

## **In Confidence**

### **Office of the Minister for the Environment**

#### **Chair, Cabinet Environment, Energy and Climate Committee**

## **Comprehensive review of the resource management system: scope and process**

### **Proposal**

1. This paper seeks agreement to the scope and process for a comprehensive review of the resource management system, focused on the Resource Management Act 1991 (RMA). I propose to consult on the scope with a targeted group, including Māori, before reporting back to Cabinet to agree the final terms of reference. I am also seeking approval to establish an expert advisory group to carry out the review.

### **Executive summary**

2. A two-stage approach is proposed for improving the resource management system, particularly the RMA. Cabinet has already agreed to Stage 1. A Stage 1 Bill will address problems that are relatively straightforward to correct, or where there is a clear need to act in advance of decisions on a more comprehensive review. This Bill is being drafted.
3. Stage 2, which is the subject of this paper, will be a more comprehensive review of the resource management system focused on the RMA. The review will build on current work across freshwater, climate change and urban development, and address a wide range of concerns with the RMA.
4. The RMA is the principal statute for managing New Zealand's built and natural environments, including the coastal marine area out to the 12 nautical mile limit. It radically reformed New Zealand's environmental law by integrating land, water and air planning under the common purpose of sustainable management of natural and physical resources, focused on the effects of activities.
5. The RMA was a major step forward for resource management in New Zealand, and was a product of rising environmental awareness. While much of the RMA remains sound, it is underperforming in the management of key environmental issues such as freshwater, and in delivering affordable housing and well-designed urban communities. Also, ecosystems and biodiversity are being degraded by poorly managed cumulative effects; and there are doubts that the RMA can respond effectively to future challenges such as climate change.
6. The RMA works in conjunction with other important statutes, including the Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA) to determine outcomes across the entire resource management system.
7. Successive amendments have added complexity to the RMA, rendering it unwieldy, and there have been significant problems with the Act's implementation. There is broad frustration with the quality of RMA plans and processes, the interaction and alignment

between the RMA and other legislation, the coherence and effectiveness of national direction, and inconsistent engagement with Māori.

8. The Stage 1 changes to the RMA will only have limited application to these more fundamental issues. However, with Stage 1 now progressing, the time is right to begin a comprehensive review to address those issues, and to deliver a coherent and effective resource management system. A review would not start from a blank slate. It should uphold the core principles in Part 2 of the RMA, provide for local decision-making and meaningful public participation, and achieve good environmental outcomes.
9. I have considered three options (A, B and C) for the scope of the review, and propose that it be a comprehensive review of the RMA *itself* (Option B). This would include work on spatial planning across the RMA, LGA and LTMA, without including the entirety of the LGA and LTMA. A more limited scope (Option A) would risk creating more complexity through piecemeal changes to the RMA that target specific issues, while leaving many problems unaddressed. Setting the scope broader across the whole resource management system (Option C) would, in my view, be over-ambitious and likely lead to delays. See *paragraphs 41 to 52* for more detail on the options.
10. The Option B review will aim to improve intergenerational wellbeing by strengthening environmental protection and better enabling urban development outcomes within environmental limits. The review's scope would include potentially separating statutory provision for land use planning and environmental protection.
11. Not proceeding with a comprehensive review would risk ongoing and widespread criticism that the resource management system is not fit for purpose. Fixing the RMA will ensure better decisions are made on increasingly complex resource-use trade-offs, and that decisions are more widely supported by affected parties and the general public.
12. Developing new resource management legislation is a complex undertaking. I am seeking agreement to establish an expert advisory group (EAG) that will work with officials to prepare proposals for reform of the RMA. The EAG will be tasked with delivering reform proposals for public consultation, including indicative legislative drafting of key provisions, in mid-2020.
13. Based on the content of this paper, Cabinet will be asked to appoint EAG members prior to final Cabinet decisions confirming the scope and terms of reference for the review. This is to enable EAG members to begin preparatory work.
14. The review must resolve debate on key issues. To get this right, I propose a phased approach to public engagement to ensure opportunities for input within reasonable timeframes. In Phase 1, I propose to consult on the scope for the review with a targeted group, including Māori. I will then report back to Cabinet seeking the specific decisions needed to continue the review.
15. In Phase 2, the EAG will consult with a wider group, to ensure policy development is informed by their expertise and experience. Phase 3 will be a broad, open process of public consultation, once concrete proposals have been developed by the EAG.
16. The EAG will draw on other work. The Government already has a wide-ranging work programme on some issues identified above, and is also reviewing local governance and funding, and infrastructure planning and delivery.
17. Existing external work includes recent significant reviews by the New Zealand Productivity Commission (the Productivity Commission) and the Organisation for Economic Cooperation and Development (OECD), as well as work undertaken by Local Government New Zealand (LGNZ), and the Environmental Defence Society (EDS) supported by the Employers and Manufacturers Association (EMA), Property Council New Zealand, and Infrastructure New Zealand. EDS is now refining alternative models for reform, which can be considered as part of the review process.

18. The RMA is of great significance to Māori. RMA provisions for Māori participation are some of the most significant expressions of how the Crown provides for the Treaty of Waitangi (the Treaty) and the Māori-Crown relationship.
19. Māori will be engaged as Treaty partners throughout the review process, and as part of existing relationships with iwi authorities. Ministry for the Environment (MfE) officials will also engage with iwi at existing regular regional hui. MfE will collate the input received for the EAG to consider.
20. As with any change, review of the RMA risks creating uncertainty for local government and other participants operating within the current resource management system. To manage this risk, transitional provisions will be important, including for initiatives underway to improve the operation of the existing RMA (such as national direction). These initiatives, as well as district and regional plans, need to be carried over into a reformed system. Agreements in Treaty settlements providing for iwi engagement in aspects of the current system will also need to be carried over. Policy proposals will be assessed to ensure they do not have unintended consequences for existing and future settlements.
21. Cabinet has agreed funding for the review in Budget 2019.

