to streamline and simplify the processes under the Resource Management Act (RMA) within 100 days of entering office. The Ministry for Environment finalised a Cabinet paper yesterday that sets out more than 90 policy recommendations for Phase 1 of the Review of the RMA. Phase 2 of the Review is intended to include complex issues that could not be addressed within the tight timeframes. The intention is for the Phase 1 proposals to be considered at Cabinet Business Committee on 27 January.

MED is broadly supportive of many of the proposals in the Cabinet paper which together should promote more efficient processes and provide greater certainty to RMA participants. However we have concerns over the proposals regarding the provisions prohibiting consideration of trade competition under the Act. Originally we had understood that these type of issues would be canvassed in Phase 2. We consider that given the relatively late emergence of trade competition proposals the issues have not been able to be canvassed in depth in the available time. We are of the view that there is some merit in having trade competition taken into account by decision makers under the RMA (for example the benefits of a new supermarket opening). However we note that allowing consideration of trade competition under the RMA would be a significant shift from the current approach and consideration would need to be given to the implications for the formulation of any competition test, standing to participate in hearings, initiate appeals, penalties and parties involved in the RMA process.

Given the above, we are of the view that there is a need for detailed assessment regarding the treatment of trade competition under the RMA. In recognition of the necessary urgency of the Bill, we recommend that further work on these matters be undertaken as part of Phase 2 of the review of the RMA, **or** as part of the Select Committee process on Phase 1 proposals.

Review of the Resource Management Act: Phase 1 proposals

Purpose of Report

1 This briefing outlines the proposals contained in the Cabinet paper on the Resource Management Act (RMA) Phase 1 proposals. MED has concerns about the proposals to address trade competition and recommends that further consideration is given to these matters either through Phase 2 of the Review or through the Select Committee process on the proposed Bill for Phase 1 proposals.

Background

2 As one of its pre-election promises, the Government promised to introduce legislation into the House to amend the RMA within 100 days of entering office. On 3 December Cabinet Business Committee noted that the Minister for the Environment intended to introduce a Bill to simplify and streamline the RMA by 26 February 2009 and would report back to Cabinet by 27 January with policy proposals.

3 On 8 December 2008 Cabinet agreed to the terms of reference for the RMA Technical Advisory group (TAG)[1] and noted that a cross-departmental officials working group had also been established to contribute to the policy development of the RMA reforms. The Minister for the Environment's TAG was announced on 16 December, 2008. Since its appointment the TAG has met a number of times to consider policy options. These policy options have been informed by input from officials and ideas and comments received from local authorities.

4 The review is currently split into two Phases. Phase 1 is intended to implement amendments that can be done relatively simply and that could be given adequate consideration within the first 100 days of the Government entering office.

5 In December 2008 it was our understanding that trade competition issues would be part of Phase 2. We considered this appropriate given the complexity of issues involved. However, in January we were informed that trade competition issues would be considered as part of Phase 1 proposals. We note that MfE has tried its best to prepare analysis and consult within the constraints it has faced. (The Cabinet paper was just finalised yesterday.) However, we are of the view that the trade competition aspects require further consideration and detailed assessment.

6 The proposals in the final Cabinet paper are divided along nine themes:

a Frivolous, vexatious and anti-competitive objections;

[1] Membership of the TAG consists of: Alan Dormer, Barrister (chairperson); Guy Salmon, Executive Director of the Ecologic Foundation; Penny Webster, Mayor of Rodney District; Michael Foster, Director of Zomac Planning; Dennis Bush-King, Environment and Planning Manager at Tasman District Council; Rt Hon Wyatt Creech; Paul Majurey, Partner, Russell Mcveagh; Mike Holm Barrister

b Proposals of national significance;

c Improving plan development and change process;

d Improving resource consent processes;

e Improving central government direction;

f Improving the effectiveness of compliance mechanisms;

g Improving decision making; and

h Other matters to improve workability.

7 This briefing is divided into two parts. The main focus of this paper is on the trade competition proposals which are contained in the first part of this paper. For completeness, Part B of the paper sets out the other policy proposals contained in the Cabinet paper. In the discussion on Part B of the paper you will note that other parts of MED have concerns with some of the other proposals in the Cabinet paper which fall outside your portfolio. These concerns are not specifically related to trade competition issues and as such are a secondary focus of this paper.

Part A: Proposals relating to trade competition concerns

Frivolous, vexatious and anti-competitive objections

8 Currently, the RMA prohibits councils from having regard to trade competition when considering consent applications, or when preparing regional plans or plan changes. It appears that the objective of these provisions is to prevent competitors from making objections regarding adverse competitive effects as a means to delay or discourage a competitor's entry. However, despite this, parties have been able to circumvent the purpose of these provisions by disguising their commercial interests through third parties fronting on their behalf, using aspects of planning principles, arguments regarding potential effects, and other means.

Proposals in the Cabinet paper

9 The Cabinet paper sets out a number of proposals to reduce frivolous, vexatious and anti-competitive objections such as:

- enabling the courts to seek security as to costs;
- enabling the courts to award indemnity costs where an appeal was motivated by trade competition;
- requiring parties who lodge an appeal to disclose any trade competitor support;

- removing full standing to participate in hearings for trade competitors (i.e they cannot make submissions on consent applications of a trade competitor or proposed policy statements or plan changes concerning the activity of a trade competitor) unless they are directly affected and the effects do not solely relate to trade competition;

- amending sections in the RMA which prohibit consideration of trade competition to make it clear that the prohibition on having regard to trade competition also encompasses its effects; and

- Introducing a punitive damages regime to be available in cases where appeals have been motivated by trade competition.

Comment

10 MED is supportive of the proposals to allow courts to seek security for potential cost awards, and the requirement for parties to disclose trade competitor support. This increases the potential costs of an unsuccessful appeal and should provide disincentives for RMA participants to lodge appeals that are likely to be frivolous, vexatious and driven solely by trade competitor's desire to delay or discourage potential competition. The other proposals to streamline plan processes and improve decision-making set out in Part B below will also contribute positively towards reducing the costs to applicants of potential gaming and delays under the RMA.

11 We note the Commerce Commission advises that the RMA frequently comes up as a reason to delay the timely entry of competitors as part of its assessment of potential competition in its determinations. Therefore, the timeliness of entry to respond to price hikes and poor service is a critical issue.

Standing of trade competitors

12 The proposal to remove full standing for trade competitors in consent and plan hearings unless they are directly affected by a proposal would prevent trade competitors participating in processes that involve issues that may set important precedents. For example, it would prevent the likes of Meridian Energy from supporting Trustpower in the appeal against Trustpower's Mahinerangi Wind Farm. It would also have prevented Meridian from taking an interest in the Waikato River Water Allocation, as although Meridian has no assets on that river, for example, it might have set a precedent for how water is allocated in the Waitaki system.

13 We are of the view that trade competitors who are concerned about the effects of precedent have a legitimate reason to participate in RMA processes.

Provisions prohibiting consideration of trade competition

14 We note that one of the biggest issues relating to designing mechanisms to deal with the potential use of RMA processes as a means to delay or discourage competition is whether or not trade competition should be a relevant consideration for decision-makers under the Act.

15 The current formulation of proposals are based on the status quo and the premise that trade competition should not be a relevant consideration under the RMA. Thus, the proposals would strengthen the current prohibition on non-consideration of trade competition to include effects, prevent trade competitors from making submissions, remove standing for trade competitors to appeal, and proposes higher penalties for those motivated by trade competition concerns.

16 We are of the view that the premise that trade competition should not be a relevant consideration under the RMA requires further consideration and detailed assessment. Notwithstanding this, we note that the option of enabling the benefits of competition to be taken into account would be a significant shift from the current approach under the Act. Consideration of this option would require an assessment on issues such as:

- The benefits of having trade competition taken into account as part of decision making;
- The formulation or thresholds of the test for any competition assessment;
- The role of the Commerce Commission;
- Who would bear the onus of undertaking any assessment;
- Standing to participate in hearings and initiating appeals; and
- The impact on costs for applicants and councils.

17 As far as we are aware, and given the time available and the original proposal to deal with trade competition as part of Phase 2, the option of allowing decision makers to have regard to the benefits of trade competition has not been canvassed in any great depth by TAG, MfE or MED. We also note that whilst TAG has considerable experience and expertise in RMA processes (as appropriate), TAG does not have a competition 'expert'.

18 Our preliminary view is that there is merit in having the benefits of further competition (for example through a new supermarket) to consumers (as opposed to effects on individual competitors) being able to be taken into account as part of a consent application process. This would allow environmental arguments being used as technical barriers to competition to be assessed in terms of competition impacts.

19 One of the options would be to amend the current provision so that councils will be prohibited from having regard to the adverse effects of trade competition. This would mean that councils would be able to consider the benefits of further competition to consumers but competitors' objections relating to adverse effects on their businesses in terms of reduced profits, losses would be ignored. We think that this needs further thought as it is likely that pro-competitive arguments may be challenged and thus that this may not necessarily avoid submitters putting up arguments about anti-competitive effects.

20 In other jurisdictions such as the United Kingdom and Australia, the potential for planning regimes to restrict trade competition has been one of the issues canvassed by competition authorities. The United Kingdom Competition Commission recommended that a competition test be introduced for local planning authorities when assessing planning applications for new grocery stores. In Australia, similarly the Australian Competition and Consumer Commission (ACCC) in its grocery inquiry report recommended that all levels of government reassess the zoning and planning laws having regard to the likely impact of a supermarket on existing competition between supermarkets in that area. The Coalition of Australian Governments is currently considering the ACCC's recommendation. Work on the ACCC's and Competition Commission recommendations is currently underway but has yet to be finalised.

21 We understand that Phase 2 of the RMA review includes work-streams under which further proposals that may address trade competition issues can be considered. MED's preferred approach is for further consideration be given to these matters as part of Phase 2.

22 We are cognisant of the Government's commitment to make amendments to the RMA in the first 100 days. Given this, we recommend that further consideration on the trade competition proposals relating to the consideration of trade competition under the RMA can be done through:

- Removing the specific recommendation in relation to amending the provisions relating to non-consideration of trade competition. This would mean that the issue of the treatment of trade competition under the RMA would be undertaken as part of Phase 2 of the Review of the RMA; or

- Leaving the recommendations in place but agreeing that MfE and MED should consider this as part of the Select Committee processes on Phase 1 proposals.

Part B: Other policy proposals

23 For completeness we have provided a summary below of the other policy proposals contained in the Cabinet paper for your information.

Proposals of national significance

24 The Cabinet paper proposes amendments to the current call-in powers to allow the Minister for the Environment to refer a call-in application to the Environmental Protection Agency (EPA). The EPA would be a newly created body. Until the EPA is established, MfE would have these responsibilities.

25 The current call-in provisions allowing applications to be referred to a Board of Inquiry would remain. Applicants would be able to make applications directly to the EPA.

26 Decisions would be made within nine months from when the project was notified with the ability to extend this timeframe if the Minister for the Environment is satisfied from a report by the Board of Inquiry that there is necessary justification.

27 There are a number of other proposals relating to appointment processes for boards of inquiry to require the Minister for the Environment to seek nominations from local authorities, removal of restrictions on scale of remuneration for members of board of inquiries, and increasing the number of Environment Court judges that may hold office at one time.

28 Appeals are restricted to points of law, and would be heard by the Appeal Court.

29 As drafted, the Cabinet paper does not provide for any criteria for what constitutes a proposal of national significance. MED is of the view that there should be a set of clear criteria on what projects would be accepted to provide certainty for businesses. These criteria could be based on the value of the project.

Improving plan development and change processes

30 Most of the delays with developing and changing district and regional plans occur when the plan is appealed to the Environment Court. The Cabinet paper proposes to make appeals that seek the withdrawal of entire plans ultra vires. TAG recommended that this go further and require appellants to seek the Environment Court's leave to lodge an appeal. The latter should substantially reduce the number of appeals on plans.

31 The Cabinet paper also proposes other changes to help streamline the process and reduce costs for councils. For example councils will not longer be required to summarise each submission and to respond to each individual submission. Instead councils will be able to summarise according to themes raised by submitters or hold a round of second submissions.

32 The Cabinet paper also proposes that non-complying classes of activities be deleted from the RMA within three years of enactment. This class of activity covers activities that are considered generally inappropriate within a given jurisdiction but consent can be granted where effects are minor or where it is not contrary to a plan. This class is usually used in circumstances where the allocation of a natural resource is at, or close to, its sustainable limits.

33 MED is of the view that removing the non-complying consent category could raise costs for councils and this matter is better dealt with in Phase 2.

Improving resource consent processes

34 The Cabinet paper proposes to remove the presumption that all consents would be notified so that only significant projects would be required to be notified. This is expected to contribute to reducing the number of challenges to not notify a consent application.

35 There are also proposals to assist councils to process applications more efficiently through allowing greater use of Internet and email, and allowing councils the discretion to adopt an applicant's assessment of environmental effects report.

Improving national instruments

36 The Cabinet paper proposes to improve the workability of national policy statements (NPS), national environmental standards (NES) and the call-in power (which would be retained). The Minister for the Environment would be able to cancel, postpone of restart the development of any proposed NPS before it is gazetted. Appeals on plan changes made to give effect to an NPS would be limited to points of law only. Changes would also be made to improve the linkages between NPS, NES and other RMA provisions.

Improving compliance mechanism effectiveness

37 Along with measures to reduce delays in plan making and consent applications, there are measures intended to improve compliance with the RMA. The paper proposes to increase the maximum fine from $200,000 to $300,000 for individuals or to $600,000 for corporate offenders.

38 The Court would be given the power to cancel or amend consents that are held by repeat offenders.

39 The Cabinet paper proposes that the Crown no longer be immune from prosecution for RMA offences. MED as a whole has not assessed our own exposure to this risk. We note that operational agencies such as the Department of Conservation would particularly vulnerable. MED is of the view that this is an issue that should be considered as part of Phase 2.

Improving decision making

40 One of the pre-election RMA policy announcements was that the Minister of Conservation's powers to make the final decision on applications for restricted coastal activities be removed. The Cabinet paper recommends removing the Minister of Conservation's powers in this regard. It recommends that consideration of whether the restricted coastal activities process under the RMA should be removed be an issue canvassed as part of Phase 2.

41 Applicants can choose to have their consent application heard by independent commissioners instead of councillors. Appeals on Environment Court decisions would only be granted with the leave of the High Court. It would also be clarified that councils can delegate decisions on plan changes to staff or any other person.

Other matters to improve workability

42 There are also a number of other matters proposed to be included in the Bill, largely dealing with technical amendments. One of these includes reducing the time available for third parties to join in appeals from 30 working days (or six weeks) after the last day an appeal is lodged, to 15 working days. This brings the timeframe in line with the time for lodging an appeal and would reduce uncertainty amongst all participants as to who is participating in an appeal.

Next steps

43 It is anticipated that the Cabinet paper will be considered at the 26 January Cabinet meeting. If policy decisions are not made at this meeting, the February 16 deadline for introducing the Bill can still be met if decisions are made at the following Cabinet meeting.

44 A LEG paper will be submitted for approval, probably with a draft Bill with Cabinet Office on Monday 12 February. A final Bill is expected to be considered by LEG, with final Cabinet approval on Monday 16 February. The Bill would then be able to be introduced.

45 Phase 2 of the RMA review is intended to deal with complex issues. It is proposed that Phase 2 will have a minimum of three work streams that cover:

a Further measures to simplify and streamline the RMA;

b Management of complex and contentious issues such as natural resource allocation and urban design; and

c Means to more effectively implement, monitor the Act and evaluate performance.

46 The Minister for the Environment intends to report back to Cabinet with the proposed terms of reference and timelines for each of the work streams of Phase 2 of the RMA review by the end of March 2009.

47 Should you agree that specific proposals relating to trade competition need further detailed assessment, this can be done either

a through postponing the consideration of amendments to provisions under the RMA in relation to non-consideration of trade competition to Phase 2 of the Review of the RMA (our preferred approach); or

b through ongoing discussions between MfE and MED officials and within the existing Phase 1 process. Any subsequent amendments could be made at the Select Committee stage.

48 Should you agree to postponing consideration of the treatment of trade competition under the RMA to Phase 2, when the Cabinet paper is considered at Cabinet Business Committee, we recommend that you:

- Invite the Minister for the Environment to consider deferring the treatment of trade competition (relating to recommendations 6-9, 11 and in the Cabinet paper) under the RMA as part of Phase 2 of the review.

