Departmental Disclosure Statement

Resource Legislation Amendment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

25 November 2015

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Part One: General Policy Statement

Introduction

The overarching purpose of the Resource Legislation Amendment Bill (the Bill) is to create a resource management system that achieves the sustainable management of natural and physical resources in an efficient and equitable way.

Sitting beneath this overarching purpose are 3 main objectives. Specifically, the Bill seeks to achieve:

- better alignment and integration across the resource management system, so that—
    - duplication within the system is reduced and legislative frameworks are consistent internally and with each other;
    - the tools under the resource management legislation are fit for purpose; and
    - resource management legislation is implemented in a consistent way and the hierarchy of planning documents is better aligned.
- proportional and adaptable resource management processes, so that—
    - there is increased flexibility and adaptability of processes and decision-makers; and
    - processes and costs are able to be scaled, where necessary, to reflect specific circumstances.
- robust and durable resource management decisions, so that—
    - there is high value participation and engagement, including from iwi/hapū, in resource management processes;
    - decision makers have the evidence, capability and capacity to make high quality decisions and accountabilities are clear; and
    - engagement is focussed on upfront planning decisions rather than individual consent decisions.

It is intended that this Bill be divided into the following 5 separate Bills at the Committee of the whole House stage: a Resource Management Amendment Bill, a Reserves Amendment Bill, a Public Works Amendment Bill, a Conservation Amendment Bill, and an Exclusive Economic Zone and Continental Shelf (Environmental Effects) Amendment Bill.

The principal proposed amendments are to the Resource Management Act 1991 (RMA), the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (EEZ Act), and the Environmental Protection Authority Act 2011 (EPA Act). The Bill would also amend the Conservation Act 1987 (Conservation Act), the Reserves Act 1977 (Reserves Act), and the Public Works Act 1981.

Proposals

The current package of resource management reform proposals comprises over 40 individual proposals aimed at delivering substantive, system-wide improvements to the resource management system.

National direction

While resource management legislation is largely implemented by local government, central government can provide national direction in several ways. Specific tools to provide national direction include National Policy Statements (**NPSs**) and National Environmental Standards (**NESs**), regulations, the exercise of Ministerial intervention powers, the use of special legislation, and amendments to the purpose and principles, or the statutory functions and powers of decision makers, in resource management legislation.

The Bill seeks to—

- sharpen processes for developing NPSs and NESs under the RMA to address current limitations on the (joint) development of these tools and broaden what they can provide for:
- introduce a new regulation-making power in the RMA to permit specified land uses so as to avoid unreasonable restrictions on land and prohibit and remove council planning provisions that duplicate the functions in, or have the effect of overriding, other legislation or impose unnecessary restrictions on land use for residential development. introduce provisions in the EEZ Act for a tool to allow the Government to propose national direction to support decision making on applications for marine consents:

- enable the development of a national planning template to improve the consistency of RMA plans and policy statements, reduce complexity, and improve the clarity and user-friendliness of plans:
- better manage risks from natural hazards in New Zealand by including "the management of significant risks from natural hazards" as a new matter of national importance in section 6 of the RMA. This change also supports changes to section 106 regarding consideration of risks from all natural hazards in subdivision consents:
- amend sections 30 and 31 of the RMA to make it a function of regional councils and territorial authorities to ensure sufficient residential and business development capacity to meet long-term demand. This is designed to enable better provision of residential and business development capacity, and therefore improved housing affordability outcomes:
- remove the explicit function of regional councils and territorial authorities to manage hazardous substances. This is designed to remove duplication between the RMA and the Hazardous Substances and New Organisms Act 1996.

Plan making

The RMA requires councils to develop regional policy statements, district and regional plans that explain how the council will manage the environment. Plans contain objectives, policies, and rules that address land use, subdivision, air quality, coastal, and other resource management issues within the region or district. The RMA sets out a process for preparing or changing a regional policy statement or plan, which allows for public input at different stages. However, current plan-making processes are often litigious and costly. The length of time taken to develop a new plan and resolve any appeals (approximately 6 years) means that plans lack agility and are not able to be responsive to urgent issues. A significant amount of the time taken for plans to become operative has been spent resolving appeals in the Environment Court.

The Bill proposes changes to the current plan-making process to enable a more efficient, flexible, and proportionate plan change process. The Bill also introduces 2 new planning tracks for councils, namely, the streamlined planning process and the collaborative planning process.

The streamlined planning process will provide for more flexibility in planning processes and time frames and allow these to be tailored to specific issues and circumstances. The collaborative planning process encourages greater front-end public engagement, which will produce plans that better reflect community values and will thereby reduce litigation costs and lengthy delays.

The Bill also seeks to place a statutory obligation on councils to invite iwi to form an iwi participation arrangement that will establish the engagement expectations when consulting during the early stages of the Schedule 1 plan making processes. This proposal aims to improve consistency in iwi engagement in plan development.