## **Background**

22. The RMA is the principal statute for managing New Zealand's built and natural environments, including the coastal marine area out to the 12 nautical mile limit. It sets the framework for central and local government to sustainably manage natural and physical resources. While much of the RMA remains sound, it is underperforming in the management of key environmental issues such as freshwater and in delivering affordable housing and well-designed urban communities. Also, ecosystems and biodiversity are being degraded by poorly managed cumulative effects; and there are doubts that the RMA can respond effectively to future challenges such as climate change.
23. The RMA works in conjunction with other important planning and environmental management statutes, including the LGA and LTMA, to determine outcomes across the resource management system. The decision-making frameworks in these statutes are intertwined, and changes in one area can impact other aspects of the system.
24. Successive amendments have added complexity to the RMA, rendering it unwieldy, and there have been significant problems with the Act's implementation. There is broad frustration with the quality of RMA plans and processes, the interaction and alignment between the RMA and other legislation, the coherence and effectiveness of national direction, and inconsistent engagement with Māori.
25. Cabinet has confirmed the Cabinet Environment, Energy and Climate Committee's work programme. This includes a commitment to improving the effectiveness of the resource management system [CAB-18-0246 refers].
26. Cabinet has agreed to progress a Stage 1 Bill to address problems that are relatively straightforward to correct, or where there is a clear need to act in advance of decisions on a more comprehensive review. This Stage 1 Bill is being drafted. It will largely reverse widely criticised changes made to the RMA by the Resource Legislation Amendment Act 2017. However, the Bill will only have limited application to the more fundamental issues identified above.
27. Cabinet has also noted my intention to conduct a comprehensive review of the resource management system and has invited me to report back on the scope and process of the review [ENV-18-MIN-0028 refers]. This Stage 2 review will build on current work, including across freshwater, climate change and urban development, and address a

wide range of concerns with the RMA. My preferred approach for this review is set out in this paper.

### ***The RMA was a major step forward for resource management in New Zealand***

28. The RMA, when passed in 1991, radically reformed New Zealand's environmental law. The Act took an integrated approach to the way central government, local government and communities manage natural and physical resources. It required them to do so under the common purpose of sustainable management of natural and physical resources, and focused on the effects of activities. Also, varying processes were standardised.
29. Among statutes replaced was the Town and Country Planning Act 1977, which was prescriptive and perceived by some to unnecessarily constrain development. Also replaced were the Water and Soil Conservation Act 1967, Clean Air Act 1972, and Noise Control Act 1982. Many other statutes were amended.
30. The RMA was also the product of a number of important developments:
  - The National Development Act 1979 and its associated 'Think Big' projects generated significant public opposition on environmental and constitutional grounds.
  - Rising environmental awareness in the mid-1980s led to the creation of the Ministry for the Environment, the Office of the Parliamentary Commissioner for the Environment, and the Department of Conservation (DOC).
  - There was increasing recognition of te ao Māori and the role of Māori through the 1970s and 1980s, particularly with the establishment of the Waitangi Tribunal in 1975 (and the expansion of its jurisdiction in 1985 to include historical grievances), and with the recognition in the courts of the principles of the Treaty.
  - Internationally, the 1987 report *Our Common Future* from the United Nations Commission on Environment and Development (known as the Brundtland Report) introduced the concept of sustainable development into policy discussions. The concept of intergenerational equity became a key part of the sustainable management principles of the RMA.
  - Major local government reform in 1989 radically restructured local government, with 850 single and multi-purpose local bodies amalgamated into 86 multi-purpose regional, and district or city councils.<sup>1</sup>
31. The RMA introduced a new focus on integrated management of the effects of activities within environmental bottom lines, and set processes that are critical across all domains (air, freshwater, marine, atmosphere and climate, and land). It was designed to be more permissive for activities where resource consent was not required.

### ***The resource management system, including the RMA, is underperforming***

32. The outcomes from the resource management system have been mixed. There have been improvements in some environmental outcomes (for example air quality), but freshwater, climate change, biodiversity and marine outcomes have been poor. According to EDS, "the environmental outcomes of the RMA have not met expectations ... it has largely failed to achieve the goal of sustainable management to date".<sup>2</sup> Nor has the New Zealand Biodiversity Strategy, adopted in 2000 and currently being reviewed, succeeded in halting biodiversity decline.

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<sup>1</sup> There are now 78 local authorities, following a review of Auckland local government structure in 2010.

<sup>2</sup> EDS, *Evaluating the environmental outcomes of the RMA*, 2016.

33. Problems have emerged in the management of the built environment and its effects on quality of life. House prices in Auckland are among the most unaffordable in the world. Poor quality regulation and regulatory processes have contributed to these problems. According to the Productivity Commission, “the planning system shows considerable evidence of unnecessary, excessive (and poorly targeted) land use regulations”.<sup>3</sup>
34. Infrastructure planning and provision has also been insufficient, and as a result there is a bow wave of unfunded costs. Infrastructure planning under the LGA and LTMA, and deficiencies in infrastructure financing are major contributors to this. However, the problem is being made worse by insufficient spatial planning and slow and costly RMA plan-making processes.
35. Priority and resources for compliance, monitoring and enforcement (CME) operations are highly variable across the country. In some regions and districts, CME resourcing is too low. Some councils involve politicians in CME decisions, which is inappropriate because there should be a separation of roles. When enforcement action occurs, the penalties imposed are sometimes an insufficient deterrent when compared to the financial advantage of not following rules and conditions.
36. There is a need for a system that better enables development to enhance intergenerational wellbeing, while promoting high environmental standards and responding effectively to climate change. The answer does not lie in further patch-ups and workarounds, which have already led to a complex and lengthy RMA. Making the system more coherent and effective, and more accessible for users (including councils, developers, and the public) will help promote confidence in it.
37. With Stage 1 now progressing, the time is right to begin a comprehensive review to address the more fundamental issues. The review would not start from a blank slate. It should uphold the core principles in Part 2 of the RMA, provide for local decision-making and meaningful public participation, and achieve good environmental outcomes.