49 The specific proposals in recommendations 6-9 and 11 are:

- That all provisions in the RMA that prohibit the consideration of trade competition be amended to also prohibit consideration of the effects of trade competition;
- That the effects of trade competition be excluded from consideration when forming an opinion as to whether a resource consent application needs notification;
- That trade competitors cannot make submissions in opposition to a resource consent unless directly affected and the effect does not relate to trade competition;
- That trade competitors should not make submissions on proposed policy statements, plans or plan changes unless they are directly affected and the effect does not relate to trade competition; and
- Removing the ability of trade competitors to take part in appeals as third parties.

Recommended Action

We recommend you:

50 **Note** that the Resource Management (Streamlining and Simplifying) Amendment Bill) is on track for being available to be introduced the week starting 16 February 2009;

51 **Note** that MED is largely supportive of the policy proposals in the Cabinet paper that aim to streamline and simplify processes under the Resource Management Act;

52 **Note** that MED has concerns with proposals intended to address trade competition concerns under the RMA that relate to strengthening the prohibition on non-consideration of trade competition;

53 **Agree** that the recommendation to amend provisions of the RMA relating to non-consideration of trade competition (**recommendations 6 - 9, and 11 of the Cabinet paper**) be given further consideration;

54 **Agree** that further consideration be given to proposals relating to the prohibition on the consideration of trade competition either through:

a As part of Phase 2 of the review of the RMA (our preferred approach).

agree/disagree

OR

b Ongoing discussions between the Ministry for the Environment and Ministry of Economic Development, with any amendments to be proposed as part of Select Committee consideration for the Bill implementing Phase 1 proposals of the review of the RMA.

agree/disagree

55 **Agree** (if you support the recommendation in 54(a) above), to invite the Minister for the Environment to consider deferring the treatment of trade competition under the RMA to Phase 2 of the Review.

agree/disagree

Lisa Barrett
Manager, Corporate and Competition Policy
Competition, Trade & Investment

Hon Simon Power
Minister of Commerce

Get advisory Board up + running asap
↳ phil to set day at/tomorrow today.
Minister will be heads on.

Ministry for the Environment
Manatū Mō Te Taiao

Options from 1999 RMA review process not implemented or captured by National Party policy proposals

Date:	5 December 2009	**MfE Priority:**	URGENT
Security Level:	IN CONFIDENCE	**Number. of Attachments:**	One
		MfE Ref No:	08-B-1123

Action Sought

	Action Sought	Deadline
Minister for the Environment Hon Dr Nick Smith	Note the contents of this paper.	5 December 2009

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Minister, Ata - by heads together, discuss how TAG will work

Options from 1999 RMA review process not implemented or captured by National Party policy proposals

Purpose of Report

1. To identify amendments to the Resource Management Act 1991 (RMA) proposed during the development of Simon Upton's 1999 RMA Amendment Bill that have not subsequently been implemented or captured by the National Party policy proposals.

Background:

2. In late 1997, Simon Upton appointed a Reference Group to review and recommend proposed amendments to the RMA. This reference group built on work that came out of an earlier review process involving Owen McShane, Ken Tremaine, Bob Nixon and Guy Salmon. Simon Upton considered the Reference Group's recommendations and generated a set of proposals for amending the RMA that were eventually translated into the proposed Resource Management Amendment Bill 1999.

3. The key recommendations of the Reference Group related to:

   - Amending the definition of "the environment" to clarify that councils should not engage in social and economic planning.
   - Strengthening section 32, requiring councils to more rigorously justify their policies and plans.
   - Simplifying the matters decision-makers are required to consider when determining resource consent applications.
   - Requiring the use of appropriately qualified commissioners to conduct all hearings on resource consent applications and limiting appeals on these decisions to points of law.
   - Improving procedures relating to the drafting of national policy statements.
   - Allowing for contestable processing of resource consent applications.
   - Providing for direct referral to the Environment Court.

4. Many of the recommendations made by the Reference Group have been implemented either directly or indirectly via subsequent amendments to the RMA in 2003 and 2005. Of those that have not been implemented many have been captured in the National Party's 2008 Resource Management policy paper. Remaining options include:

   a. Remove reference to "aesthetic coherence" from the definition of 'amenity values'.
   b. Define limited discretionary activities.
   c. Limit the matters decision-makers are required to consider under section 104 to: relevant provisions of plans only, relevant matters of Part II only, environmental effects and social and economic effects.
   d. Remove the requirement for decision-makers to consider applications subject to Part II for controlled and restricted discretionary activities.

e. Provide for direct referral of resource consent applications to the Environment Court where the applicant requests it and the consent-authority agrees.

f. Amend the RMA so that no weight shall be given by decision-makers to proposed plans until provisions are operative or beyond contest - *[Note: a softer amendment was enacted that gave councils discretion to pass resolutions to stop provisions having effect until they are beyond contest].*

g. Define the term 'economic efficiency' – *[Note: Simon Upton finally decided that the evolution of case law would be suitable to address any issues arising from the lack of a clear definition].*

h. Require councils to develop a regulatory impact statement when they prepare plan changes – *[Note: Simon Upton eventually decided against requiring a Regulatory Impact Statement in favour of increasing the rigour of section 32 (evaluation of alternatives, benefits and costs)].*

i. Enable local authorities to make amendments to plans outside the scope of suggestions made in submissions – *[Note: subsequent amendments have enabled council to engage in mediation and negotiation with submitters and affected parties to facilitate constructive solutions].*

j. Delete the requirement to produce a regional policy statement – or focus the scope to core control functions (air, water and soil).

k. Limit the scope of matters for which regional councils can propose regional plans to the core control functions.

l. Remove contents of district and regional plans that do not have statutory effect i.e. limiting plans to objectives, policies and rules – *[Note: subsequent amendments have made the elements of plans that have no statutory effect optional, but councils still have to discretion to retain them].*

5. In Attachment 1 to this briefing we provide you with a table that sets out the National Party proposals, comment based on the initial Ministry for the Environment 'options package' and the relevant (i.e. not minor or technical) options remaining from 1999 review process.

6. Prior to releasing the Resource Management Amendment Bill 1999, Simon Upton circulated an explanation of the rationale for the key policy decisions that lay behind the proposed amendments. A summary of this document is included as Attachment 2 to this briefing. A more comprehensive (seven-page) summary is available on request.

Recommended Action

We recommend that you:

(a) **Note** the contents of this briefing on Options from 1999 RMA Review process not implemented or captured by National policy proposals **Yes / No**

Kevin Currie **Date 5 December 2008**
Acting General Manager, Local Government Group

Referred to Ministry Communications Staff: No

Hon Dr Nick Smith **Date**
Minister for the Environment

ATTACHMENT 1: National Party proposals, initial MFE comments and options remaining from 1999 review process

	National Party proposal	Comment based on initial MfE 'options package'	Relevant 1999 options not subsequently implemented or captured by National's proposals
Simplifying the RMA	Limiting the definition of 'environment'	Not recommended – removing 'economic' from the definition of environment could make it more difficult to (a) consent large projects with significant adverse environmental effects (b) deal with reverse sensitivity.	• Limit the definition of 'amenity values' • Define limited discretionary activities. • Various options for addressing inefficiency and delays due to uncertainty around tangata whenua consultation and involvement were discussed by the Reference Group. Options ranged from doing nothing and letting case law resolve concerns to radically amending Part II. The final recommendation was, however, that further investigation was required before a preferred option could be identified.
	Prohibiting objections with respect to trade competition	Various options proposed including limiting appeal rights, reintroducing security for costs (and indemnity costs) and raising appeal and Court hearing fees.	
	Reducing the number of resource consent categories from five to three	Proposed to remove restricted coastal activity and non-complying consent categories.	
	Replace Treaty principles with specific requirements for iwi consultation	Not recommended – case law has solidified around the Treaty principles and section 36A makes it clear that there is no duty to consult with iwi on resource consent applications. Most complex iwi-related issues are tagged to other sections of the RMA (6e and 7a); amendments to section 8 could complicate rather than clarify the issue.	
Resource Consents	Priority consenting of major infrastructure projects	Proposed to establish a two-track consent process to distinguish priority consents from standard consents. Use call-in provisions in interim – with modifications to improve their use.	• Limit the matters decision-makers are required to consider under section 104 to the: relevant provisions of plans only, relevant matters of Part II only, environmental effects and social and economic effects. • Remove the requirement for decision-makers to consider applications subject to Part II for controlled and restricted discretionary activities. • Provide for direct referral of resource consent applications to the Environment Court where the applicant requests it and the consent-authority agrees. • Make it that no weight shall be given by decision-makers to proposed plans until provisions are operative or beyond contest.
	Complaints mechanism	Agreed.	
	late consent penalties	May result in perverse outcomes (more consents declined, gaming behaviour).	
	Remove ministerial veto over coastal consents	Agreed.	
	Retain, but refocus ELA fund on technical support	Not part of package as no change required to RMA.	
	Direct referral of major consent to Environment Court	A variation of this proposed as part of two-track consent proposal (priority track).	

Frivolous Vexatious	Reinstate security of costs	Considered as part of a wider package on appeals.	• Not an apparent focus of the 1999 review process – tended to retain rather than extend relevant provisions existing at the time.
	New powers to reject frivolous and vexatious objections	Proposed to limit appeal rights and in particular remove the ability to appeal whole plans. Also proposed to remove presumption of notification.	
Simplifying RMA Plans	Encourage development of 'OnePlans' for region / districts	Possible now under RMA. MfE package focuses more on speeding up process and reducing costs. A minor amendment strengthening the relationship between s.80 and 78A could assist.	• Define the term 'economic efficiency'. • Require councils to develop a regulatory impact statement when they prepare plan changes. • Enable local authorities to make amendments to plans outside the scope of suggestions made in submissions – enable mediation and negotiation with submitters and affected parties to facilitate constructive solutions. • Delete the requirement to produce a regional policy statement – or focus the scope to core control functions (air, water and soil). • Limit the scope of matters for which regional councils can propose regional plans to the core control functions. • Remove contents of district and regional plans that do not have statutory effect (issues, expected environmental outcomes etc).
	Encourage greater use of internet	Can and is being done now.	
	System of approved contractors for minor consents	Considered as part of consents package along with reduced Schedule 4 requirements.	
National Direction and Administration	Expand ERMA into EPA and reprioritise MfE resources to allow this to happen	Not considered as an RMA amendment (but may require consequential amendments).	• Significant changes were proposed to improve call-in, NPS and NES processes. Subsequent amendments have sought to address the issues raised in the 1999 review process.
	New EPA powers to allow prosecution of Crown	Enforcement powers against Crown Agencies proposed, but left open regarding where the powers of prosecution will sit.	
	New NESs on forestry, telecommunications, housing, energy and agriculture	NPSs and NESs can be done now. MfE suggests enhanced provisions to make the process and implementation of these more efficient and effective.	
	New NPSs on water, biodiversity, coastal management and home affordability.		

ATTACHMENT 2: Summary of key policy decisions made by the Minister for the Environment in the lead-up to the 1999 Resource Management Amendment Bill

Consideration of social and economic matters in decision-making

1. The definition of 'environment' opens the door to the sort of social and economic planning that the RMA was designed to leave behind. In order to sharpen the focus of the RMA, it was proposed to restrict the definition to include ecosystems, natural and physical resources and health, safety amenity and cultural values.

2. Submitters were concerned that economic and social benefits should continue to be relevant and argued that it would be artificial to divorce social and economic consequences from environmental outcomes. Simon Upton found this argument unpersuasive because:

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

Public participation in decision-making

3. Simon Upton proposed to provide for limited notification but considered that more flexible notification procedures should be accompanied by enhanced opportunities to scrutinise and review decisions not to notify applications. This led to a proposal to allow the Environment Court to review notification decisions by way of a declaration.

Contestable processing of consents

4. The option of contestable consent processing prompted significant debate and misunderstanding throughout the review process. Simon Upton stated that "at no time was it suggested that decision making itself should be contestable ... it was always intended that the substantive decision remain with the consent authority".

5. After considering submissions, Simon Upton proposed to retain the element of choice for applicants but to amend the proposal so that:

   - Councils maintain considerable control over the application and the conduct of all processors
   - External processors will be paid by the councils and not by the applicant – the responsibility and allegiance of the processor is to the council.

Commissioner hearings

6. Suggested requirements for mandatory use of commissioners for all first-order hearings drew strong opposition from local government and cost analysis indicated that such a requirement was likely to increase costs for applicants. This proposal was, therefore, dropped and the Bill was amended to allow an applicant or a submitter the option of requiring that commissioner be appointed in place of a council hearings committee.

7. To avoid manipulation by councils appointing only commissioners with sympathetic opinions, commissioners were to be registered nationally by the Sectary for the

Environment following consultation with other departments (including Te Puni Kokori) and appointed to individual cases by the Chief Executive of the relevant local authority.

Direct Referral

8. Simon Upton proposed to amend the RMA allow for applications for resource consent and notices of requirement for designations to be referred directly to the Environment Court. This raised two major sets of concerns:

   (i) local authorities feared dilution of local democratic processes and the principle that decisions should be made locally.

   (ii) Community and environment groups feared increased costs and difficulty for submitters wanting to participate in the hearings process.

9. Simon Upton considered these concerns seriously, but ultimately discounted them for the following reasons:

   (i) The criteria for direct referral were set, and would be applied, in such a way as to capture only those applications that would almost certainly be appealed to the Environment Court anyway.

   (ii) Because these hearings would be 'first order', it was significantly less likely that submitters would face the prospect of costs being awarded against them.

Reference to Part II in sections 104 and 105

10. Simon Upton proposed to remove the requirement for decision-makers to take Part II (purpose and principles) matters into account when considering applications for controlled and limited discretionary matters.

Plan Quality – changes to section 32

11. Simon Upton proposed to improve the quality of plan provisions by tightening section 32 governing the assessment of alternatives, benefits and costs to:

- simplify language
- directly require an analysis of alternatives
- define the efficiency test for objectives, policies and methods as referring to 'economic efficiency'
- insert a requirement to take into account the risks of acting when information is incomplete

12. Simon Upton considered defining the term economic efficiency in the RMA but ultimately decided against it on the grounds that case law was emerging that established a sufficient guideline for councils.

Subdivision

13. The act of subdivision is a legal process with no environmental effects but controlling subdivision is one means of managing the adverse effects of land use activities. Simon Upton proposed to improve council subdivision practice by:

- removing the control of subdivision as a separate function of territorial authorities and list it as a method
- reversing the presumption in section 11 so that subdivision is allowed unless controlled by a rule on a plan
- removing the prescriptive provisions in section 106 to allow councils greater flexibility to manage the risks of natural hazards as they see fit

Functions of regional councils

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

15. Most problems can be addressed by minor changes to sections 30 and 32 of the RMA. However, of greater importance was the overlapping policy functions and the question of whether local government should be seen as a hierarchy of, in descending authority, central, regional and local tiers? Or should?

16. Simon Upton preferred to view territorial authorities and regional councils as equal partners with separate and complementary functions and proposed amendments to remove the sweeping powers of regional councils as they extend to land use issues. The objective was to promote a partnership model with regional councils managing bio-physical resources (water, soil, air, the coast and biodiversity), while territorial authorities would primarily manage land use activities.

Sue P

Ministry for the Environment
Manatū Mō Te Taiao

RECEIVED

History of the Resource Management Act 1991 and its Amendments

Date:	12 December 2008	**MfE Priority:**	(URGENT
Security Level:	In Confidence	**Number of Attachments:**	Nil
		MfE Ref No:	08-B-1179

Action Sought

	Action Sought	Deadline
Minister for the Environment Hon Dr Nick Smith	Note contents Circulate to RMA Review Technical Advisory Group	Circulation to Technical Advisory Group 12 December 2008 for meeting of 18 December 2008.

Ministry for the Environment Contacts

Name	Position	Telephone (cell)	Telephone (work)	1st Contact
Richard Hills	Senior Advisor	NA	439 7532	✓
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Sue Powell	General Manager: Local Government Group	027 2322689	439 7454	

History of the RMA and its Amendments

Executive Summary

This briefing provides an overview of the history of the Resource Management Act 1991 from the time of the Resource Management Law Reform of 1988 through to the Amendment Act of 2005.