Consenting

Council plans set out all the rules and conditions for different types of activities within their area. The process that a consent authority must follow in coming to a decision on a consent application can involve a decision on whether to notify the application, an officer's report, a hearing, and, if the resource consent is granted, the setting of consent conditions.

The Bill introduces greater proportionality into the process of obtaining resource consents by introducing a 10-working-day time limit for determining simple applications (fast-track applications) and allowing councils to treat certain activities as permitted.

The Bill also aims to make consent processes more simple and efficient by identifying the parties eligible to be notified of different types of applications. In particular, the Bill refines the notification regime and introduces limits to the scope and content of submissions and subsequent appeals.

The Bill removes the presumption under section 11 of the RMA that requires subdivision to be expressly provided for in plans and makes changes that clarify the scope of conditions that may be placed on resource consents.

To increase certainty for applicants, the Bill proposes a regulation-making power that requires consent authorities to fix the fees for processing certain consent applications and hearings, and the remuneration for hearings panels.

Courts and appeals

Making decisions on plans and resource consents is usually the responsibility of consent authorities. If an applicant disagrees with a decision made by a consent authority, they can either make a formal objection to the decision, or lodge an appeal. When a decision is appealed, the appeal is heard and decided on by the Environment Court.

The Bill introduces a number of improvements to Environment Court processes to support the efficient and speedy resolution of appeals. It also enables applicants to request that their objections to a council's decision be heard by an independent commissioner rather than by the council.

The Bill also provides the Environment Court with the new ability to direct councils to acquire land (where planning provisions have rendered land incapable of reasonable use and placed an unfair and unreasonable burden on the landowner) as an alternative to the existing approach of amending planning provisions.

Process alignment

Measures are proposed to reduce overlaps and duplications between various statutes within the resource management system. While not all overlaps or duplications are undesirable, in some cases changes to the legislation have been made to improve alignment and to provide greater efficiencies where a particular activity triggers more than 1 piece of resource management legislation. These include—

- an optional joint process of public notification, hearings, and decisions for proposals that involve publicly notified plan changes or resource consents under the RMA and recreation reserve exchanges under the Reserves Act. This process would be particularly beneficial to facilitate urban redevelopment projects:
- alignment of the notified concessions process under the Conservation Act with notified resource consents under the RMA. These changes to the Conservation Act will bring concessions processes and time frames in line with resource consent processes:

The Bill also proposes to align processing of certain notified discretionary marine consent processing under the EEZ Act with the board of inquiry process for nationally significant proposals under the RMA. Greater consistency between the EEZ Act and the RMA will enable the Environmental Protection Authority (**EPA**) to make efficiency gains by standardising business processes.

Process improvement

The Bill makes several process improvements. The proposals described do not relate to a particular part of the resource management system. Some proposals apply to all decision makers under the RMA, whereas others apply to specific decision-making bodies such as councils, boards of inquiry, or the EPA.

The Bill ensures that servicing of documents to parties via online platforms will occur more often. Where a document has been provided electronically, a hard copy version will not be required unless specifically requested or required by a court. It also requires all RMA public notices to be written clearly and concisely and be made publicly accessible on an Internet site. Only summaries of public notices will be required to be published in newspapers. This will reduce end user costs and align RMA processes with changing social and technological preferences.

The Bill enables regulations to be made to prescribe how councils undertake monitoring, including what information must be collected, what methodologies must be used, and how these would be reported. This will lead to standardised information collation, which will better facilitate council comparisons and improve the quality and consistency of the information that the Ministry for the Environment receives from councils.

Amendments are proposed to reduce board of inquiry cost and complexity, which include incorporating electronic provision of information in the process, requiring boards to have regard to cost effectiveness, and changing the composition of boards to improve their efficiency. The Bill also enables the EPA to provide secretarial and support services to decision makers appointed under any

Act that amends or overrides RMA processes where major hearings are held. Where necessary, the EEZ Act will also be amended to reflect these proposed changes.

In addition, the Bill introduces new requirements in Part 3 of the RMA to ensure decision makers apply procedural principles to minimise the costs of implementing RMA processes. The Bill simplifies charging regimes for new developments by removing financial contributions from the RMA. It also removes the ability for heritage protection authorities that are bodies corporate to give notice of a heritage order over private land, and allows for ministerial transfer of heritage orders.

The Bill introduces provisions in the EEZ Act to provide for decommissioning structures once they reach the end of their productive life. This includes a requirement that owners or operators must prepare a decommissioning plan in accordance with requirements set out in regulations.

The Bill makes a number of other changes to the EEZ Act to ensure that it can be implemented effectively and efficiently, including amendments to transitional provisions and enforcement provisions.

Minor fixes

Finally, there are minor or technical amendments that are sought to some parts of existing legislation to either improve an existing resource management process or to address an unintended consequence. These include—

- providing for equality of treatment of those who take water for stock drinking purposes; and
- giving regional councils the discretion to remove abandoned coastal structures; and
- creating a new regulation-making power to require stock to be excluded from water bodies; and
- removing redundant provisions on water quality classes from the RMA, as this has been superseded by a national objectives framework in the 2014 National Policy Statement for Freshwater Management; and
- making minor and technical amendments to provide clarity and improve the workability of the EEZ Act.