### **Underlying causes of problems in the resource management system – a mixture of legislative, implementation and institutional issues**

38. The RMA has been the subject of sustained criticism, although sometimes as a scapegoat for failures by central and local government to properly implement a range of other statutes.<sup>4</sup> However, recent reviews have pointed to legislative, implementation and institutional issues that are at the root of poor planning and environmental outcomes and disregard for environmental law:<sup>5</sup>

- **Objectives and alignment:** the RMA has become unnecessarily complex. There is poor alignment of land use and infrastructure plans, processes (including public participation) and funding across the RMA, LGA and LTMA. It also took over two decades for the courts to settle how and when the Act’s purpose (section 5) is to be applied.
- **Functions and processes:** Central government has, until recently, not made best use of provisions in the RMA, in particular by failing to issue national policy statements with clear priorities and environmental bottom lines.

Likewise, local government has struggled to deliver a well-functioning system. Plans have been poorly drafted and too slow to change, partly due to the multiple avenues

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<sup>3</sup> The Productivity Commission, *Better Urban Planning*, 2017.

<sup>4</sup> Implementation failures are not limited to the RMA, but include wider legislation such as the Building Act 2004 and the LGA.

<sup>5</sup> External reviews include the Productivity Commission’s *Better Urban Planning* and *Using Land for Housing* inquiries and the OECD’s 2017 *Environmental Performance Review*. MfE has also produced a *Regulatory Stewardship Assessment* and a number of internal evaluations of the performance of aspects of the RMA.

open to relitigate decisions. Plans have not effectively managed cumulative environmental effects, and there are poorly designed and unnecessary rules in urban areas.

An overemphasis on managing effects under the RMA has crowded out space for longer-term, strategic planning. Prioritisation of existing use rights has biased the system towards the status quo, and there has been insufficient use of economic instruments to complement regulation.

- **Institutions:** There is sometimes a lack of capacity and capability in central and local government to undertake the roles expected of them. The Productivity Commission found cultural problems within council planning departments. Also, when processes become inefficient, elected councillors do not have sufficient accountability and governance tools to effectively oversee their planning departments.

In some cases, conflicts of interest have led to failure to introduce environmental regulation, or fund effective enforcement.

Engagement with Māori has been inconsistent across the country, and the meaning of iwi authority and hapū in the RMA needs clarifying.

39. There have been successive legislative amendments targeting aspects of the RMA, and a proliferation of new arrangements to work around it.<sup>6</sup> These include bespoke planning processes in Auckland and Christchurch, and special legislation for housing. While necessary to address deficiencies in the system, these workarounds have been resource-intensive to develop.
40. Treaty settlements have established new approaches to governance and decision-making regarding natural resources including recognition by the Crown of the legal personhood of Te Awa Tupua (Whanganui River) and Te Urewera.

### **Preferred scope for a comprehensive review of the resource management system**

41. I have considered three options for a comprehensive review of the resource management system. The options are a choice about the breadth and depth of reform to be advanced:

- Option A: Further discrete changes to the RMA, as required by existing work programmes (no additional reform).
- Option B: A comprehensive review of the RMA *itself*, including work on spatial planning across the RMA, LGA and LTMA (preferred option).
- Option C: A broader review of the resource management system that encompasses the *entirety* of the RMA, LGA and LTMA.

42. Set out below is the extent to which these options are an efficient and effective way of addressing identified problems and improving outcomes in the system.

#### **Option A: Further discrete changes to the RMA, as required by existing work programmes**

43. Option A would build on the more narrowly-focused Stage 1 Bill. This option would be limited to potential legislative changes identified by work programmes already underway. For example:

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<sup>6</sup> The RMA has been amended 22 times in the last 27 years. While initial amendments focused on addressing technical issues arising from implementation, more recent changes have added new process tracks for plan-making and consenting, and increased complexity. Housing-related legislation has worked around the RMA, for example, the Housing Accords and Special Housing Areas Act 2013; and the Kāinga Ora—Homes and Communities Bill, the new housing and urban development authority legislation currently before Parliament.

- Essential Freshwater: the freshwater work programme is developing better ways for managing discharges into freshwater and for allocating freshwater resources, particularly whether the 'first in, first served' approach needs to be revised (together with the associated assumption that time-limited consents will be routinely renewed).

The current consenting process has led to catchments often being fully or over-allocated for pollution discharges and freshwater abstraction. Any revision is likely to require amendments to the RMA.

- Climate Change Response (Zero Carbon) Amendment Bill and climate change adaptation: the transition to a zero carbon economy will require substantial changes in resource use. There may be benefits in amending the RMA to better enable decision-makers to consider both the effects of development on climate change (mitigation) and the effects of climate change on new and existing development (adaptation).
- Urban Growth Agenda: this work is changing system settings to create the conditions for the market to respond to growth and bring down the high cost of urban land. It includes work on spatial planning frameworks that may require amendments to the RMA, LGA and LTMA to better align land use planning with infrastructure funding and financing.

44. The advantage of Option A is that it would target the Government's identified priority outcomes for the resource management system, while avoiding the cost and uncertainty involved in reviewing and reforming the RMA as a whole. The disadvantage is that it may create more complexity through piecemeal changes to the RMA that target specific issues, while leaving many problems with the RMA unaddressed.

***Option B: A comprehensive review of the RMA, including work on spatial planning across the RMA, LGA and LTMA (preferred option)***

45. Option B would be a comprehensive review of the RMA *itself* to complement and align with existing initiatives, while minimising overlaps. It would also include work on the potential for spatial planning to better integrate decision-making across the RMA, LGA and LTMA. It would consider whether or not to provide separate statutory provision for land use planning and environmental protection.