The RMA has been the subject of 15 amendment Acts since it came into force in 1991. The most significant amendments were those of 1993, 1996/1997, 2003 and 2005. These amendments added new classes of activities, gave the Minister for the Environment additional powers, reduced the mandatory content of plans, and tried to simplify consenting processes. Other amendments tended to be more issue specific, or were tasked with ensuring the RMA remained consistent with other new legislation that came into force over the last 17 years.

Recommended Action

We recommend that you:

(a) **Note** the contents of this briefing note: History of the RMA **Yes / No**

12/12/08

Sue Powell
Local Government Group

Date

Referred to Ministry Communications Staff: No

13/12/08

Hon Dr Nick Smith
Minister for the Environment
Minister for Climate Change Issues

Date

History of the RMA and its Amendments

Purpose of Report

1. To provide an overview of the history of the RMA and its amendments up to the present as background to the first meeting of the RMA Review Technical Advisory Group on 18 December 2008.

Background:

2. The RMA Review Technical Advisory Group is scheduled to hold its first meeting on Thursday 18 December 2008. In a meeting with the Chair of the Technical Advisory Group on Tuesday 8 December 2008 you requested that a briefing note be prepared that provided an overview history of the RMA and its amendments.

Origins of the RMA

3. Prior to 1991 New Zealand had a range of single purpose resource management and planning statutes covering town and country planning, clean air, water and soil conservation, geothermal, harbours and noise control. Many (some estimate the number at more than 50) local and smaller statutes broadly related to the environment also existed.

4. A reform of all New Zealand's environment related statutes commenced in 1988. After extensive consultation, drafting of Resource Management Bill, to restate and reform the law related to the use of land, air, water and other resources commenced in 1989.

5. In 1990, before the Bill could be enacted, there was a change of government. The new National government immediately appointed a review group to consider the Bill. The review group recommended a number of changes be made (tightening up the purpose and principles sections and separating out management of minerals for example). These changes were subsequently introduced into the House by way of a Supplementary Order Paper before the Bill was enacted in 1991.

Resource Management Amendment 1993

6. This amendment removed the requirement for there to be mandatory esplanade reserves alongside all water bodies, and introduced new instruments in the form of esplanade strips and access strips (to provide public access and provide for conservation protection).

7. A new category of activities (Restricted Discretionary Activities) were added to enable a plan to restrict what effects needed to be considered. However the existence of this category was not formalised until the 2003 amendments.

8. The tests and requirements for discharge permits to be obtained were changed so that only those activities of a type that required consents to be obtained under legislation prior to the enactment of the RMA needed to obtain a discharge permit (though a plan was allowed to override this). Up until this time there was a requirement for all discharges from industrial or trade premises to obtain discharge permits. This had proven unworkable.

History of the RMA and its Amendments

Resource Management Amendment 1994

9. This amendment to the RMA ratified the MARPOL convention on marine pollution and standardised controls on discharges from ships.

Resource Management Amendment 1996/7

10. This amendment to the RMA was split into two as a result of some provisions being passed before, and others after, a general election.

11. The Amendment Bill introduced new provisions in respect of marine farming and coastal occupation charges. However the marine farming provisions were never implemented (they were superseded by aquaculture reforms).

12. A new enforcement tool was added in the form of infringement notices. At the same time the presumption that an appeal in respect of an abatement notice acted as a stay on that notice was reversed.

13. Outline plans were reintroduced for designations (they had previously existed under the repealed Town and Country Planning Act 1977). This provides increased flexibility to resolve detailed controls on land that had been designated to a point in time just before works associated with the designation commence.

Resource Management (Aquaculture Moratorium Act) 2002

14. This introduced a two-year moratorium on the ability to lodge coastal permits for aquaculture activities to allow an alternative management regime to be put in place. The moratorium was subsequently extended until 31 August 2004 by the Resource Management (Aquaculture Moratorium Extension) Amendment Act 2004.

Resource Management Amendment Act 2003

15. This amendment had its origins in the 1998 Owen McShane 'Thinkpiece'. A review group was subsequently formed in late 1998 chaired by Mike Holm. The report of the review group was published in November 1998. It contained ideas around 'contestable consent processing', compulsory commissioner hearings (in place of council elected officials), and proposals to allow direct referral of contentious resource consent applications to the Environment Court.

16. The Amendment Bill was introduced to the House in 1999 but did not reach Select Committee stage before the 1999 general election. In addition to the matters listed above, account was taken of the Historic Heritage Management Review. As such the role of the Historic Places Trust in relation to the RMA was proposed to be downgraded and heritage protection provisions transferred into the RMA.

17. The Resource Management Amendment Bill was reported back to the House in May 2001. However no further progress was made in respect of the Bill, after Select Committee had reported back until 2003.

18. Provisions relating to contestable consent processing, compulsory commissioner hearings and direct referral were deleted by the time the Bill was enacted in August 2003. Gone also were the proposals to transfer historic protection provisions from the Historic Places Act into the RMA. The 2003 Amendment Act did however:

- Introduce Limited notification for resource consents
- Codify the case law on the permitted baseline (in respect to decisions related to notification and the determination of resource consent applications) but made the use of the permitted baseline test discretionary
- Clarified matters around the implementation of NESs
- Make historic heritage a matter of national importance under section 6.

Resource Management Amendment Act 2004 (No.1)

19. A minor amendment to change references to the Minster of Justice to 'Attorney General'. These changes affected provisions in respect to the appointment and resignation of Environment Court judges. Environment Court Judges were also given the same immunities as High Court Judges.

Resource Management Amendment Act 2004 (No.2)

20. These amendments introduced a new aquaculture management regime. Replacement provisions were inserted in regard to marine farming and coastal permits. Other changes were:

    - A new schedule 1A providing additional requirements in respect of processes for the preparation and change of Regional Coastal plans providing for aquaculture activities. The Chief Executive of the Ministry of Fisheries was given the power to have specific reservations excluded from aquaculture management areas. Restrictions were also placed on decisions affecting aquaculture management areas (in regard to boundary alterations, and changes to the character of those areas).
    - Deletion of transitional provisions related to the aquaculture moratorium.

Resource Management (Energy & Climate Change) Amendment Act 2004

21. The effects of climate change (for example increased droughts) and benefits of renewable energy were both made matters to which particular regard must be had (section 7).

22. The ability for regional councils to make rules regarding the emission of greenhouse gasses (unless prescribed by a national environmental standard), or for any local authority to consider effects on climate change, were removed. Effects of the emission of greenhouse gasses on climate change were only allowed to be considered to the extent that they were a benefit of use and development of renewable energy.

Resource Management (Foreshore and Seabed) Amendment Act 2004

23. An Act to implement aspects of the Foreshore and Seabed Act 2004 through the RMA in respect of preparing plans and issuing consents in respect of areas that are subject to customary use rights and foreshore and seabed reserve management plans.

24. Local authorities are required to recognise and provide for foreshore and seabed reserve management plans once they have been lodged with them. Restrictions are

placed on the granting of resource consents (including for controlled activities) where they adversely affect a recognised customary activity.

Resource Management (Waitaki Catchment) Amendment Act 2004

25. In September 2004, Parliament passed The Resource Management (Waitaki Catchment) Amendment Act to create an improved decision-making process for allocating water from the Waitaki Catchment. That Act set up an independent Board to develop and approve a regional plan to guide water allocation in the Waitaki Catchment.

26. This legislation also provided for the cancellation of call-in for resource consent applications in relation to the Waitaki catchment and for the Waitaki Water Allocation Plan to prevail over existing RMA plans where such plans were inconsistent with the water allocation plan.

Resource Management Amendment Act 2005

27. In September 2004 the then Labour government announced a comprehensive package of measures designed to improve the working of the Resource Management Act (RMA) following a four-month review. The review was focussed around five key themes:
    - Achieving the right balance of national and local interests
    - Improving the design and process for local policy formulation
    - Improving the consent decision making process
    - Allocation of natural resources (water, air or geothermal)
    - Supporting measures for building capacity and promoting best practice and implementation

28. The Resource Management Amendment Act 2005 was passed in August 2005 and introduced the following measures:
    - Changes were made to the ability for local authorities to request further information for resource consents under s.92. Timeframes can now be defined as to when a request for further information must be complied with. Applicants have the ability to refuse requests for further information and request their consent applications be processed using information already supplied.
    - Local authority hearing powers where expanded (including the introduction of powers to strike out frivolous and vexatious submitters) while those chairing hearings, and the majority of any hearing panel, are required to be accredited.
    - The mandatory content of regional and district plans is reduced to the extent that they are only required to contain objectives, policies and rules.
    - Provisions relating to National Environmental Standards were amended to provide for absolute standards.
    - The range of matters for which a national environmental standard can be prepared was expanded to cover uses of land.
    - The Minister for the Environment was given new powers to refer an application that had been called-in to a Board of Inquiry or directly to the Environment Court. Additional powers were also provided to allow the Minister to direct plan changes to be prepared by a local authority and investigate local authority performance.

Sue P

Ministry for the Environment
Manatū Mō Te Taiao

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Priority projects: central processing authority

Date:	12 December 2008	**MfE Priority:**	URGENT
Security Level:	IN CONFIDENCE	**Report No:**	
		MfE Ref No:	08-B-1109

Action Sought

	Action Sought	Deadline
Minister for the Environment Hon Dr Nick Smith	Note contents	-

Ministry for the Environment Contacts

Name	Position	Telephone (cell)	Telephone (work)	1st Contact
Andrew Schollum	Adviser	027 2114455	439 7563	✓
Tim Bennetts	Manager	027 4781470	439 7705	
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Purpose of Report

1. You have requested a briefing from officials on what role a central processing authority might play in improving the processing of priority projects under the Resource Management Act 1991 (RMA).

Background

2. The RMA has been criticised for failing to promote the efficient and effective processing of resource consent applications for large-scale infrastructure projects of regional and national significance (priority projects).

3. The call-in provisions were changed in 2005 to improve the way they could work for matters of national significance. The changes required a current, former or retired Environment Court Judge to chair a board of inquiry, which would consider and make decisions on the called-in application (the alternative is direct referral to the Environment Court). Appeals were restricted to the High Court on points of law. Call-in is effectively a one step consent process as it removes the local authority stage and offers applicants considerable time savings on projects that are inevitably appealed.

4. Criteria for eligible projects for call-in are very broad and were not changed by the 2005 amendments. However, the criteria do not allow consideration of the urgency of the application or the benefits of the time saved by having a one-step process to the applicant and the national good.

5. There are effective two choices for options to streamlining the resource consent process for priority projects. Either the current call-in provisions could be modified (recommended option), or new priority consenting provisions could be introduced in addition to or instead of the current call-in provisions.

Central processing of priority projects

Option 1: modify existing call-in provisions (recommended approach)

6. Current call-in provisions have the potential to deliver faster processing times for priority projects. However, improvements are required to

   - tighten and clarify the broad criteria for call-in to remove uncertainty on behalf of applicants, councils and the community about what projects are eligible
   - introduce a timeframe within which the Board of Inquiry must reach a decision
   - streamline the appointment process and remove the restrictive fee scales for members of Boards of Inquiry (which are cost recoverable)
   - provide for local representation on the decision-making panel.

Introduction of threshold

7. In addition to these process improvements, explicit thresholds could be grafted into the existing call-in provisions to enable priority projects to be called-in, providing greater certainty to industry on what applications would be called-in and the length of time for a decision.

8. For example, those projects that were either 'infrastructure projects' (as defined in the RMA) or 'public works' (as defined in the Public Works Act) , and had a total capital expenditure of over $200 million would be called-in by a central processing authority (CPA) if requested by the applicant.

9. The $200 million threshold has been selected in consultation with officials from the Ministry for Economic Development (MED). $200 million would capture a large number of possible generation and transmission projects, potentially new prisons and some large transport projects. If need be, the threshold could be altered at a later stage once the CPA or its equivalent was fully established and able to process more projects. Setting the threshold through regulations, rather than inserting them directly into the RMA, would retain this flexibility.

10. Even if an applicant meets the threshold, the applicant may prefer the current process of a council hearing and full appeal rights. As an example, Meridian Energy did not wish its Mokihinui hydro proposal to be called-in despite the requests of the relevant

councils. Other generators have expressed similar views. We consider it important that the applicant retains this choice of which procedural path to use.

Processing of consents

11. Upon receiving an application, the CPA (or an expanded call-in unit of the Ministry for the Environment in the interim) would verify that the application provided enough information to enable determination by a Board of Inquiry. The CPA would be permitted to make one request for further information from the applicant if necessary.

12. Once the application was ready for notification, the CPA would produce a report (akin to the officer's report currently produced by councils). This report would be made publically available on notification. This would assist potentially affected parties to consider what are likely to be complex projects. With more information available at notification the standard 20 working day submission period would apply.

13. After notification, the application would be passed to a Call-in Inquiry Board. This would be a standing board with members approved by Cabinet who would establish Boards of Inquiry from amongst its members with the necessary skills and experience to decide particular matters, including applications for priority projects. The Call-in Assessment Board could recommend the appointment of additional members in particular instances where local knowledge (i.e. where there is significant local interest) and specialist expertise that is not available from within the members of the standing board is considered necessary. The CPA would manage the appointment of additional Board members, which would require Cabinet approval.

14. Notification would trigger the start of a nine-month processing deadline; any delays would need to be agreed to by the Minister for the Environment.

15. The notification, application, submission, pre-hearing and hearing processes would need to be prescribed in order to enable compliance with the nine-month deadline. For example:

    - applicant's would be required to enter into pre-application discussions with the CPA.
    - the application would need to include a set of proposed conditions.
    - submitters would be able to comment on the conditions.
    - the CPA would not be permitted to either extend the submissions period or lodge a further request for information once submissions had been received. If further information is desirable, the applicant could choose to put the nine-month deadline on hold to provide that further information or could choose to address any additional matters via evidence at the hearing. If considered necessary, the CPA could make a supplementary report commenting on the significance of any new matters raised in submissions.
    - pre-hearing mediation/meetings would need to be set for specific times.
    - evidence would need to be circulated well in advance and taken 'as read' at the hearing.
    - As with the current call-in provisions, appeals would only be permitted on points of law.

16. In officials' views, the above changes could be incorporated into the 100-day package.

17. Additional requirements would apply for priority applications that also require concessions from the Department of Conservation and other approvals, including from the Historic Places Trust and the New Zealand Transport Agency. These requirements may include enabling the applicant to lodge applications for all relevant

approvals, concessions etc at once and requiring other bodies to process these applications in parallel to the substantive consent i.e. to follow the same nine-month decision deadline.

18. Integration with other legislation is potentially a complex area, and it may not be possible to achieve this in time for the 100-day bill.

Transitional arrangements

19. Until a CPA is set up, an expanded call-in unit within the Ministry for the Environment would handle all call-in requests. In order to facilitate the transition towards a CPA, it would be helpful to introduce explicit powers into the RMA to provide for independent servicing of Boards of Inquiry and the commissioning of independent reports. The Ministry for the Environment would need additional resources to handle an increased number of call-in requests.

20. A process flow diagram setting out the above steps is shown at the bottom of this briefing note.

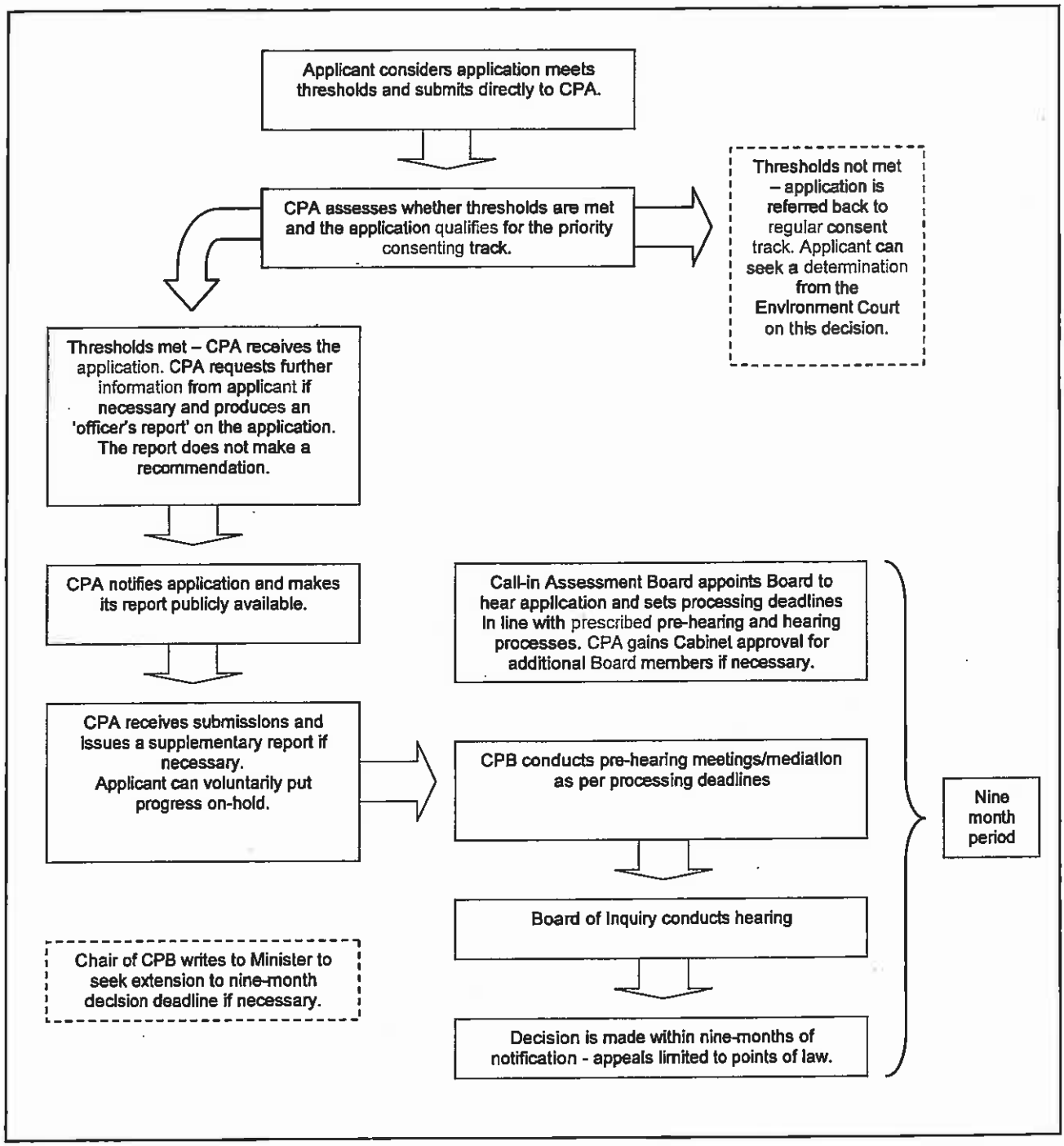
Retention of Ministerial discretion

21. There may be projects that fall outside of the threshold that would benefit from being called-in. For example, the Holcim cement plant near Oamaru (which is currently under appeal) has a capital value of around $300 million. However, it would not be eligible under the priority consent threshold as it would not fit the criteria of being infrastructure or public works (despite cement being a critical element of both types of projects). There may be future proposals that would have a significant adverse effect on the environment that would benefit from being considered by a central authority. In these instances, officials consider it important that the Minister for the Environment retains his or her discretion to use the call-in power.

Option 2: introduce entirely new priority consenting provisions into RMA

22. You could choose to introduce a similar consenting track into the RMA by drafting entirely new 'priority consent track' sections. We recommend against this, however. Applicants, councils and the community are beginning to develop some degree of familiarity with and understanding of the existing call-in provisions. Modifying these provisions is likely to be better understood by all parties and more readily accepted by applicants. Entirely new provisions will take some time to 'bed-in' and the resultant 'lag-time' may work to counter efforts to quickly facilitate timely and effective decision-making on priority projects. Creating unnecessary uncertainty would not be welcomed by industry.

Process flow diagram: modified call-in provisions to provide for priority consent track



Recommended actions

We recommend you:

(a) **Note** the contents of this briefing note – Priority projects: central processing authority. **Yes / No**

12/12/08

Sue Powell
General Manager, Local Government Group **Date**

13/12/08

Hon Dr Nick Smith **Date**
Minister for the Environment

PS: Minister requests discussion on this matter.

RECEIVED

Ministry for the Environment
Manatū Mō Te Taiao

NOTE FROM OFFICE: BRIEFING SEEN BIT DISCUSSION WITH OFFICES & CABINET PAPER PROCESS ODER TOOK MIN - SIGNING THIS BREIF

Subject of Briefing: '100 day' RMA reforms – national policy statements (NPS) and national environmental standards (NES)

Date:	17 December 2008	**MfE Priority:**	URGENT
Security Level:	IN CONFIDENCE	**Report No:**	-
		MfE Ref No:	08-B-1112

Action sought

	Action sought	Deadline
Hon Dr Nick Smith **Minister for the Environment**	**Note** the contents of this briefing	None

Ministry for the Environment contacts

Name	Position	Cellphone	Telephone	1st contact
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Rachel Treston	Senior Adviser, Standards	-	439 7725	
Tim Bennetts	Manager, RMA Policy	027 478 1470	439 7408	✓
Sue Powell	General Manager, Local Government Group	027 232 2689	439 7454	

Purpose of report

1. To advise you on '100 day' RMA reform amendment options for vital fixes and streamlining relating to National Policy Statements (NPS) and National Environmental Standards (NES). This report focuses on amendment options to help ensure NPS and NES are articulated in a timely way and to save council time and resources.

Background

2. Processes in the Act for developing NPS have generally worked well. Our main concern, however, is that implementation of NPS and NES – through plans – under Schedule 1 of the Act is time consuming and risks duplication of process.

3. We believe that streamlining processes to enable councils to make plan changes to give effect to NPS, without following the full Schedule 1 process, can be justified because NPS are Government mandated, and because they will already have been through a robust independent hearings process. A similar argument can be supported for enabling plans to be modified to be consistent with NES.

4. Implementation of the telecommunications facilities NES and the process of preparing drafting instructions for the electricity transmission NES has highlighted a number of amendments that are required for councils to implement these standards.

Amendment proposals

5. Streamlining processes for plan-making in response to NPS

The Act currently implies that councils may be able to introduce or remove objectives and policies in plans to 'give effect' to an NPS, without going through the full Schedule 1 process (section 55(2A)(b)). However, no such provisions are available for rule-making. It is highly questionable that rule-making to give effect to NPS mandated policies should still have to go through the time, cost and re-litigation of the full Schedule 1 process. To help councils fulfil their NPS duties, without undue barriers, and help articulate NPS policies in a timely way a streamlined process is suggested.

Suggested amendments:

- Clarify that councils may notify proposed plan changes to introduce, modify or remove objectives and policies, to give effect to NPS, by going through a truncated Schedule 1 process.
- Allow councils to notify proposed plan changes to introduce, modify or remove rules, terms or methods, to give effect to NPS, by going through a truncated Schedule 1 process.
- Limit appeals on the notified plan changes (rules, terms or methods only) to the Minister, affected Ministers of the Crown and councils, and iwi authorities and boards of foreshore and seabed reserve areas, and 'points of law'.

'Natural justice' can be served in part by the fact that anyone could make a submission to an independent board of inquiry, on a proposed NPS, and also because parties could still appeal resource consent proposals that affect them.

6. Streamlining processes for making changes to NPS

Proposed NPS that have been notified may arrive too early to benefit from the above proposals (paragraph 5). Therefore, it may be desirable that these NPS are reviewed or changed very soon after issue to allow them to be implemented through the proposed truncated plan-making process. Unfortunately, existing Act provisions about review or change of NPS are awkward and unclear. The ability for councils to use any truncated process without the NPS having to repeat the board of inquiry process is potentially

ruled out. We do not believe it would be necessary or desirable for an existing NPS to have to repeat the inquiry, time and costs of a board of inquiry.

Suggested amendments:

- Enable the review of an NPS any time, and allow changes (or revocation) to an NPS without going through a board of inquiry while allowing councils to undertake plan-making through a truncated process (similar to that described above in paragraph 5) together with general streamlining of NPS processes.

7. Streamlining processes for plan modifications in response to NES

NES regulations automatically override rules and terms in district and regional plans. It is not necessary for councils to change their plans because of NES, however it is considered good practice to do so to enable all relevant rules to be viewed in one document.

As the Act stands, any council that wants to update a plan to reflect a NES must go through a full plan change process pursuant to Schedule 1, which includes a duty to consult on and publicly notify changes. This is costly and time consuming for local authorities and the public, especially as standards are absolute and local variation is not possible in most cases.

Suggested amendments:

- Allow NES to specify when local authorities may amend plans without the need for a full Schedule 1 process.

8. Defining roles and responsibilities for NES

The Act does not clearly specify who is responsible for implementing and enforcing NES once they are in force. Recent experience by local government has indicated that there is a lack of clarity over who can issue a 'certificate of compliance' for a NES in cases where legal confirmation of compliance with a standard is requested. This is needed to provide certainty to industry that they are complying with NES permitted activity requirements.

Suggested amendments:

- Amend the Act to make it explicit that local authorities are responsible for implementing an NES, unless an NES states otherwise.
- Amend the Act to allow local authorities to issue certificates of compliance where activities are permitted under a NES.

9. Making minor amendments to NES

There is currently no provision under the Act to undertake minor corrections to a NES once regulations are in place. Any amendments must go through a full process, including public consultation. This is costly and time consuming.

Suggested amendments:

- Allow for minor technical corrections to a NES without further formality where an alteration is of minor effect and within the original policy intent of the regulation.

10. Improving linkages between NES and other sections of the Act

There are unclear linkages between NES and other sections of the Act. Apart from leading to confusion, there are some implications for those NES which specify rules that override existing rules in local authority plans. Where these standards have not been incorporated directly into plans via a plan change, they remain 'stand alone rules' which are not afforded the same rights as 'plan rules' throughout the Act. This current uncertainty is leading to unnecessary delays and costs associated with legal interpretation.

Suggested amendments:

- Amend numerous sections of the Act to explicitly refer to NES regulations (e.g. Part 3 of the Act).

Recommended actions

We recommend you:

(a) **Note** the contents of this briefing.

17/12/08

Sue Powell
General Manager, Local Government Group **Date**

Media Staff Referred: No

Hon Dr Nick Smith **Date**
Minister for the Environment

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Ministry for the Environment
Manatū Mō Te Taiao

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- 7 JAN 2009
MINISTER'S OFFICE

MFE
BY

ontent of phase two of RMA reform

ate:	6 Jan 2009	MfE Priority:	NON-URGENT
ecurity Level:	LOW	Number of Attachments:	Nil
		MfE Ref No:	09-B-00004

ction Sought

	Action Sought	Deadline
nister for the Environment n Dr Nick Smith	**Agree** that the potential content of phase two of the RMA reforms, as described in this briefing note, accurately reflects your intentions.	A response is required by ~~9~~ 20 Jan 2009. Confirmation that officials have accurately interpreted your intentions for phase two of the RMA reforms will help facilitate a timely process of drafting and departmental consultation.

nistry for the Environment Contacts

ne	Position	Telephone (cell)	Telephone (work)	1st Contact
lrew Schollum	Senior Adviser	027 2114455	439 7563	✓
Bennetts	Acting General Manager	027 4781470	439 7705	

Content of phase two of RMA reform

Executive Summary

Phase two of RMA reform will comprise three workstreams:

(a) *Amendments to further improve RMA processes*

The process of streamlining and simplifying RMA processes will not end with the first phase of reforms. Some possible amendments involve complex policy issues that will require further analysis and consultation that cannot be completed within the timeframe set for the first phase of reform. These amendments will be addressed in phase two of the reforms to ensure that Ministers have adequate opportunity to consider fully their potential implications. Similarly, the establishment of an Environmental Protection Agency with specific RMA responsibilities will further streamline processes but will not be able to be achieved within the first phase of reform.

(b) *Tackling the Tough Issues*

The RMA is the vehicle for dealing with some of the most controversial and contested environmental, social and sustainability issues facing New Zealand. Three key issues are: resource allocation mechanisms (specifically, but not limited to, water and coastal space); promoting better integration across legislation (including compensation arrangements); and urban design policy. Changes that have implications for other legislation beyond the RMA will, in most instances, require more consultation than the timeframe for the first phase of amendments allows.

(c) *Delivery, Monitoring and Evaluation*

The RMA reform must result in practical improvements on the ground. Effective implementation will therefore be a high priority and the performance of both local authorities and central government agencies will need to be improved. This will require comprehensive, proactive and ongoing monitoring and evaluation so that the government can track trends in RMA performance, and can accurately intervene where necessary.

The Phase Two RMA reforms should be framed as more specific in line with National's policy.

ie - Aquaculture
- Urban Design
- Water
- EPA

Content of phase two of RMA reform

Recommended Action

We recommend that you:

(a) **Agree** that the potential content of phase two of the RMA reforms, as described in this briefing note, accurately reflects your intentions. **Yes / No**

Tim Bennetts
Acting General Manager, Local Government Group

06/01/09
Date

Hon Dr Nick Smith
Minister for the Environment

7/10/09
Date

Content of phase two of RMA reform

Purpose of Report

1. To seek your confirmation that the proposed content of phase two of RMA reform accurately reflects your intentions.

Background:

2. You have indicated that reform of the RMA will proceed in phases with the first phase aiming to streamline and simplify processes, and a subsequent phase (or phases) addressing more complex matters where wider consultation and further analysis are required.
3. Officials are currently drafting the Cabinet Paper and Regulatory Impact Statement associated with the first phase of RMA reforms. This Cabinet Paper will need to contextualise the first phase of reforms within the Government's wider RMA reform agenda.
4. Confirmation that officials have accurately interpreted your intentions for phase two of the RMA reforms will help facilitate a timely process of drafting and departmental consultation.

Proposed content of phase two of RMA reform

5. Phase two of RMA reform will comprise three workstreams:

    - Amendments to further improve RMA processes
    - Tackling the Tough Issues
    - Delivery, Monitoring and Evaluation

Amendments to further improve RMA processes

6. There are further options to consider for simplifying consent and planning processes, beyond the amendments proposed the first phase of reform. The government will consider, for example, mandating greater consistency in plans and consent applications by developing a National Environmental Standard on information requirements for consent applications, standardising the structure, format and content of plans, and/or introducing a set of national definitions for key terms and concepts.

7. There is also an opportunity to increase the comprehensiveness and integration of central government input into local authority processes, by bringing more of a strategic perspective to such engagement through legislative and non-legislative measures. More specifically, there is a need to investigate further options for reducing real or perceived conflicts of interest in the Department of Conservation's various roles, and to consider reviewing the role of the Environment Court and the nature of appeals that are made to it.

Tackling the Tough Issues

8. There is widespread concern that the RMA does not facilitate effective and efficient resource allocation. Resource allocation problems are most keenly felt where resources are approaching or at full allocation: coastal aquaculture space, air-sheds and freshwater resources. The current first-come-first-served system of resource allocation evolved from case law during a period of lesser resource competition and in the absence of explicit central government direction or alternative approaches to allocation. Amendments to the RMA in 2005 increased the range of allocation options

available, but councils and consent holders have been reluctant use them – with the result that direct government involvement is now required. Particular actions could include:

- Developing quality and quantity goals that balance economic and environmental outcomes, perhaps through a collaborative approach with key stakeholders;
- Clarifying Maori interests in these resources, particularly with regards to the development of 'co-management regimes' between iwi and councils;
- Implementing technical and market-based measures to support the delivery of agreed goals, such as standards, trading systems, models, etc.

9. In phase two we will also consider whether overlaps between other legislation and the RMA affect infrastructure and priority development projects to a degree that warrants broader legislative review and amendment. An immediate focus will be on the interaction between the RMA and the compensation arrangements under the Public Works Act 1981 to ensure that compensation for compulsory land acquisition is handled as quickly, fairly and efficiently as possible. More generally, in phase two we will seek to ensure that other regimes affecting infrastructure and priority development projects, such as approval processes under the Historic Places Act 1993 and Conservation Act 1987, align as far as possible with the broader consents regime under the RMA.