46. Option B would also pick up priority system issues that are not being addressed as part of existing work, including:

- removing unnecessary complexity from the RMA, in part by rationalising the multiple decision-making pathways that have proliferated since the RMA was originally passed in 1991
- improving interaction and alignment between the RMA and other legislation
- improving the quality of RMA plans and processes; and ensuring plans can be created, amended and implemented within a more reasonable timeframe while providing meaningful opportunities for public participation
- improving the coherence and effectiveness of national direction
- improving the quality of decision-making
- creating a new role for spatial planning
- ensuring the resource management system recognises Māori interests.

47. See *paragraphs 53 to 63* for more on issues to be addressed by Option B. Addressing all the issues is necessary for maintaining momentum (*see paragraphs 64 to 65*) towards the Government's desired outcomes for freshwater, climate change, urban development, biodiversity, heritage, infrastructure and regional development; and for promoting public

confidence in the resource management system.

**Option C: A broader review of the resource management system that encompasses the entirety of the RMA, LGA and LTMA**

48. Option C would be a broader review that encompasses wider urban development and environmental legislation, in particular the LGA and LTMA. Stakeholders have pointed to the need for an integrated approach to governance, regulation, funding and delivery across resource management statutes. Problems have been identified with local government capability, capacity and accountability. Some stakeholders have called for local government reform.<sup>7</sup>
49. Option C therefore has some merit, but would in my view be over-ambitious. It could nonetheless be attractive to some stakeholders, whose expectations may need to be managed. It would be almost impossible to achieve a review this broad in either theory or practice. It would be an enormous and time-consuming undertaking, be difficult to manage, and likely lead to delays.
50. Additionally, the Government already has a wide-ranging work programme that will at least partially address these problems:
  - The Local Governance for Community Wellbeing work programme is seeking to ensure that local governance functions in a way, and delivers a mix of public goods and services, that helps to transform community wellbeing now and in the future.
  - The Three Waters Review is looking into the challenges facing our three waters system (drinking water, wastewater, and stormwater) and developing recommendations for system-wide performance improvements.
  - The Productivity Commission's inquiry into local government funding and financing is addressing infrastructure funding and financing issues.
  - The new housing and urban development authority, Kāinga Ora–Homes and Communities, will be able to access development powers and functions through a single process for large and complex development projects.
  - A new independent infrastructure body is being established to support planning and delivery of infrastructure.
  - The Building System Legislative Reform programme is delivering changes to support a high performing building sector.

**Options analysis summary**

51. The analysis above indicates that Option B will deliver the most additional benefit in light of existing initiatives. I favour Option B. Many significant problems with the system would not be addressed by Option A. Option C, even if achievable, would lead to considerable overlap with existing work.
52. Option B would require complementary work to be done on local government performance, mostly through the wide-ranging work programme outlined in *paragraph 50*. Alignment with that programme would be necessary to ensure coherent reform as a whole.

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<sup>7</sup> For example, Infrastructure New Zealand, *Integrated Governance, Planning and Delivery: A proposal for local government and planning law reform in New Zealand*, 2015.

## More on issues to be addressed by Option B

53. A review will aim to improve intergenerational wellbeing by strengthening environmental protection and better enabling urban development outcomes within environmental limits. The system for land use regulation and environmental protection needs to be made fit for addressing current and future challenges such as climate change.
54. I expect that the purpose and principles of the RMA (Part 2) will be included in this review. The clarity of Part 2 of the RMA can be improved, building on existing jurisprudence. For many years an 'overall broad judgment' interpretation of the purpose of the RMA (section 5) led to uncertainty and cost. The Supreme Court's 2014 *King Salmon* decision and the Court of Appeal's 2018 *RJ Davidson Family Trust* decision have clarified how and when section 5 is to be applied.
55. However, there are longstanding Part 2 issues that must be resolved regarding recognition of development objectives and planning in the urban environment, including the promotion of human health and wellbeing outcomes. It is appropriate to consider the introduction of new resource management concepts, such as strengthening community and ecosystem resilience to climate change and natural hazards. The review should also consider having an explicit function to actively restore or enhance the natural environment in situations where bottom lines may already be breached.
56. Spatial planning is only given statutory weight in Auckland, through special legislation. Voluntary spatial planning exercises conducted elsewhere have been developed ad hoc, in response to local circumstances. However, spatial planning has the potential to be a powerful organising tool to integrate intersecting policy decisions across multiple domains, and coordinate decision-making between central and local government. Spatial planning could help ensure the planning system is more strategic, future-focused and responsive to change.
57. Creating a new role for spatial planning requires consideration of plans and processes across the RMA, LGA and LTMA and will build off the work already underway through the Urban Growth Agenda. I intend to consult the Minister for Local Government, the Minister of Transport, the Minister of Housing and Urban Development, and the Minister for Infrastructure before coming back to Cabinet on the scope of spatial planning reform.
58. I expect that all RMA functions and processes will be reviewed to ensure they are efficient, effective and coherent. This includes national direction (including processes for the New Zealand Coastal Policy Statement), plan making (including coastal plans), consenting, funding tools, economic instruments and CME.
59. While I do not anticipate the review will recommend major institutional reform, it may assist to ensure functions are allocated to delivery institutions with the right incentives and capability. Management accountability in the resource management system should sit with the community of interest that is most relevant to the decision.
60. The review should therefore include the respective roles of MfE, DOC and the Environmental Protection Authority (EPA), regional councils and territorial authorities, the Environment Court, and quasi-judicial institutions such as Independent Hearings Panels and Boards of Inquiry.
61. Cabinet has already agreed to the particular issues of urban tree protection and climate change resilience (both mitigation and adaptation) being considered as part of this review [CAB-18-MIN-0485.01 refers].
62. Officials are separately considering issues relating to the coastal marine environment. These include open ocean aquaculture, and developing a charging regime for marine farmers and other occupiers of the coastal marine area. This work will run in parallel, with officials reporting back to relevant Ministers (Environment, Fisheries, Conservation) by late 2019 on the potential inclusion of these issues in the review. Broader issues

relating to overlapping marine legislative frameworks are better addressed through a subsequent review of the marine system.