10. The government is aware that some stakeholders in the local government, planning and property development sectors believe the RMA could work better in an urban context and officials have begun work on developing a National Policy Statement for Urban Design. In the lead-up to phase two of the RMA reforms consideration will be given to placing this work on hold and (a) implementing a broader review of the functioning of the RMA in an urban context (b) exploring new approaches to managing urban development. If existing work is placed on hold the government and stakeholders will need to agree on what outcomes are actually sought from the RMA with regards to urban issues. Once the desired outcomes are agreed, the government will be in a position to work with stakeholders to identify whether new approaches or legislative reform are needed to achieve them. This work will need to be undertaken alongside consideration of the overall balance between environmental protection and economic growth in the principles of the RMA

Delivery, Monitoring and Evaluation

11. Effective implementation, by both central government and local authorities, is critical to the success of the RMA reforms.

12. In phase two we will seek to further improve RMA implementation by revisiting some of the institutional arrangements in resource management decision-making. The first priority will be to develop an Environmental Protection Agency to administer the new priority consenting regime and, possibly, to undertake an expanded monitoring and review role.

13. The RMA already enables ministerial intervention and central government guidance via a range of existing mechanisms. Developing a more consistent approach to using these various tools and interventions would improve their effectiveness. This could be achieved in phase two by setting explicit 'triggers' for the exercise of ministerial powers, creating formal processes to review existing National Policy Statements and Environmental Standards, or identifying/considering whether new Statements and Standards are needed. Phase two could also see the development of direct an

overarching government policy statement governing the use of central government RMA intervention powers and clarifying expected environmental, social and economic outcomes.

14. Phase two amendments will be complemented by guidance and communications material so that local authorities fully understand how changes will affect them and how they are expected to respond. Central government will also improve its monitoring of local authorities and the performance of the RMA against clearly articulated expectations. In this regard, the division of responsibilities between the Parliamentary Commissioner for the Environment, the Ministry for the Environment and the Environmental Protection Agency will need to be clearly articulated.

Next Steps

15. Each of the three workstreams described above will involve varying levels of analysis and consultation, and are likely to proceed on different timelines. Officials will report back to Cabinet with proposed terms of reference and timelines for each of the workstreams by 31 March 2009.

Ministry for the Environment
Manatū Mō Te Taiao

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Review of the Resource Management Act 1991: Phase One Proposals

Date:	16 January 2009	**MfE Priority:**	URGENT
Security Level: None		**Number of Attachments:** ~~3~~ 2 1) Cabinet paper ~~2) 'Cabinet 100', consultation notification~~ – PHIL has this 3) Copy of Executive Summary and recommendations from the Cabinet paper	
		MfE Reference No:	09-B-0141

Actions Sought

	Actions Sought	**Deadline**
Hon Dr Nick Smith **Minister for the Environment**	**Note** the content of this briefing **Agree** and **sign** the Cabinet paper (MfE Ref No. 09-C-0020) **Note** the Regulatory Impact Analysis **Sign** the 'Cabinet 100' notification.	Monday, 26 January 2009 This deadline is to ensure that drafting by the PCO can occur in time to introduce legislation by mid-February 2009.

Ministry for the Environment Contacts

Name	**Position**	**Cellphone**	**Telephone**	**1st Contact**
Tony Appleyard	Senior Adviser, RMA Policy and Functions	-	439 7723	
Tim Bennetts	Manager, RMA Policy and Functions	027 478 1470	439 7408	✓
Sue Powell	General Manager, Local Government Group	027 232 2689	439 7454	

Review of the Resource Management Act 1991: Phase One Proposals

Executive Summary

We seek your agreement to the attached Cabinet paper that sets out policy recommendations to simplify and streamline processes under the RMA.

You are scheduled to meet with the TAG on Tuesday 20 January to discuss the proposals. You will need to be comfortable with the proposals and sign off on the paper before submitting it to the Cabinet Office by 10.00 am on Wednesday 21 January.

A copy of the Executive Summary and the recommendations from the Cabinet paper are attached to this note for your information.

You will note in the recommendations that there are several areas where the views of officials do not align fully with the proposals of the TAG. We provide comments on these areas in paragraph 9 of this briefing note.

Recommended Actions

We recommend that you:

(a) **Note** the contents of this briefing

(b) **Agree** and **sign** the attached Cabinet paper **Yes / No**

(c) **Sign** the attached consultation notification ('Cabinet 100') **Yes / No**

16/1/09

Sue Powell **Date**
General Manager, Local Government Group

Referred to Ministry Communications Staff: **No**

18/1/09

Hon Dr Nick Smith **Date**
Minister for the Environment

Purpose of Briefing

1. To seek your agreement to the attached Cabinet paper that sets out policy recommendations to simplify and streamline processes under the RMA.

Background

2. We have worked with your Technical Advisory Group (TAG) and an interdepartmental group of officials to develop a Phase One package of amendments to the RMA.

3. The policy proposals contained in the attached Cabinet paper need to be confirmed on Monday 26 January 2009, to enable the legislation to be drafted by the Parliamentary Counsel Office for introduction in mid-February.

4. You are scheduled to meet with the TAG on Tuesday 20 January to discuss the proposals. You will need to be comfortable with the proposals and sign off on the paper before submitting it to the Cabinet Office by 10.00 am on Wednesday 21 January.

5. The Cabinet paper is set out in nine parts. These are:

   - (Part A) Frivolous, vexatious and anti-competitive objections
   - (Part B) A new consenting path for significant projects
   - (Part C) Providing for an Environmental Protection Authority (EPA)
   - (Part D) Improving plan development and change processes
   - (Part E) Improving resource consent processes
   - (Part F) Improving national instruments
   - (Part G) Improving compliance mechanism effectiveness
   - (Part H) Improving decision making
   - (Part I) Other matters to improve workability

6. A detailed analysis of each Part, along with a set of associated amendments, is included in the Cabinet paper. A copy of the Executive Summary and the recommendations from the paper are attached to this note for your information.

Comment

7. The approach the paper adopts to the establishment of an EPA, in Phase One, is as a transitional measure, the roles, functions and powers of the EPA will be exercised by the Secretary for the Environment. The Secretary will delegate these functions to his or her employees, to allow the administrative work to be carried out by a dedicated unit. Advice from the Minister of State Services will be required on what measures will be necessary to make an EPA independent from the Government, and to be able to act freely from direction from the Minister for the Environment.

8. Many of the administration costs incurred by an EPA in administering a Significant Project Path process will be able to be cost-recovered from applicants. The establishment of a stand-alone unit will require at least one manager and in the order of three full time equivalent employees, plus the establishment of new systems and processes. It is estimated that the initial establishment cost will be approximately $1 million.

9. You will note in the recommendations that there are several areas where the views of officials do not align fully with the proposals of the TAG. These are:

   1) That the non-complying activity class is removed from the RMA (Rec 34)

      We consider that the impacts of such a change are significant and should be studied further as part of phase two. Removal of the non-complying category would impose costs to local authorities and to the community in the transitional period, as plans would need to be updated in response.

   2) That rules in proposed plans should have no legal effect until such time as decisions have been made and notified on related submissions, except to protect natural resources and heritage sites (Rec 38)

      We consider that proposed plans need to have weight to protect resources from 'gold rush' behaviour by resource users. Excepting natural resources and heritage sites means that these matters would need to be carefully defined to avoid confusion or abuse of process.

   3) That appeals on plans be limited to questions of law, except in cases where the appellant has sought the leave of the Environment Court for questions of merit to be considered (Rec 39)

      The Ministry of Justice and other officials consider the appeal right is a fundamental right, and there has been insufficient time to consider the implications of this option

   4) That the ability to create for blanket tree protection in urban areas be removed from the RMA (Rec 44)

      We agree that this may reduce the number of consents in cities such as Auckland, but it is not necessarily a problem in other parts of the country. We consider that other options exist to encourage local authorities to adopt alternatives approaches to blanket rules (such as NES), that would be more tailored and not require changes to the RMA

   5) That the requirement for district plans to give effect to national policy statements and the New Zealand Coastal Policy Statement be replaced by the lesser duty to 'not be inconsistent with' (Rec 59)

      We consider that this change would greatly reduce the effectiveness of national policy statements to set national direction, and render the ability of regional policy statements to coordinate the plans of territorial authorities substantially

   6) That provisions relating to restricted coastal activities are removed from the RMA (Rec 80)

      We have mixed views about the benefit of this proposal and note that the timing in Phase One does not allow for implications for the New Zealand Coastal Policy Statement review or foreshore and seabed ownership and Treaty settlement implications to be considered.

Ministry for the Environment
Manatū Mō Te Taiao

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Security for Costs and Plan Change Statistics

Date:	30 January 2009	**MfE Priority:**	Non-Urgent
Security Level:	None	**Number of Attachments:**	Nil
		MfE Ref No:	09-B-00270

Action Sought

	Action Sought	**Deadline**
Minister for the Environment Hon Dr Nick Smith	Note contents.	5 February 2009

Ministry for the Environment Contacts

Name	**Position**	**Telephone (cell)**	**Telephone (work)**	**1st Contact**
Richard Hills	Senior Advisor		439 7532	✓
Tim Bennetts	Manager: RMA Policy and Functions	027 478 1470	439 7408	
Sue Powell	General Manager: Local Government Group	027 232 2689	439 7454	

Information provided to Private Secretary for Speeches. Phil

Executive Summary

Security for Costs

Prior to a case being heard in court, a party that is required to defend an appeal can apply to that court for an order requiring the other party that made the appeal to provide sufficient upfront funds as a bond in case costs are awarded against them. This is known as requiring "security for costs".

Up until the 1996 amendment to the RMA, the Environment Court only had the power to order incorporated societies to provide security for costs. Between 1996 and 2003, the Environment Court had the ability to require any person to provide security for costs. The ability to order security for costs was removed entirely from the RMA by the 2003 amendment.

A search of environmental law databases found 35 cases where an order to provide security for costs was sought by at least one of the parties in Environment Court. Of the 35 cases, 25 appeared to have been before the Environment Court in the period the 1996 amendment to the RMA was in force.

Security for costs only appears to be been ordered by the Environment Court on eight occasions. The highest security that was required to be provided was $30,000.

Plan Changes

The Ministry for the Environment receives notice of between 150 and 250 plan changes each year. Of the 692 plan changes received since January 2006, 534 (77%) were yet to be made operative as at 25 January 2009.

Recommended Action

We recommend that you:

(a) **Note** the content of the briefing

Sue Powell
Local Government Group

Date 3/2/09

Referred to Ministry Communications Staff: No

Hon Dr Nick Smith
Minister for the Environment
Minister for Climate Change Issues

Phil Gurnsey
Private secretary

Date 4/2/09

Purpose of Report

1. To provide you with an overview of how security for costs were applied in the Environment Court until removed from the RMA in 2003, and to provide statistics on plan changes being processes by local authorities.

Background:

2. To provide some background to the policy proposals being put forward in the first phase of the review of the Resource Management Act you requested information around security for costs in Environment Court cases.

3. You also requested information of the number of plan changes that were processed by councils each year, and the number of plan changes that have yet to be made operative.

Security for Costs

4. The Environment Court has the ability to order one party to pay money to another party to offset the expenses incurred in a hearing. Such orders are often referred to as 'costs'.

5. Prior to a case being heard in court, a party that is required to defend an appeal can apply to that court for an order requiring the other party that made the appeal to provide sufficient upfront funds as a bond in case costs are awarded against them. This is known as requiring "security for costs".

6. Prior to 1996 the Environment Court was known as the Planning Tribunal and it had the powers of a District Court, though only in regard to specifically listed matters. The powers enabled the Planning Tribunal to require security for costs against incorporated societies only, by virtue of section 17 of the Incorporated Societies Act 1908.

7. In 1996, section 278 of the RMA was amended giving the [newly named] Environment Court the same powers as a District Court, without the limitations that previously existed. This meant that the scope to require security of costs was automatically widened to include parties that were not incorporated societies.

8. The Environment Court's power to award security for costs against all parties was removed from the RMA in 2003 through the insertion of a new s.284A. Environmental and community groups supported this change as they felt that the threat of security of costs deterred appeals and, in conjunction with other proposed amendments, further reduced public participation in the Act.

9. A search of environmental law found that there have been 36 cases relating to security for costs over the entire life of the RMA (17 years).

10. In the period between 1996 and May 2003, when the Environment Court was able to require security of costs from any party, security for costs was sought in 25 instances. On 7 (28%)of the 25 occasions, the court required the appellant to provide security of costs.

11. Since May 2003, there have been further six cases relating to security for costs. In one case, security of costs were awarded, while in the other cases the Environment Court noted that the RMA had been amended to remove the ability of the Court to require security for costs.

12. A summary of the main statistics for security for costs are contained in the table below:

Year of Court Decision	Number of Cases where security for costs was sought	Number of Cases where Court ordered security for costs	Highest level of security required.
1993	2	0	N/A
1997	4	0	N/A
1998	4	0	N/A
1999	3	1	$30,000
2000	7	4	$20,000
2001	4	1	$8,000
2002	4	0	N/A
2003	5	1	$3,000
2004	1	0	N/A
2005	1	1	Not known
Totals Cases / Costs	**36**	**8**	**$84,000**

Plan change statistics

13. The Ministry for the Environment database of plan changes contains complete information of all the plan changes the Ministry has been sent for three years (the period since January 2006). In addition, data from the 2005/2006 Biennial Survey of Local Authorities provides an indication of the number of plan changes in 2005.

14. The number plan changes each year since 2005 are shown in the table:

Year	Number of Plan Changes
2005	147
2006	249
2007	255
2008	188

15. Of the 692 plan changes received since January 2006, 534 (77%) were yet to be made operative as at 25 January 2009.

Ministry for the Environment
Manatū Mō Te Taiao

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Subject of Briefing: Certificates of Compliance

Date:	9 February 2009	**MfE Priority:**	Non-urgent
Security Level:	NONE	**Number of Attachments:**	Nil
		MfE Ref No:	09-B-343

Action Sought

	Action Sought	Deadline
Minister for the Environment Hon Dr Nick Smith	1. Discuss with officials; 2. Decide on interim role of EPA for certificates of compliance	13 February 2009

Ministry for the Environment Contacts

Name	Position	Telephone (cell)	Telephone (work)	1st Contact
Natasha Tod	Senior Adviser, RMA Implementation		04 439 7716	✓
Tim Bennetts	Manager, RMA Policy and Functions	027 478 1470	04 439 7408	
Sue Powell	General Manager, Local Government Group	027 232 2689	04 439 7454	

Briefing not signed
Issue resolved in oval discussion with minister on 11/2/09
No need for briefing.
Phil Gurnsey
12.2.09

Executive Summary

1. Cabinet agreed on 2 Feb 2009 to enable the EPA to issue certificates of compliance. Certificates of compliance are not mandatory, and can only be granted for activities which comply with the permitted activity standards of a plan.
2. The EPA would need to be given the explicit power of a consent authority to enable it to issue certificates of compliance beyond those which relate to called-in proposals. The proposed transitional arrangements for the EPA agreed by Cabinet do not adequately provide for the EPA to be given the power of a consent authority (i.e. decision-maker powers).
3. Receipt and assessment by the EPA of all certificates of compliance applications received is expected to require at least 4-5 FTEs, and specialised legal resourcing.
4. Liability and risk of judicial review need to be very carefully considered should the EPA have this function.
5. Of the three alternatives suggested in this briefing, the preferred option (option 3) is that the EPA power to issue certificates of compliance be transitionally limited to those associated with called-in proposals of national significance, and at a later stage (when the EPA has full functionality) determine whether the power be extended to other situations.

Recommended Action

We recommend that you:

(a) **Agree** that the EPA powers to issue certificates of compliance be transitionally limited to those associated with ~~called-in~~ proposals of national significance, ~~and at a later stage (when the EPA has full functionality) determine whether the power be extended to other situations.~~ as discussed with officials on 11/2/09 **Yes / No**

9/2/09

Sue Powell
General Manager
Local Government Group

Date

Referred to Ministry Communications Staff: No

Hon Dr Nick Smith
Minister for the Environment

Date

Purpose of Report

6. You have indicated that you want the new Environmental Protection Authority (EPA) to be able to issue certificates of compliance. This briefing note raises several issues that need to be considered when giving the EPA such a function.