63. The table below summarises the key issues the review could focus on, which I intend to test with key stakeholders. The identification of these issues should not preclude or constrain the investigation of other issues as they may arise over the course of the review.

**Table 1: Key issues to be addressed in a comprehensive review of the RMA**

Aspect of RMA	Key issues
Objectives and alignment	<ul style="list-style-type: none"> <li>• Removing unnecessary complexity from the RMA</li> <li>• Strengthening environmental bottom lines, and further clarifying Part 2</li> <li>• Recognising objectives for development (including housing and urban development and infrastructure networks and projects)</li> <li>• Ensuring the system has sufficient resilience to manage risks posed by climate change and natural hazards</li> <li>• Considering an explicit ability to restore or enhance the natural environment</li> <li>• Aligning land use planning and regulation with infrastructure planning and funding through spatial planning</li> <li>• Considering whether or not to separate statutory provision for land use planning and environmental protection</li> <li>• Ensuring that the RMA aligns with the purpose and processes outlined in the Climate Change Response (Zero Carbon) Amendment Act (once passed)</li> <li>• Ensuring that Māori have a role in the resource management system</li> </ul>
Functions and processes	<ul style="list-style-type: none"> <li>• Examining all RMA functions and processes</li> <li>• Improving the coherence and effectiveness of national direction</li> <li>• Enabling faster and more responsive land use planning</li> <li>• Improving the quality of plans</li> <li>• Reducing the complexity of consenting processes</li> <li>• Ensuring processes enable sufficient certainty for major infrastructure</li> <li>• Improving the use of funding tools and economic instruments</li> <li>• Ensuring appropriate mechanisms for Māori participation in the system, including giving effect to Treaty settlement agreements</li> <li>• Clarifying the meaning of iwi authority and hapū</li> <li>• Ensuring CME functions are effective</li> </ul>
Institutions	<ul style="list-style-type: none"> <li>• Allocating roles in the system to central and local government, the Environment Court, and other institutions such as Independent Hearings Panels</li> </ul>

	<ul style="list-style-type: none"> <li>• Considering the interaction of the Climate Change Commission and other institutions in responding to climate change</li> <li>• Ensuring institutions have the right incentives (including clearly defined roles, responsibilities, and accountability mechanisms)</li> <li>• Introducing a package of complementary measures to support the transition to a new system and to address planning system culture, capacity and capability</li> </ul>
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### **Maintaining momentum for delivering multiple government priorities**

64. A comprehensive review of the RMA should improve outcomes across the resource management system and support, but not duplicate, the following work programmes:

- Freshwater: More effective national direction tools and faster resource management planning processes to support necessary allocation of scarce water resources and assist in land use change to highest value uses within environmental limits.
- Climate change: Consideration of adaptive management tools to support the land use change required for climate change adaptation. The review will also consider the role of regulation in supporting climate change mitigation.
- Urban development: Better quality regulation in urban areas that is more responsive to growth, to support housing development, improve urban amenity, improve health and wellbeing outcomes, and achieve more resilient infrastructure.
- Biodiversity: More effective national direction tools and better planning and resource consent processes to help limit further destruction of significant indigenous vegetation and habitats, better protect ecosystem services, and guide councils to 'protect' natural resources, as well as considering 'use and development' aspects of sustainable management.<sup>8</sup>
- Heritage: Development of national direction and other planning tools on heritage to help councils better identify and protect historic heritage in their local areas.
- Infrastructure: Better aligning land use and infrastructure planning processes will support improved decision-making and assist regional development.
- Whenua Māori: Support for the sustainable development of whenua Māori, including increasing the knowledge and skills of Māori land owners.

65. Not proceeding with a review will leave unresolved the ongoing and widespread criticism that the resource management system is not fit for purpose. Fixing the RMA would ensure better decisions are made on increasingly complex resource-use trade-offs, and that decisions are widely supported by affected parties and the general public.

### **Consultation on scope of the review**

66. This review must resolve debate on key issues. To ensure we get this right at the outset, I propose to consult on the scope of the review with a targeted group of stakeholders (the Phase 1 engagement referred to below). Also, all Ministers should write to me by 31 August 2019 with any specific issues relevant to their portfolios that fall within the scope of Option B, to enable them to be considered as part of the review process.

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<sup>8</sup> To inform biodiversity protection, the New Zealand Biodiversity Strategy adopted in 2000 is being reviewed. To provide national direction, a National Policy Statement for Indigenous Biodiversity is being developed.