Background:

7. Cabinet agreed (2 Feb 2009) to enable the EPA to issue certificates of compliance.
8. The EPA is being set up initially to provide efficient and timely administration of proposals of national significance.
9. Consent authorities have the role of issuing certificates of compliance for activities which are permitted by the RMA or a plan. Certificates of compliance are not mandatory - according to the biennial survey of local authorities around 1200 certificates of compliance are issued each year.
10. Certificates of compliance can only be issued for activities which comply with a plan. Such activities have to be able to meet the permitted activity standards, terms and conditions in the plan.
11. There is value in the EPA having the ability to issue certificates of compliance for permitted activities associated with called-in proposals so the proposal can be dealt with in its entirety. This would be consistent with the interim role of the EPA, although will need to be specifically provided for in the set up of the EPA.
12. To provide the EPA responsibilities in relation to certificates of compliance further than this (i.e. to all permitted activities) raises several aspects requiring further consideration.

Authority for the EPA to issue certificates of compliance

13. The proposed interim arrangements for the EPA agreed by Cabinet do not currently adequately provide for the EPA to be given the power of a consent authority for decision-making. The functions discussed to date with the State Services Commission are for the EPAs role to be one of assessing and advising only, as decisions are made by a board of inquiry.
14. The EPA would need to be given the explicit decision making power of a consent authority to enable it to issue certificates of compliance beyond those which relate to called-in proposals

Resourcing and financial implications

15. Local authorities are resourced and structured to provide for the function of issuing certificates of compliance.
16. Should the EPA duplicate this function it would need to maintain an up-to-date library of all 130 operative plans, all proposed plans (at least 10) and approximately 600 plan changes to ensure it was accurately assessing all applications it received for certificates of compliance.
17. The EPA would need to be given the power to request information from local authorities, to ensure this library is kept up to date.
18. Dedicated staff within the EPA would need to be familiar with these planning documents. If the EPA had a broad function in relation to certificates of compliance it is possible that around 600 applications may be received by the EPA annually. This function is expected to require a minimum of 4-5 FTEs exclusively to handle the

application assessment workload for certificates of compliance, as well as specialised legal resourcing and administrative support.

19. The EPA would be able to recover from the applicant a portion of costs associated with issuing certificates of compliance. Local authorities do this either through fixed fees or by recovery of the actual and reasonable costs.

Liability and risks

20. Certificates of compliance typically show than an activity complies with a plan and therefore does not require a resource consent. If granted in error, it can deny an affected party the ability to have a say in a proposal that affects them.
21. Because there are no appeal rights in respect of certificates of compliance, the only redress is through judicial review.
22. Judicial review can impose significant costs on both the party seeking a review, and the party (the EPA) in defending its decision.
23. We consider that with such a large number of plans and plan changes to consider, there is a considerable risk of plans being misinterpreted.
24. Liability and risks needs to be very carefully considered should the EPA have the function of issuing certificates of compliance.
25. To minimise risk to the EPA would need to consult with each of the relevant councils, to ensure correct interpretation of each plan, that it has the most up-to-date version, and is aware of any recent plan changes.
26. A range of processes would need to be developed by the EPA to ensure applications are accurately assessed, and copies of applications and certificates are provided to the relevant council which retain compliance and enforcement responsibilities.

Alternatives

27. Option 1: The EPA coordinates obtaining the certificates from Local Authorities. This avoids liability issues and requires less additional resourcing.
28. Option 2: The EPA power to issue certificates of compliance is limited to those associated with called-in proposals of national significance.
29. Option 3: The EPA power to issue certificates of compliance is initially limited to those associated with called-in proposals of national significance, and at a later stage (when the EPA has full functionality) determine whether the power be extended to other situations.
30. Officials recommend Option 3 as a preferred option.

NZ TRANSPORT AGENCY
WAKA KOTAHI

MINISTERIAL BRIEFING NOTE

Name of Agency	New Zealand Transport Agency
Contact Person	Ernst Zöllner, Acting Chief Executive
Contact Details	DDI 64 4 894 6219 M 021 241 5308 E ernst.zollner@nzta.govt.nz
Date	23 January 2009
Subject	Review of the Resource Management Act 1991: Phase 1 proposals

Purpose of Report

1. To bring to your attention significant implications for the planning, funding and operation of transport infrastructure contained in the cabinet paper titled Review of the Resource Management Act 1991: Phase 1 proposals (the paper); and
2. To suggest potential amendments to ensure the anticipated outcomes sought in respect of transport infrastructure are achieved.

Context

As a member of the cross-departmental officials working group, the NZTA has provided written and verbal feedback to MFE on earlier drafts of the paper. While some issues have been addressed through this drafting process, NZTA is concerned about the implications of several recommendations in the paper. We have identified these concerns from our perspective as an experienced, significant and frequent user of the RMA process as both an applicant and an affected party.

We understand that MOT share these concerns and we expect they are also shared by other operational infrastructure agencies who are not members of the officials working group such as Housing, Education, Corrections.

Key Implications

1. Amended call-in provisions

   Earlier drafts of the paper proposed to establish a new process to 'fast track' RMA approval processes for regionally and nationally significant infrastructure projects. NZTA supported this process in principle, but it has now been replaced by a proposal to amend call-in provisions. However, the current and proposed call-in provisions have no explicit reference to infrastructure or regionally significant projects, and are therefore unlikely to result in many transport projects being fast-tracked through the RMA process.

   To date, call-in provisions have not been used to progress any transport projects. This is principally for the following reasons:

   a. Uncertainty as to what transport projects would be considered nationally significant by the Minister for the Environment, and therefore qualify for call-in. While a small number of 'mega-projects' such as the Waterview Connection and Transmission Gully may qualify, we doubt other transport projects, especially those of regional significance, would be eligible e.g. Whangamoa South Realignment ($38m) in Nelson and Rotorua Eastern Arterial ($70m).

b. Under current RMA provisions, the call-in process is not subject to any statutory timeframes and consequently the NZTA (and formerly Transit NZ) has been reluctant to consider call-in as a mechanism for fast-tracking approvals. While the cabinet paper goes some way towards addressing these concerns by specifying a nine month time limit on call-in decisions post notification, no timeframes are proposed prior to notification of the application. Certainty around these issues would significantly improve the effectiveness and efficiency of call-in.

c. Under current RMA provisions, appeals on decisions made by the Board of Inquiry can only be made to the High Court on points of law. This is a significant difference to the wide range of appeal rights and negotiation options under standard Council/Environment Court proceedings, each of which provide NZTA with the opportunity to ensure a project fulfils RMA requirements in an affordable manner. The fact that call-in is essentially a 'one-stop shop' for approval therefore places a significantly higher onus on all parties to ensure the efficacy of the decision and supporting conditions.

In order to improve the workability of the call-in process, we suggest the following amendments:

- Amend eligibility and decision making criteria of call-in provisions to capture transport projects of national and *regional* significance.
- Introduce a three month statutory timeframe from lodgement of an application for determining the eligibility of a project for call-in and publicly notifying the application. This would provide certainty that a transport project would take no more than twelve months to obtain statutory approvals under the RMA.
- Retain the existing ability for parties to comment on any aspect of the draft report from the Board of Inquiry.

2. Removal of requirements for territorial authorities to review district plans every 10 years

NZTA is concerned that the statutory requirement for territorial authorities to review district plans every 10 years is to be removed. Plan reviews initiated by a council on behalf of its community are the main opportunity to achieve alignment between transport planning, land use planning and long term council community planning processes.

Without a mandatory review requirement there is little incentive for councils to make these changes, and this could significantly reduce the economic and social benefits of aligning transport and land use planning. The NZTA would need to initiate private plan changes across the country to achieve these integrated planning outcomes, which would be highly undesirable. The NZTA also sees a wider risk that plan reviews would become developer led, rather than community led.

In order to address these concerns the following amendment is suggested:

- Amend the district plan review provisions to ensure that no part of a plan remains without review for more than 10 years.

3. Removal of non-complying activity status

It is proposed that non-complying activities be deleted from the RMA and become full discretionary activities. The NZTA is concerned that this fails to consider the different assumptions underpinning discretionary and non-complying activities. Non-complying activities are not anticipated to occur in an area or zone and therefore the onus is on the applicant to demonstrate the appropriateness of the activity and its associated effects. For discretionary activities the presumption favours the applicant

in so far as the activity and associated effects are anticipated. The applicant therefore has stronger ability to demonstrate the appropriateness of an activity in a particular area.

In a transport context, non-complying activity status gives a clear signal to developers that their proposal may not be compatible with the surrounding environment including transport networks.

In order to address this concern the following amendment is suggested:

- Retain non-complying activity status.

4. Limitation on appeal rights

The NZTA is concerned about the proposal to limit appeals on policy statements and plans to points of law (with appellants having the ability to seek leave to appeal on merit). A large number of the appeals we are involved in seek amendments to clarify the meaning of ambiguous provisions and to ensure workable planning frameworks. These are not legal issues and are often resolved by agreement. However, the existing appeal processes are essential to provide these opportunities for resolution. Having to seek special leave from the Court to address these issues would unnecessarily add cost, time and make the planning process more litigious.

In order to address these concerns the following amendment is suggested:

- Retain existing appeal rights in respect of policy statements and plans.

5. Designations and public works

It is understood that TAG will provide Cabinet with a separate paper on a range of matters, including a proposal to remove decision making responsibilities from requiring authorities. It is also understood that Phase 2 of the RMA review will include a workstream to address improving infrastructure provisions relating to the Public Works Act.

The NZTA strongly believes that decision making responsibilities of requiring authorities should be considered as part of a wider review of designation provisions, which are inextricably linked to the Public Works Act. As the only requiring authority on the officials working group, we do not believe appropriate consideration has been given to the potential implications of such changes. We also believe there is potential to streamline the designation process, which would improve the delivery of transport infrastructure.

In order to address these concerns the following amendment is suggested:

- Retain existing decision making ability of requiring authorities.
- Undertake a comprehensive review of designation and public work provisions in Phase 2.

Next steps

The NZTA will continue to work closely with MOT and other officials during the remainder of Phase 1 and Phase 2 of the review. We will ensure significant issues and/or points of concern are raised with you.

Ministry of **Transport**
TE MANATU WAKA

MINISTRY OF TRANSPORT REPORT

Subject: RMA REVIEW PHASE 1 - UPDATE

Date: 30 January 2009 **Docmin No.:** WGTA10947

Attention: Hon Steven Joyce (Minister of Transport)

Purpose of Report

1. To update the Minister on relevant changes to the proposals to amend the Resource Management Act (RMA), in advance of consideration by Cabinet on Monday 2nd February 2009.

Executive Summary

2. As you will be aware, the Ministry and the New Zealand Transport Agency (NZTA) made comment to the Ministry for the Environment ahead of Cabinet Business Committee consideration of the RMA on Monday 26th January 2009. Subsequently, further comment has been made and meetings held between yourself, the Minister for the Environment, the Technical Advisory Group (TAG) and officials.

3. At this point, the content of the Cabinet Paper is largely supported by the Ministry and the NZTA. There remain some issues of contention, but none involving revised processes that cannot be overcome with altered and improved management by Ministry officials, the NZTA and the transport sector.

4. There are a range of proposals that have little impact on the transport sector, but are expected to have widespread public interest, particularly proposals to reduce public participation in planning processes, resource consents and appeal rights.

Appeals from Call-in Process

5. The Minister for the Environment has sought opinion on the split recommendation below:

29. Either *[Supported by Minister for the Environment and Technical Advisory Group]*

29.1 ***agree*** *that appeals on decisions made by the Board of Inquiry can only be made to the Court of Appeal and are restricted to questions of law*

OR *[Supported by Attorney-General]*

29.2 ***agree*** *that appeals on decisions made by the Board of Inquiry can only be made to the High Court on questions of law, and that any further appeal to a higher court shall only be made with the leave of that court*

6. The Ministry considers that this is more of a constitutional issue, than of operational significance to the transport sector. The emphasis of the call-in process is very much as a

"one-chance" process, with appeal rights being confined to points of law in any event. For transport projects, it is unusual to be pursued after a single appeal and certainly not beyond the High Court. Accordingly, the Ministry has no material view on either option.

Remaining Issues of Contention

7. Overall, the Ministry and the NZTA support the changes proposed in Phase 1 of the Review. There remain some outcomes that are not ideal, primarily from the perspective of the NZTA. These issues below have been fully discussed and, if adopted in their current form, will require operational changes, which can be achieved, in order to attain timely project outcomes. Issues that remain are:

- Projects qualifying for call-in (Recommendation 16) – the change to include "national networks" in the criteria is supported. However, it is noted that port, local road and airport infrastructure will not explicitly be captured, but may still fall within the general call-in powers. Note the references to the "relevant Minister" in Recommendations 17-25 relate to the Minister for the Environment or the Minister of Conservation.
- Loss of non-complying activity status (Recommendation 46) – the effects of this will be wide-ranging. However, the three year implementation period will allow this to be managed.
- Ability to appeal local authority decisions on district plans (Recommendation 54) – appeals are currently utilised widely by the NZTA, ports and airports in order to reach more reasonable outcomes. An unfettered ability to appeal is seen as a significant quality control mechanism over district and regional plans and transport officials would prefer it to be retained. However, no changes are sought.
- Change of decision-maker on designations (Recommendation 94) – this will involve a more substantial shift in influence (balance of power) over the process than may be immediately apparent from the relatively simple change in the Bill. However, this issue can also be managed operationally.

Other Issues of Wider Public Interest

8. There are several issues that are likely to have widespread public interest, that have been considered by the Ministry and the NZTA, but are expected to have little impact on the transport sector. These include:

- reorienting the assumptions around notification of resource consents away from public participation;
- limiting the ability to appeal and increasing provisions for costs to be awarded;
- direct referral to the Environment Court (with agreement of the local authority);
- requirements to improve processing timeframes by local authorities;
- increasing penalties for offences under the RMA and removal of Crown protection from prosecution; and
- the ability for any party to require a matter to be heard by independent commissioners.

Recommendations

The recommendations are that you:

(a) **Note** the contents of this brief and draw on it as required for any Cabinet discussion. Yes/No

Priority Routine **Security Level** In-confidence **Deadline**

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested First Contact
		Direct Line	After Hours	
Ian Clark	Manager, RMA Review	04 439 9385	021 469 177	✓
Matthew McCallum-Clark	Consultant	04 439 9019	027 221 3363	

Ian Clark
Manager, RMA Review

pp Elizabeth Anderson
General Manager, Land Transport Investment and Development

MINISTER'S COMMENTS:

MINISTER'S SIGNATURE:

DATE:

☐ *Noted*	☐ *Seen*	☐ *Approved*
☐ *Needs Change*	☐ *Referred to*	
☐ *Withdrawn*	☐ *Not Seen by Minister*	☐ *Overtaken by events*

Ministry of **Transport**
TE MANATU WAKA

MINISTRY OF TRANSPORT REPORT

Subject: RMA REVIEW - PHASE 1

Date: 23 January 2009 **Docmin No.:** WGTA10905

Attention: Hon Steven Joyce (Minister of Transport)

Purpose of Report

1. To update and advise the Minister with respect to the Cabinet Paper on the proposed Phase 1 amendments to the Resource Management Act 1991 (RMA), which is to be presented to Cabinet Business Committee on Monday 26 January 2009 and to Cabinet on Monday 2 February 2009.

Executive Summary

2. The RMA changes proposed in the Cabinet Paper are generally supported by the Ministry of Transport (the Ministry) and the New Zealand Transport Agency (NZTA).

3. While the proposed extensions to the 'call-in' powers are helpful, these need further refinement and expansion, to enable a wider range of transport projects to be called-in and benefit from the additional certainty and reduced timeframes.

4. A number of plan development refinements are proposed that will impact at an operational level, particularly on the NZTA. Many of these changes are not particularly urgent, and could be deferred for more thorough consideration in Phase 2 of the review.

5. Work towards Phase 2 of the RMA review is underway and a brief will be forwarded on the relevant matters in due course.

Background

6. Phase 1 of the RMA review is part of the 100-day legislative programme to improve efficiency and timeliness of approval processes. Of particular interest to the transport sector, it amends some of the provisions relating to 'call-in' powers which are intended to make consenting large projects more efficient and certain.

7. The scope of Phase 2 of the RMA review is still being developed. More contentious and complex issues have generally been deferred to Phase 2. Work toward Phase 2 is already underway, and a briefing will be forwarded in due course. Phase 2 may involve a full review of the designations provisions and the relationship with the Public Works Act 1981.