## **Establishing an expert advisory group to undertake the review**

67. I have considered two options for carrying out this review: a standard policy process, supported by MfE officials; and an expert advisory group (EAG) process that supplements departmental capability with external expertise. Developing new land use and environmental management legislation is a complex undertaking. I believe that creating an EAG is the more effective way of providing a wide perspective to the review, as well as accessing skills and expertise held outside the public service.
68. Members of the EAG will be selected based on their collective skills in planning, local government, environmental management, ecology, te ao Māori, resource management law, development, primary industries, economics and climate change response. I propose that the EAG be chaired by an experienced resource management decision-maker, for example a senior judge.
69. Based on the content of this paper, membership of the EAG will be considered by the Cabinet Appointments and Honours Committee (APH), prior to appointments being made by Cabinet. This process will occur before final Cabinet decisions confirming the scope and terms of reference for the review, in order to enable EAG members to begin preparatory work as soon as possible.
70. The EAG will be tasked with recommending how to reform the RMA, and be asked to provide detailed policy proposals and indicative legislative drafting of key provisions. The EAG will work with a secondee from the Parliamentary Counsel Office to prepare the indicative drafting. The EAG will be given until mid-2020 to complete its task.
71. I expect the EAG's final report to contain proposals for significant parts of a new Act or Acts. This includes the purpose and principles, national direction, plan making, consenting, CME, and the roles of central and local government, the Environment Court, and Māori.
72. Drafting for more detailed policy questions and transitional provisions will occur subsequently, after public consultation and Cabinet approvals.
73. I will retain close oversight of the work of the EAG. The Chair of the EAG will be required to test and seek my direction on proposals for reform at key decision points in the process. I intend to test the direction of significant reform proposals with relevant Ministers before key decisions are made.
74. I will also lead discussions with the Cabinet Environment, Energy and Climate Committee at key stages as the review progresses, about the possible impacts of the EAG's work. I also intend to establish a Ministerial governance group to oversee the review once the work of the EAG is underway. Cabinet will consider the final outputs of the EAG in mid-2020.
75. The EAG will be supported by a secretariat based at MfE, which will provide policy advice and analysis, research, communication, project management and administrative services. The secretariat will also play a key role in maintaining alignment between the EAG and wider government work programmes.
76. Cabinet has agreed funding for the EAG in Budget 2019.

## **Involving the public in the review**

77. I propose that the review take a phased approach to engagement with the public, to ensure opportunities for input within reasonable timeframes. This will recognise the importance of achieving buy-in for any potential RMA reform.

78. Phase 1 engagement will comprise consultation on the scope for the review with a targeted group including: EDS, the other members of Resource Reform New Zealand,<sup>9</sup> LGNZ, the Iwi Leaders Group, New Zealand Māori Council, Te Tumu Paeroa<sup>10</sup>, Federation of Māori Authorities, Kāhui Wai Māori,<sup>11</sup> Ngā Aho,<sup>12</sup> the Resource Management Law Association, New Zealand Planning Institute, Environment and Conservation Organisations of NZ (ECO), Forest & Bird, the Farming Leaders Group, Fish & Game, the New Zealand Law Society, Council of Trade Unions, Interim Climate Change Committee and Sustainability Council. I will then seek agreement from Cabinet on a final scope and process, and on the EAG's terms of reference.
79. Phase 2 engagement will comprise the EAG consulting with a likely wider group, including further sector and environmental groups, and iwi authorities, to ensure that policy development is informed by their expertise and experience. This group will be confirmed following Phase 1. The EAG will also have the discretion to consult other stakeholders on particular technical issues if needed.
80. Phase 3 engagement will be a broad, open process of public consultation, and will begin following Cabinet consideration of concrete proposals developed by the EAG.

### **Engaging with Māori throughout the review process**

81. The RMA is of great significance to Māori. RMA provisions for Māori participation are some of the most significant expressions of how the Crown provides for the Treaty and the Māori-Crown relationship.
82. The close relationship of Māori with natural resources, and interest in them, was reaffirmed at nationwide hui between March and June 2018 organised by the Minister for Māori Crown Relations: Te Arawhiti. Various RMA issues were identified, with a greater role for Māori participation in the resource management system being a recurring theme.
83. I will consult on the scope for the review (Phase 1 engagement) with the pan-Māori groups listed in *paragraph 78*. Their views will be reported back to Cabinet along with the finalised proposed scope and process for the review. I note, however, that it is not anticipated that the review will extend to legislating for such concepts as co-governance.
84. Māori will be engaged as Treaty partners throughout the review, and as part of existing relationships with iwi authorities. MfE officials will also engage with iwi at existing regular regional hui. MfE will collate the input received for the EAG to consider. MfE will work with Te Arawhiti throughout the engagement process.
85. The EAG will include members with expertise and experience in Te Tiriti o Waitangi, mātauranga Māori, tikanga Māori and other te ao Māori matters. The approach the EAG will take to engagement with Māori will be confirmed after Phase 1. It is also expected that, in addition to being informed by Phase 1 feedback and MfE engagement feedback, the EAG will engage with pan-Māori groups directly, and call for external advice and expertise as required.

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<sup>9</sup> Resource Reform New Zealand is a significant coalition of stakeholders pushing for resource management system reform. It includes EDS, the EMA, Property Council New Zealand, Infrastructure New Zealand, and Business New Zealand.

<sup>10</sup> Te Tumu Paeroa is led by the Māori Trustee.

<sup>11</sup> Kāhui Wai Māori is an advisory group to the Essential Freshwater work programme.

<sup>12</sup> Ngā Aho is a network of Māori and Indigenous urban design professionals who come together to support each other to better service the design aspirations of Māori and indigenous communities.

## **Drawing on, and connecting with, other work**

86. The EAG will draw on existing or continuing government work that has been referred to in this paper, and on significant external work that has identified problems and options for reform of the resource management system.
87. This includes the New Zealand Productivity Commission's 2017 *Better Urban Planning* report and 2018 *Low-emissions economy* report, the OECD's 2017 *Environmental Performance Review*, and EDS's 2018 *Next Generation* report. EDS is now refining alternative models for reform, which can be considered as part of the review process. LGNZ has also developed proposals. The EAG will draw on all of these reports as part of developing its own recommendations.
88. The benefits of comprehensive RMA reform will be optimised by also addressing problems identified by the Productivity Commission with local government capability, capacity and accountability. These issues are already being at least partially addressed in the wide-ranging work programme outlined in *paragraph 50*.
89. The EAG will be kept informed of this programme by the secretariat and will ensure its own reform proposals are aligned with it, in order to deliver a coherent and effective system as a whole. The pace, range and timing of RMA reform will need to be carefully managed to ensure coordinated and measured changes across the system.
90. The EAG will also draw on the outputs of other reform processes outlined in *paragraphs 43 and 64*, including for freshwater, climate change, and urban development.

## **Ensuring a stable transition**

91. As with any change, review of the RMA risks creating uncertainty for local government and other participants operating within the current resource management system. To manage this risk, transitional provisions will be important, including for initiatives underway to improve the operation of the existing RMA (such as national direction). These initiatives, as well as district and regional plans, need to be carried over into a reformed system.
92. These significant initiatives include development of new national direction on freshwater management, quality urban intensification, indigenous biodiversity, heritage protection, planning standards, highly productive soils, and aquaculture. A RMA enforcement unit is also being established within the EPA. To minimise uncertainty, any transition to a reformed RMA will need to carry these elements over efficiently.
93. Treaty settlements have often included provision for iwi engagement in aspects of the resource management system. These agreements will also need to be carried over. Review proposals will also be assessed to ensure they do not have unintended consequences for existing and future Treaty settlements.
94. The Government is progressing new housing and urban development legislation that includes the ability for certain development projects to access RMA powers and functions through a single process. The RMA review will not impact this legislation in the short term, but alignment will be desirable once detailed RMA reform proposals have been developed.
95. The Climate Change Response (Zero Carbon) Amendment Act (once passed) will be the main framework for reducing greenhouse gas emissions (mitigation), and assessing and responding to risks from a changing climate (adaptation). The review should ensure that our resource management system aligns with and supports this framework. The Government's Community Resilience Group is also developing policy to reduce risks from natural hazards – including those exacerbated by climate change – to enable

communities to reduce risk and adapt their activities. The review will consider alignment with the outputs of this Group as appropriate.

96. Legislative change arising from the review will not alone be enough to fix the system. Culture and capability issues have hindered the implementation of the RMA, and cause ongoing problems. The Productivity Commission’s 2017 *Better Urban Planning* inquiry identified planning culture and capability as a significant cause of the “scope creep” in the system that has seen land use rules and regulations that “do not provide a net benefit and increase the cost of housing unnecessarily.”<sup>13</sup>
97. A future planning system will require more focus on rigorous analysis of policy options and proposals, and improved central and local government capability. I have asked officials to give early consideration to a package of complementary measures, which would address culture and capability issues and support legislative changes.

### Consultation

98. The following agencies have been consulted on the proposals in this paper: the Treasury, Ministry of Housing and Urban Development, Department of Internal Affairs, Ministry of Transport, Department of Conservation, Te Puni Kōkiri, Office for Māori Crown Relations: Te Arawhiti, Ministry for Primary Industries, Land Information New Zealand, Ministry of Culture and Heritage, Ministry of Civil Defence and Emergency Management, Ministry of Justice, Ministry of Health, Ministry of Business, Innovation and Employment, Ministry of Defence, Ministry of Education and Statistics New Zealand.
99. The Department of Prime Minister and Cabinet has been informed of the proposals in this paper.

### Financial implications

100. Cabinet has approved funding in Budget 2019 for the review, in line with the scope of Option B outlined in this paper. Approved funding is outlined in the table below:

Financial year	2019/20	2020/21	2021/22	2022/23	Total
\$ (millions)	3.480	4.254	0.250	0.000	7.984

101. For the remainder of the current fiscal year (ending 30 June 2019), any preparatory work needed to progress the review will be funded within the existing MfE baseline budget.
102. Option C has not been fully costed but, as a result of its increased complexity, it would likely cost significantly more than Option B.

### Legislative implications

103. A comprehensive review of the RMA will result in proposals for legislative change that will be consulted on in the 2020 calendar year.

### Regulatory impact analysis

104. The Regulatory Impact Analysis (RIA) requirements do not apply to the proposals in this paper.

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<sup>13</sup> New Zealand Productivity Commission, *Better Urban Planning*, 2017.

## **Human rights, gender implications and disability perspective**

105. There are no human rights, gender and disability implications associated with this paper.

## **Publicity**

106. I intend to announce the scope and process for a comprehensive review of the RMA once this is approved by Cabinet after Phase 1 engagement with targeted groups. Proactive release of this paper would be considered at that time.

## **Recommendations**

The Minister for the Environment recommends that the Committee:

### ***Background***

1. **Note** that the Cabinet Environment, Energy and Climate Committee's work programme includes a commitment to improving the effectiveness of the resource management system [CAB-18-0246 refers];
2. **Note** that the Minister for the Environment has responded to Cabinet's invitation to report back on the scope and process for a comprehensive review of the resource management system [ENV-18-MIN-0028 refers];
3. **Note** that the Resource Management Act 1991 (RMA) is the principal statute for managing New Zealand's built and natural environments;
4. **Note** that the RMA was a major step forward for environmental management in New Zealand, and a product of rising environmental awareness;
5. **Note** that the RMA works in conjunction with other important statutes, including the Local Government Act 2002 (LGA) and Land Transport Management Act 2003 (LTMA), to determine outcomes across the entire resource management system;
6. **Note** that successive amendments have added complexity to the RMA, rendering it unwieldy, and there have been significant problems with the implementation of the Act;
7. **Note** that the resource management system as a whole is underperforming for the environment and urban areas, including degradation of ecosystems and biodiversity by poorly managed cumulative effects;

### ***Preferred scope of a comprehensive review of the resource management system***

8. **Note** that the Minister for the Environment has considered three options for a review:
  - 8.1. Option A: Further discrete changes to the Resource Management Act 1991 (RMA), as required by existing work programmes
  - 8.2. Option B: A comprehensive review of the RMA (the review), including work on spatial planning across the RMA, LGA and LTMA
  - 8.3. Option C: A broader review of the resource management system that encompasses the RMA, LGA and LTMA;
9. **Note** that Option B is the Minister for the Environment's preferred option;
10. **Agree** that the review will aim to improve intergenerational wellbeing by strengthening environmental protection and better enabling urban development outcomes within environmental limits;