8. The Minister for the Environment has established the fully independent Technical Advisory Group (TAG) to provide advice to Ministers on improvements to the RMA. The Ministry and NZTA officials have been involved in the Officials' Working Group on the proposals to amend the RMA, which has been led by the Ministry for the Environment. While the response to the Ministry and the NZTA input has been generally positive, there remain significant issues for

your consideration, primarily with respect to the ability for transport projects to benefit from the revisions to the 'call-in' process.

9. The Ministry has consulted with the NZTA in the preparation of this advice, and it incorporates the issues of significance to the NZTA.

Issues for Consideration

Part B – Proposals of National Significance

10. For some time there has been concern that important infrastructure projects have been delayed by RMA processes and that insufficient weight has been given to wider benefits in decision-making. The proposed amendments to the Minister for the Environment's existing 'call-in' provisions are intended to remedy this. A new Environmental Protection Authority (EPA) will act as the administrative agency for all applications that are 'called-in'.

11. The existing 'call-in' provisions give the Minister for the Environment the discretion to prescribe the processing method for an application that has "national significance". Typically such applications are heard and decided on by a Board of Inquiry, headed by an Environment Court judge. "National significance" is defined under the RMA, in *environmental* (but not economic or social) terms, and includes such circumstances where a proposal:

    (a) has aroused widespread public concern about its effects on the environment;

    (b) involves or is likely to involve significant use of natural and physical resources;

    (c) affects a structure, feature, place or area of national significance;

    (d) affects more than one region or district;

    (e) involves new technology or processes that may affect the environment; or

    (f) impacts on New Zealand's international obligations.

12. The proposed amendments are aimed at improving the call-in processes and procedures, with a view to their more frequent use. The primary gains occur through efficiency of process, with the EPA focus being solely on large projects, a standing panel of Board members and limitation of appeal rights to points of law to the Court of Appeal.

13. While generally supporting the revision of the call-in regime, the Ministry and the NZTA are concerned that only a small number of transport projects are likely to benefit from the proposals.

14. It is considered that there will be important, regionally significant, projects that will not meet the criteria for "national significance". It is conceivable that very few transport projects would qualify for call-in because they may not qualify under the current national significance threshold. Such projects as Transmission Gully, Christchurch Southern Motorway, Rangiriri Four Laning (a part of a Waikato Expressway) and Homer Tunnel (Milford Sound) safety improvements, are large and important but their "national significance" in environmental terms is questionable. In addition, projects such as major new schools in Auckland and significant local infrastructure projects (such as irrigation schemes, water, wastewater, stormwater systems and transport projects) are unlikely to qualify. There may also be implications for the Government's economic stimulus package, although the timeframe for

implementation of the proposed RMA changes may exclude assistance with the Government's short-term objectives.

15. The Ministry and the NZTA are of the view that the power to call-in projects should be widened to include infrastructure projects that have regional significance.

16. The Cabinet Paper also specifies a new nine month timeframe for the processing of called-in applications. However, there is an 'acceptance' process to be carried out by the EPA and Minister for the Environment prior to this nine month timeframe beginning. The Ministry, the NZTA and other officials have noted that in the absence of a defined overall timeframe or a timeframe for these early steps, there is potential for unexpected timeline slippage. A timeframe of no more than two months for these initial steps should be adequate.

Part D – Plan Development Processes and Part F – Improving National Instruments

17. District and regional plan development under the RMA framework is a lengthy and costly process for both local authorities and the public. A number of amendments are proposed to simplify plans, with fu ther amendments being suggested as a part of the Phase 2 proposals.

18. Primary issues:

18.1. The non-complying activity class of resource consents is proposed to be phased out over three years. The Ministry and the NZTA, together with other officials, consider this issue should be reviewed more fully in Phase 2. The Ministry and the NZTA consider that the implications of this change are complex. Non-complying activity status generally signals an inappropriate activity. For example, unsafe accessways onto roads or houses under noisy airport flight paths might be non-complying activities. Downgrading the status of these kinds of activities may make them harder to oppose and consequently have safety and long term efficiency implications.

18.2. The TAG and Ministry for the Environment have suggested limiting appeal rights on plans to points of law, unless leave is obtained from the Environment Court. Other officials, including the Ministry and the NZTA do not support this position, as the quality of plans is often such that appeals are required to resolve a range of transport related issues. These issues are typically resolved through negotiation and mediation, rather than through an Environment Court hearing. The Ministry and the NZTA do not support this amendment, as it discourages any external 'quality control' over local authority planning documents.

18.3. The current statutory requirement for territorial authorities to review their district plans every 10 years is proposed to be removed. These provisions are seen by the NZTA as critical in enabling long term strategic planning, supporting alignment between Land Transport Management Act and RMA planning documents, and in achieving integrated planning in the context of transport and land use. Without a mandatory review requirement there is a risk that councils, for a variety of reasons including resource constraints, might never undertake full reviews of their plans but instead wait for individual plan change proposals to come along. The statutory requirement to review these documents provides an important 'safety net' to ensure district plans are regularly updated to ensure a long term strategic focus is maintained and such alignment occurs. The NZTA sought an amendment to ensure that no *part* of a plan remains without review for more than 10 years. The Ministry and the NZTA are of the view that this should be reflected in the Cabinet Paper.

Part G – Compliance

19. The significant changes relate to trebling the current maximum fines under the RMA to $600,000, and the removal of any Crown immunity from prosecution. The Ministry and the NZTA are of the opinion that these changes should be noted, but are not operationally significant.

Part I – Other Matters

20. An amendment is proposed to no longer require the full public notification of all notices of requirement for designations through allowing those with more limited effects to be processed through a similar 'limited notification' path as is available for some resource consents. This is supported by the Ministry and the NZTA.

21. There is some discussion about changes to designations, but no recommendations are made in the Cabinet Paper. In addition, there is some mention of property rights, compensation provisions and the Public Works Act 1981. The inter-relationship between the RMA and the Public Works Act 1981 should not be underestimated, as property acquisition for large projects can be a substantial source of delay. The Ministry and the NZTA support the view that designations and the Public Works Act 1981 should be comprehensively reviewed as a part of Phase 2, rather than components being brought forward into Phase 1.

22. Currently, the Minister of Transport is responsible for certain navigation safety issues for coastal permits under the RMA. Maritime NZ is now responsible for these activities and an amendment to the RMA is proposed to reflect this.

Public Participation

23. While many of the proposed amendments to the RMA have been clearly signalled to the public, there is a dilution of the public participation philosophy of the current RMA. While in the Ministry's and the NZTA's view this is justified by the process improvements, some sectors of the community, and potentially local government, may not be supportive of the changes, particularly with respect to the widened call-in powers. The Ministry of Justice has raised these matters as it falls within its responsibilities.

Cabinet Consideration

24. The Cabinet Paper is being considered by the Cabinet Business Committee on Monday 26 January and again by Cabinet on Monday 2 February 2009. In order that the issues of significance to the transport sector, as one of the most impacted users of the RMA, are able to be considered fully, you may consider forwarding this advice to the Minister of Infrastructure.

Recommendations

The recommendations are that you:

(a) **Note** that the proposed amendments overall are supported by the Ministry and the NZTA Yes/No

(b) **Seek** inclusion in the RMA amendments of: Yes/No

i. More flexibility in the projects that may be considered for 'call-in', to include *regionally* significant projects; and

ii. An all-encompassing 11-month timeframe from application to final decision under the call-in path.

(c) **Seek** retention of the status quo, with further consideration shifting to Phase 2 of the RMA review, of: Yes/No

i. The non-complying activity class;

ii. Appeal rights on district and regional plans; and

iii. The requirement for local authorities to review their district plans every 10-years.

(d) **Seek** a full review of the designations provisions and the Public Works Act 1981 as a part of Phase 2 of the RMA review. Yes/No

(e) **Agree** to forward this advice to the Minister of Infrastructure. Yes/No

Priority Routine **Security Level** In-confidence **Deadline** 23/01/09

Contact for telephone discussion (if required)

Name	Position	Telephone		Suggested First Contact
		Direct Line	After Hours	
Ian Clark	Project Manager, RMA Review	04 439 9385	021 469 177	✓

Ian Clark
Project Manager, RMA Review

pp MA Beecroft
Elizabeth Anderson
General Manager, Land Transport Investment and Development

MINISTER'S COMMENTS:

MINISTER'S SIGNATURE:

DATE:

☐ *Noted*	☐ *Seen*	☐ *Approved*
☐ *Needs Change*	☐ *Referred to*	
☐ *Withdrawn*	☐ *Not Seen by Minister*	☐ *Overtaken by events*

Date: 5 February 2009 SH-10-6-1-3

To: Hon Bill English, Minister of Finance

THE TREASURY
Kaltohutohu Kaupapa Rawa

AIDE MEMOIRE: RMA REFORM – BOARD OF INQUIRY APPEAL RIGHTS

You are meeting with the Minister for the Environment and the Attorney-General at 7 p.m. on Monday 9 February to discuss whether to reduce appeal rights from Boards of Inquiry on projects of national significance.

Proposal

Any person involved in a Board of Inquiry process can currently appeal the Board's decision to the High Court on a point of law. We understand that the Minister for the Environment proposes that such appeals should go directly to the Court of Appeal, removing a step in the process. The Attorney-General, however, prefers to retain the High Court step (although potentially with the introduction of a 'chokepoint' between the High Court and Court of Appeal to reduce the number of appeals).

Considerations

The main potential benefit of the Minister's proposal is to speed up the appeals process for nationally significant projects. **The extent of benefits, however, is unclear.** Only a small number of projects have been called in to a Board of Inquiry to date, so it is too early to tell whether appeals to the Court of Appeal could become a source of significant delay. The proposal has a number of other implications that also need to be considered:

- **While overall timelines could reduce, the Inquiry process itself is likely to become slower and costlier.** An Inquiry would need to be more rigorous and legalistic, meeting a higher standard of jurisprudence, given the limitation in appeal rights.
- The need for a higher standard of jurisprudence increases the importance of ensuring that the Chair of a Board of Inquiry is either a sitting or retired Environment Court (EC) judge. Although Cabinet has decided to increase the number of EC judges, **the number of judges may act as a bottleneck** if the number of significant projects increases.
- The increase in costs for Boards of Inquiry, combined with the reduction in appeal steps, would further reduce the extent of **public participation** on nationally significant projects. There is a value judgement here about the desirable amount of public participation.
- The High Court usually plays a key role in moving consideration of a case from its *merits* to *points of law*. The Court of Appeal, on the other hand, is not ordinarily a court of first instance (except in employment matters), and may not possess the **capacity or capability** to deal with appeals referred directly from a Board of Inquiry.

Recommendation

Given the considerations above (notably the lack of certainty about benefits), Treasury recommends that you **do not support** the proposal to remove the High Court from the appeal process. Alternatively, you may wish to defer the proposal to Phase Two of the RMA reforms to allow time to consider its full implications.

Tom Hall, Manager, Natural Resource Management, *[withheld under s. 9(2)(a)]. [withheld under s. 9(2)(g)(i) and s. 9(2)(a)].*

THE TREASURY
Kaitohutohu Kaupapa Rawa

Treasury Report: Improving the Resource Management Act 1991

Date:	1 December 2008	Report No:	T2008/2203

Action Sought

	Action Sought	Deadline
Hon Bill English Minister of Finance	**Note** the package of changes to the RMA proposed by Treasury. **Refer** this report to the Minister for the Environment, Minister of Economic Development, Minister of Commerce, and the Minister for Regulatory Reform. **Agree** that Treasury provide more detailed briefings on RMA issues to the Minister for the Environment. **Indicate** whether you require further briefings on options to improve the performance of the RMA.	None.

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Tom Hall	Manager, Natural Resource Management	*[withheld under s. 9(2)(a)]*	✓
	[withheld under s. 9(2)(g)(i) and s. 9(2)(a)]		

Minister of Finance's Office Actions

Refer this report to the Minister for the Environment, Minister of Economic Development, Minister of Commerce, and the Minister for Regulatory Reform.

Enclosure: No

1 December 2008 SH-10-6-1-3

Treasury Report: Improving the Resource Management Act 1991

Purpose of Report

1. This report makes recommendations on how to improve the economic performance of the Resource Management Act 1991 (RMA), including Treasury's analysis of the options for change to the RMA that the government proposed during the election campaign.

Analysis

Background

2. New Zealand is now facing major challenges in how we use our natural resources. These challenges are economic, environmental, cultural and social in nature. Maximizing New Zealand's economic welfare over time in the context of these challenges will require a clear focus on a sustainable and productive economy in which the environmental consequences of economic activity are sustainable while other economic and social goals are achieved to the greatest extent possible.

3. The Resource Management Act 1991 (RMA) is a key tool to help achieve this goal, as it is the principal legislation for managing New Zealand's environment and allocating natural resources. There are, however, growing concerns about the RMA, in terms of complexity, uncertainty, balance between environmental and economic goals, and the failure of those responsible for administering it to manage emerging environmental challenges.

4. Given Treasury's role as the government's primary economic, fiscal and regulatory advisor, we have examined these concerns from an economic perspective, with a particular emphasis on the extent to which the RMA promotes (or does not promote) economic growth and development. We have remained mindful of the Act's purpose to promote sustainable management of natural and physical resources while taking into account a broad spectrum of social, economic and cultural concerns.

Short-term Package

5. The underlying philosophy of the RMA – as a devolved and integrated resource management regime – is sound. There is much, however, that could be done in practical terms to improve the economic performance of the Act, by reducing the delays and uncertainty that many applicants face in trying to progress their projects. Accordingly, we recommend a short-term package of change consisting of the following components:

   - Place a greater focus on economic growth and development in the Principles of the Act;
   - Provide greater central government direction on matters of national significance;
   - Reduce delays by discouraging frivolous and vexatious objections, and streamlining the development of district/regional plans;
   - Make process improvements for consent applications;
   - Align processes mandated by the Historic Places Act 1993 and Public Works Act 1981.

6. None of these issues is unique to the RMA. Any regime seeking to manage competing demands for common resources would need to address the same issues. Given that the RMA functions as a lightning rod for some of the most controversial and heated debates in society, our recommendations distinguish concerns caused by legislative provisions from concerns that are ultimately caused by an underlying lack of societal consensus.

Medium-term Package

7. The proposed package of short-term changes would need to be supported by an integrated strategy for central government management and delivery of its roles under the RMA. Separate advice is being developed on the organisation of the sustainability sector agencies, and in particular of the Ministry for the Environment, to address these and other current challenges facing the sector in the medium term. Other priorities for the medium term include better water allocation through the use of market instruments, and pursuing further opportunities to align processes mandated by different pieces of legislation with the RMA regime.

Government Proposals

8. There is a high degree of alignment between the government's proposals and Treasury's recommendations for change. The three key areas of difference are as follows:

    - *Restricting the definition of "environment"* – While the current definition is broad, this broadness does ensure that positive economic impacts can also be considered in decision-making under the Act.
    - *Removing the reference to "Treaty principles"* – The current reference in the Act is unclear, but changing this section in the context of a wider debate about the role of the Treaty in New Zealand legislation would increase the likelihood that any resultant change is of a more durable nature.
    - *The form of an Environmental Protection Agency (EPA)* – It is timely to review the institutional arrangements of the sustainability sector, but past experience with policy/operations splits suggests that a unified ministry with an internal division between policy and operations (along the lines of the Ministry of Social Development) is likely to achieve better outcomes than a separate EPA, as it would allow effective policy and operational functions to develop side-by–side, but with lower costs and less disruption.

9. More detailed analysis of the government's proposals, and more detailed Treasury recommendations for change to the RMA, can be provided in supporting papers on request.

Recommended Action

We recommend that you:

a **note** that Treasury proposes a **short-term package** of change to the Resource Management Act composed of the following elements:

    - Place a greater focus on economic growth and development in the Principles of the Act;
    - Provide greater central government direction on matters of national significance;
    - Reduce delays by discouraging frivolous and vexatious objections, and streamlining the development of district/regional plans;
    - Make process improvements for consent applications;

- Align processes mandated by the Historic Places Act 1993 and Public Works Act 1981.

b **note** that Treasury proposes a **medium-term package** of change related to the Resource Management Act composed of the following elements:

- Improve the water allocation framework through the use of market instruments;
- Improve the performance of central and local government;
- Pursue further opportunities for alignment across different pieces of legislation.

c **refer** this report to:

the Minister for the Environment	*Yes/no*
the Minister for Economic Development	*Yes/no*
the Minister of Commerce	*Yes/no*
the Minister for Regulatory Reform	*Yes/no*

d **agree** that Treasury offer more detailed briefings on Resource Management Act issues to the Minister for the Environment; and

Agree/Disagree

e **indicate** whether you require more detailed briefings on options to improve the performance of the Resource Management Act.