11. **Agree** that issues to be addressed by the review will include removing unnecessary complexity from the RMA, improving interaction and alignment with other legislation, creating a new role for spatial planning, improving the quality of RMA plans and processes, issuing clear national direction, and improving the quality of decision-making;
12. **Note** that I will consult with the Minister for Local Government, the Minister of Transport, the Minister of Housing and Urban Development, and the Minister for Infrastructure on the scope of spatial planning reform;
13. **Note** that the review is necessary for maintaining momentum towards delivering the Government's objectives for freshwater, climate change, urban development, biodiversity, heritage, infrastructure and regional development;
14. **Agree** that the review should uphold the core principles in Part 2 of the RMA, provide for local decision-making and meaningful public participation, and achieve good environmental outcomes;
15. **Note** that Cabinet has already agreed to the particular issues of urban tree protection and climate change resilience (both mitigation and adaptation) being considered as part of this review [CAB-18-MIN-0485.01 refers];
16. **Note** that officials are separately considering issues relating to the coastal marine environment, and will report back to the Minister for the Environment, the Minister of Fisheries and the Minister of Conservation by late 2019 on the potential inclusion of these issues in the review;
17. **Agree** that the Minister for the Environment now consult on the scope for the review with a targeted group, based on Option B;
18. **Agree** that those consulted should include the Environmental Defence Society, the other members of Resource Reform New Zealand,<sup>14</sup> Local Government New Zealand, the Iwi Leaders Group, New Zealand Māori Council, Te Tumu Paeroa,<sup>15</sup> Federation of Māori Authorities, Kāhui Wai Māori,<sup>16</sup> Ngā Aho,<sup>17</sup> the Resource Management Law Association, New Zealand Planning Institute, Environment and Conservation Organisations of NZ (ECO), Forest & Bird, the Farming Leaders Group, Fish & Game, the New Zealand Law Society, Council of Trade Unions, Interim Climate Change Committee and Sustainability Council;
19. **Invite** all Ministers to write to the Minister for the Environment by 31 August 2019 with any specific issues relevant to their portfolios that fall within the scope of Option B, to enable them to be considered as part of the review process;
20. **Note** that I will report back to Cabinet to finalise the scope and terms of reference for the review following this consultation;

### ***Establishing an expert advisory group to undertake a review***

21. **Agree** to establish an expert advisory group (EAG) to support the review;
22. **Agree** that the Minister for the Environment will be responsible for oversight of the work of the EAG;

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<sup>14</sup> Resource Reform New Zealand is a significant coalition of stakeholders pushing for resource management system reform. It includes EDS, the EMA, Property Council New Zealand, Infrastructure New Zealand, and Business New Zealand.

<sup>15</sup> Te Tumu Paeroa is led by the Māori Trustee.

<sup>16</sup> Kāhui Wai Māori is an advisory group to the Essential Freshwater work programme.

<sup>17</sup> Ngā Aho is a network of Māori and Indigenous urban design professionals who come together to support each other to better service the design aspirations of Māori and indigenous communities.

23. **Note** that, based on the content of this paper, the Minister for the Environment will ask the Cabinet Appointments and Honours Committee (APH) to consider EAG membership;
24. **Note** that EAG members will be selected based on their collective skills in planning, local government, environmental management, ecology, te ao Māori, resource management law, development, primary industries, economics and climate change response;
25. **Note** that the EAG will be chaired by an experienced resource management decision-maker, for example a senior judge;
26. **Note** that it is intended to appoint EAG members in advance of Cabinet decisions finalising the scope and terms of reference for the review;
27. **Agree** that EAG members will start preparatory work as soon as possible after being appointed;
28. **Agree** that the EAG will be tasked with developing policy proposals, in line with the final scope confirmed by Cabinet;
29. **Note** that the EAG will work with a secondee from the Parliamentary Counsel Office in order to recommend indicative legislative drafting of key provisions alongside its policy proposals;
30. **Agree** that the EAG be directed to report back by mid-2020;
31. **Note** that the Minister for the Environment will lead discussions with the Cabinet Environment, Energy and Climate Committee at key stages as the review progresses, about the possible impacts of the EAG's work;
32. **Agree** that the Minister for the Environment will establish a Ministerial governance group to oversee the review, once the work of the EAG is underway;
33. **Note** that Cabinet will consider the final outputs of the EAG in mid-2020;

#### ***Involving the public in a review***

34. **Note** that the review will take a phased approach to engagement with the public, to ensure appropriate opportunities for input within reasonable timeframes;
35. **Agree** that the approach the EAG will take to engagement with Māori will be confirmed following initial consultations by the Minister for the Environment;

#### ***Drawing on, and connecting with, other work***

36. **Note** that the EAG will draw on reform proposals including those developed by the New Zealand Productivity Commission, the Organisation for Economic Cooperation and Development, and the Environmental Defence Society;
37. **Note** that the EAG will ensure any proposals for RMA reform are aligned with the outcomes of:
  - 37.1. existing work programmes in areas such as Essential Freshwater, the Climate Change Response (Zero Carbon) Amendment Bill and climate change adaptation, and the Urban Growth Agenda
  - 37.2. existing work programmes focused on local governance including the Local Governance for Community Wellbeing programme, the Three Waters Review, and the New Zealand Productivity Commission inquiry into local government funding and financing;

***Ensuring a stable transition***

- 38. **Note** that initiatives currently underway to improve the operation of the existing RMA will be carried over into a reformed RMA;
- 39. **Note** that Treaty of Waitangi settlements that include provision for iwi engagement in aspects of the resource management system will also be carried over into a reformed RMA;
- 40. **Note** that policy proposals will also be assessed to ensure they do not have unintended consequences for existing and future Treaty settlements;

***Financial implications***

- 41. **Note** that Cabinet has approved funding in Budget 2019 for the review, in line with the scope of Option B outlined in this paper.

Authorised for lodgement.

Hon David Parker

**Minister for the Environment**