Yes/no

Tom Hall
Manager, Natural Resource Management
for Secretary to the Treasury

Hon Bill English
Minister of Finance

THE TREASURY
Kaitohutohu Kaupapa Rawa

Treasury Report: Briefing on the Cabinet Paper for Phase One of the Resource Management Act Review

Date:	22 January 2009	Report No:	T2009/113

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	**Invite** the Minister for the Environment to consider: • committing to investigating further changes for significant projects in Phase Two of the reforms; • deferring introducing costs on trade competitors, and measures with unresolved fiscal implications; **Note** the Regulatory Impact Analysis Unit considers some elements of the paper's analysis to be inadequate, and that tight timeframes can compromise quality.	Monday 26 January 2009
Associate Minister of Finance (Hon Simon Power)	None.	None.
Associate Minister of Finance (Hon Steven Joyce)	None.	None.

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Kevin Guerin	Acting Manager, Natural Resource Management	*[withheld under s. 9(2)(a)]*	✓
	[withheld under s. 9(2)(g)(i) and s. 9(2)(a)]		

Minister of Finance's Office Actions (if required)

None.

Enclosure: No

22 January 2009

Treasury Report: Briefing on the Cabinet Paper for Phase One of the Resource Management Act Review

Executive Summary

Overall Impact

The package of proposed changes amounts to a major overhaul of the Resource Management Act 1991 (RMA), with the potential to significantly improve New Zealand's economic performance. At the highest level, the reforms will achieve the following three objectives:

- Allow central government to provide greater guidance on matters of national significance.
- Reduce costs and delays caused by overly broad public participation rights.
- Reduce costs and delays by streamlining process requirements for plans and consents.

Areas for Further Consideration

Treasury suggests you raise several concerns for further discussion:

- The final recommendations relating to **significant projects**. Previous versions of the cabinet paper proposed to create a 'significant projects path', which would have ensured that consents for projects valued at $100+ million were processed within nine months. The 'significant projects path' has since been removed from the package of proposals and replaced with several amendments to the existing 'call-in' process.

  We acknowledge, following limited discussions with officials and the Minister for the Environment, that the amendments to call-in are a step in the right direction, that there has not been time to confirm the need for more action at this stage, and that such action raises complex issues.

  The amendments still, however, represent an interim solution, rather than a transformative change. We suggest that you raise with the Minister for the Environment the possibility of a commitment to investigating more wide-ranging changes in Phase Two of the Reforms.

- The paper proposes to introduce **'indemnity costs' and 'punitive costs'** to discourage objections motivated by trade competition reasons. These proposals emerged late in the process, and we recommend delaying them to Phase Two to allow further time to consider their potential benefits and disadvantages.

Financial Implications

The cabinet paper does not seek any changes to appropriations at this point, but several of the proposals are likely to carry financial implications. These are:

- Allowing the Crown to be prosecuted for breaches of resource consents;
- Increasing the number of Environment Court judges (with ongoing baseline implications for Vote Courts); and
- Increasing remuneration levels for Board of Inquiry members.

We recommend deferring approval of these proposals to Phase Two of the Reforms until the potential costs can be quantified.

Recommended Action

At the Cabinet Committee meeting on Monday 26 January, we recommend that you:

a **invite** the Minister for the Environment to consider more wide-ranging changes to the process for significant projects in Phase Two of the Reforms;

Agree/disagree.

b **invite** the Minister for the Environment to consider deferring the introduction of 'punitive costs' and 'indemnity costs' for trade competitors, pending further consideration of their potential benefits and disadvantages;

Agree/disagree.

c **invite** the Minister for the Environment to consider deferring the following proposals to Phase Two of the Reforms until their potential costs have been quantified:

- Allowing the Crown to be prosecuted for breaches of resource consents;
- Increasing the number of Environment Court judges (with ongoing baseline implications for Vote Courts); and
- Increasing remuneration levels for Board of Inquiry members.

Agree/disagree.

d **note** that Treasury's Regulatory Impact Analysis Team considers the regulatory impact assessment to be inadequate in relation to some aspects of the package which were developed extremely late in the process, and for which officials had no time to undertake analysis or consultation;

e **note** that the Regulatory Impact Analysis Team considers that the imposition of such tight timeframes on developing regulatory proposals can compromise the effectiveness of the resulting regulatory changes, thereby undermining regulatory quality.

Kevin Guerin
Acting Manager, Natural Resource Management
for Secretary to the Treasury

Hon Bill English
Minister of Finance

Treasury Report: Briefing on the Cabinet Paper for Phase One of the Resource Management Act Review

Purpose of Report

1. The Minister for the Environment is taking a paper to Cabinet Business Committee on Monday 26 January, with proposals for reform of the Resource Management Act 1991 (RMA). This report briefs you on the details of those proposals, and provides you with Treasury's analysis of the overall package.

2. The cabinet paper had not been finalised at the time this briefing was prepared. We will update you further if we become aware of any significant changes to the paper before it goes to Cabinet Committee.

Analysis

Overall Impact

3. The package of proposed changes amounts to a major overhaul of the RMA, with the potential to significantly improve economic performance. The direction is consistent with the pre-election cross-departmental briefing developed by agencies including Treasury, and advice provided by Treasury in the post-election period. At the highest level, the reforms will achieve the following three objectives:

   - **Allow central government to provide greater guidance on matters of national significance.** The reforms will allow the contents of National Policy Statements and Environmental Standards to be incorporated quickly into district plans, enabling central government guidance to translate into council decisions far more quickly.

   - **Reduce costs and delays caused by overly broad public participation rights.** The overall direction of the reforms is to temper the right to object with the responsibility to behave constructively and reasonably, encouraging objectors to consider more deeply the merits of their case, and whether further action is justified. While the proposed reductions in appeal rights may prove controversial, the changes are a rebalancing towards economic outcomes, not a fundamental reweighting of the Act. The weight of anecdotal evidence indicates that many projects are delayed substantially by wide-ranging appeal rights, and very broad participation discourages investment by creating too much uncertainty for applicants.

   - **Reduce costs and delays by streamlining process requirements for plans and consents.** Reforms such as removing the need for councils to request further submissions on plans will accelerate the planning process, allowing a more timely response to emerging threats and opportunities. Similarly, proposed changes to the public notification procedure for consents will mean more consents can be processed on the faster 'non-notified' track. Many of the proposals are enabling rather than prescriptive (e.g. allowing, rather than requiring, local authorities to allow notification of consents via the internet), lessening the transition costs on local authorities.

4. Some proposed changes, however, would benefit from further consideration. Treasury has particular concerns in the following areas:

   - **Significant projects.** The original draft of the cabinet paper proposed establishing a separate 'Significant Projects Path' to process consent applications for significant projects (costing $100+ million) within a period of 9 months. This path would have

accelerated the assessment of projects of national significance, while placing a greater weighting on their national costs and benefits. Applicants would also have had greater certainty as to whether their projects would be eligible for the accelerated process. The current version of the paper, however, simply proposes to enhance the existing 'call-in' process by adding a nine-month time limit on decision-making and making a number of other minor improvements.

We acknowledge, following limited discussions with officials and the Minister for the Environment, that there has not been time to confirm the need for more action at this stage, and that issues such as more explicit criteria and delegating decision making authority are complex. The proposed enhancements – particularly the introduction of a time limit for the call-in process – are also a step in the right direction.

The proposed option does not, however, offer the full advantages of ultimately establishing a clear, dedicated path for projects of national significance. If Ministers are comfortable with the enhancements to call-in as an interim solution, though, further work could be done in Phase Two of the reforms on the following issues:

- The relationship between Boards of Inquiry and the Environment Court;
- Whether the EPA should be granted sole powers to decide whether a project should qualify for call-in; and
- Whether more explicit criteria would be useful for call-in;

We suggest that you discuss with the Minister for the Environment the possibility of him committing to include these types of issues for consideration in Phase Two of the reforms.

- **'Indemnity costs' and 'punitive costs' for trade competitors.** The cabinet paper proposes to allow any party whose trading position is adversely affected by an appeal motivated by trade competition to recover all costs associated with the appeal, and allow courts to award punitive damages against submitters motivated by trade competition. These two proposals emerged relatively late in the process, without adequate opportunity to consider their potential benefits and disadvantages. We have concerns both as to their effectiveness, and the extent to which they will constrain reasonable objections. Delaying the proposals to Phase Two will allow more time to consider their practicality and merits, and the cumulative impact of these and other proposals on public participation under the RMA.

Potential Objections from other Ministers

5. During the review process, some agencies signalled that their Ministers might raise concerns regarding some aspects of the proposals. We are aware of the following concerns:

- **Access to justice.** The Ministry of Justice is concerned that some proposals, particularly the reinstatement of security for costs, will act as a barrier for applicants with legitimate concerns to seek justice in the Courts.

  The "optimum" balance between speed and participation rights will ultimately need to reflect a value judgement. From an economic perspective, however, the wide scope for participation is anecdotally discouraging investment by creating too much uncertainty for applicants. Treasury's judgement is that most of the proposed changes will not prevent objectors from making their views heard, but that they will force objectors to consider more deeply the merits of their case.

- **Fundamental review.** We understand that the Minister for Building and Construction would like to see a more fundamental review of the RMA in Phase Two of the Reforms.

Given the gains that could already be made from Phase One of the Reforms, the scale of benefits from a wide-ranging review of all aspects of the Act is likely to be small, but one option for a more targeted in-depth review would be to reconsider the overall balance between protection and development in the Purpose and Principles of the Act. We can provide advice on options if you wish to pursue this path in Phase Two.

Next Steps – Phase Two

6. Phase One of the RMA reforms has focussed narrowly on measures to streamline and simplify processes under the Act. The cabinet paper proposes a broader scope for Phase Two of the reforms, divided into three potential workstreams:

   - Further amendments to streamline and simplify the Act that could not be completed in time for Phase One;
   - Amendments to manage complex environmental issues (such as natural resource allocation mechanisms, e.g. for water), urban design, and overlaps with other legislation; and
   - Delivery, monitoring and evaluation (including the potential development of a fully independent Environmental Protection Authority).

7. We understand that the Minister for the Environment will report back to Cabinet in the coming months with detailed terms of reference and timelines for Phase Two of the Reforms.

Financial Implications

8. The cabinet paper does not seek any changes to appropriations, but a number of the proposals in this paper are likely to carry financial implications. These include:

   - Allowing the Crown to be prosecuted for breaches of resource consents;
   - Increasing the number of Environment Court judges (with ongoing baseline implications for Vote Courts); and
   - Increasing remuneration levels for Board of Inquiry members.

9. As these proposals emerged late in the process, there has not been time to quantify the extent of fiscal risk or the benefits of the changes – particularly relating to the increased number of judges, which would be difficult to reverse. Other elements of the reforms may also reduce pressures on the existing judges through reducing the Environment Court's workload. Treasury therefore recommends deferring approval of these proposals to Phase Two of the Reforms until the potential costs can be quantified.

10. We understand that the broader costs of delivery and implementation of Phase One of the Reforms will be met from existing departmental baselines.

Comment from the Regulatory Impact Analysis Team (RIAT)

11. The Ministry for the Environment has prepared a Regulatory Impact Statement (RIS) for this Cabinet paper, and the regulatory impact analysis (RIA) and RIS have been independently reviewed by the Treasury's Regulatory Impact Analysis Team (RIAT).

12. RIAT's mandate is to assess the quality of the RIA and RIS, and provide advice on their adequacy. RIAT does not provide advice on the merits of policy proposals.

13. RIAT considers the RIA to be adequate in relation to most of the proposals in the policy package. However, they are concerned about the policy development process for some aspects of the package, notably the proposals to address the anti-competitive use of RMA provisions, and the change to when rules in a proposed plan should take legal effect.

14. RIAT considers that the Ministry has done its utmost to prepare analysis and undertake consultation within the constraints it faced, and that officials have gone beyond what would normally be expected in such circumstances.

15. However, the timeframes for policy development were very tight, and some policy proposals were developed extremely late in the process. For these proposals (in particular those noted above) there was no opportunity for the Ministry to undertake analysis or consultation. The inadequacy of the RIA for these proposals potentially compromises the effectiveness of the resulting regulatory changes, thereby undermining regulatory quality.

THE TREASURY
Kaitohutohu Kaupapa Rawa

Treasury Report: Briefing for Economic Growth and Infrastructure Committee (EGI) – Wednesday 18 February 2009

Date:	16 February 2009	Report No:	T2009/280

Action Sought

	Action Sought	Deadline
Minister of Finance (Hon Bill English)	**Read** prior to meeting	11.00am, Wednesday 18 February 2009

Contact for Telephone Discussion (if required)

Name	Position	Telephone	1st Contact
Jeremy Corban	Assistant Secretary (EPG)	*[withheld under s. 9(2)(a)]*	✓

Minister of Finance's Office Actions (if required)

None.

Enclosure: No

MS-5-1-12

Treasury Report: Briefing for Economic Growth and Infrastructure Committee (EGI) – Wednesday 18 February 2009

Executive Summary

We are currently aware of 7 items on the agenda for Wednesday 18 February 2009. The table below identifies any relevant fiscal impacts and / or provides Treasury's comments / recommendations on 3 of these. The remaining 4 papers which we are aware of, for which Treasury has no briefing or comment, are listed below the table for completeness.

Title	Pg	Recommend	Fiscal Implications ($m GST excl.)					Treasury Comment
			07/08	08/09	09/10	10/11	11/12	
[Not relevant]	4	*[Not relevant]*	*[Not relevant]*					*[Not relevant]*
[Not relevant]	5	*[Not relevant]*	*[Not relevant]*					*[Not relevant]*
Resource Management (Simplification and Streamlining) Amendment Bill [Environment]	6	**Support**	*Operating*					This paper seeks approval for final policy decisions on the RMA reforms, and for introduction of the Amendment Bill to the House. Treasury supports the proposals.
			-	-	-	-	-	
			Capital					
			-	-	-	-	-	

[Not relevant]

Recommended Action

We recommend that you **read** this report prior to the meeting at 11.00 am Wednesday 18 February 2009.

Jeremy Corban
Assistant Secretary (EPG)
for Secretary to the Treasury

Hon Bill English
Minister of Finance

[Not relevant]

[Not relevant]

Resource Management (Simplification and Streamlining) Amendment Bill

Responsible Person: Tom Hall *[withheld under s. 9(2)(a)]*

First Contact Person: *[withheld under s. 9(2)(g)(i) and 9(2)(a)]*

Purpose

9. This paper asks Cabinet to (i) approve final policy decisions on the first phase of RMA reforms, and (ii) agree to the introduction of the Resource Management (Simplification and Streamlining) Amendment Bill into the House.

Comment

10. During the drafting of the Amendment Bill, Ministry for the Environment officials identified a number of issues requiring further clarification or expansion. Most of these changes are minor and technical in nature.

11. The most significant proposals are:

- *Removing the Minister of Conservation's role as final decision maker on call-ins for restricted coastal activities and any other matter wholly in the coastal marine area* (rec 5).

  This proposal aligns the Minister of Conservation's powers with the powers available to the Minister for the Environment (who does not have final decision-making powers on call-ins outside the coastal marine area). Treasury understands that this proposal clarifies the policy intent of Cabinet's previous decision to remove the Minister of Conservation's powers over restricted coastal activities (CAB Min (09) 3/7 para 91 refers).

  The Department of Conservation does not support this proposal, on the basis that there has not been enough time for adequate policy development. Treasury is not aware of strong arguments to retain the current arrangements, but the proposal could be deferred to Phase Two of the reforms if you wish to allow further time to consider its implications.

- *Providing the Minister for the Environment with the explicit power to direct a review of the whole or part of a regional/district plan, and the Minister of Conservation with a similar power over regional coastal plans* (rec 16).

  This proposal will allow Ministers to ensure that action will be taken on emerging resource management issues, even if councils are unwilling to address them.

12. Treasury supports the proposals in this paper, on the basis that they clarify the policy intent of previous decisions.

Treasury Recommendation

13. We recommend that you **support** the recommendations in this paper.