Amendments to Public Works Act 1981

The amendments to the PWA are intended to make the land acquisition process and compensation fairer and more efficient by—

- giving incentives for landowners to enter into agreements with the Crown more readily by increasing (to up to $50,000) the non-land-related compensation for landowners whose home is acquired under the PWA and by introducing new compensation (of up to $25,000) for landowners whose land, but not their home, is acquired. These amounts, which are in addition to valuation-based compensation under the PWA, will be able to be adjusted by Order in Council:
- enabling the Minister for Land Information to delegate an administrative function to the chief executive of Land Information New Zealand:
- aligning the objections process for land acquisition cases under the PWA with that which operates under the RMA.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	**YES**

A number of reports have informed the overall reform package. These include:

- Infrastructure Technical Advisory Group. 2010. *Report of the Minister for the Environment's Infrastructure Technical Advisory Group.* Wellington: Ministry for the Environment.
- Land and Water Forum. 2010. *A Fresh Start to Freshwater.* Wellington: Land and Water Forum. http://www.landandwater.org.nz/
- Land and Water Forum. 2012. *Second Report of the Land and Water Forum.* Wellington: Land and Water Forum. http://www.landandwater.org.nz/
- Land and Water Forum. 2012. *Third Report of the Land and Water Forum.* Wellington: Land and Water Forum. http://www.landandwater.org.nz/
- Ministry for the Environment. 2010. *Building Competitive Cities.* Wellington: Ministry for the Environment https://www.mfe.govt.nz/sites/default/files/building-competitive-cities.pdf
- Productivity Commission. 2012. *Housing Affordability Inquiry*. Wellington: Productivity Commission. http://www.productivity.govt.nz/sites/default/files/Final%20Housing%20Affordability%20Report_0_0.pdf
- Productivity Commission. 2013. *Towards Better Local Regulation.* Wellington: Productivity Commission. http://www.productivity.govt.nz/sites/default/files/towards-better-local-regulation.pdf
- Urban Technical Advisory Group. 2010. *Report of the Minister for the Environment's Urban Technical Advisory Group*. Wellington: Ministry for the Environment. http://www.aucklandcouncil.govt.nz/EN/planspoliciesprojects/plansstrategies/unitaryplan/Documents/Section32report/Appendices/Appendix%203.1.4.pdf
- Principles Technical Advisory Group. 2012. *Report of the Minister for the Environment's Resource Management Act 1991 Principles Technical Advisory Group*. Wellington: Ministry for the Environment. http://www.mfe.govt.nz/publications/rma/report-minister-environment%E2%80%99s-resource-management-act-1991-principles-technical

Additional proposal-specific reports are referenced in the relevant Regulatory Impact Statements (linked below).

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	**NO**

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	**YES**

Three Regulatory Impact Statements (RIS) have been prepared by the Ministry for the Environment and have been assessed by the Treasury's Regulatory Impact Analysis Team (RIAT):

- the RIS entitled "Resource Legislation Amendment Bill 2015", presenting the Ministry for the Environment's analysis to date of a package of reforms proposed by the Minister for the Environment.
- the RIS entitled "Resource Legislation Amendment Bill 2015: EEZ Amendments" and
- the RIS entitled "Alignment of the Decision-Making Process for Nationally Significant Proposals and Notified Discretionary Marine Consents".

Copies of these RISs are available on the Treasury website at www.treasury.govt.nz

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	**YES**

The RIA Team (RIAT) in the Treasury considered that the information and analysis provided partially meets the quality assurance criteria and provided the following statements:

RIS: Resource Legislation Amendment Bill 2015

- RIAT considers that the information and analysis summarised in the RIS "Resource Legislation Amendment Bill 2015" partially meets the quality assurance criteria.
- The RIS is well structured to show how the resource management system fits together and how proposed actions contribute towards addressing clearly defined problems. Individual proposals are for the most part clearly set out, their risks identified and their rationale convincingly explained. The concerns of other Government departments and stakeholders, where these are known, are clearly set out.
- As the RIS makes clear, there has been no consultation on several actions, including some that are identified as being among the most significant. This means there is little evidence as to how stakeholders are likely to respond to new incentives and opportunities provided by the proposed reforms. It is therefore unclear how far the reform package is likely to deliver its objective of robust and durable resource management decisions.
- The new National Monitoring System should help the Ministry to monitor the effectiveness of the new system in practice. On top of that, it will be important also to identify and address additional data requirements in order to be better placed in future to understand and address further reform needs.

RIS: Resource Legislation Amendment Bill 2015: EEZ Amendments

- RIAT considers that the information and analysis summarised in the RIS "Resource Legislation Amendment Bill 2015: EEZ Amendments" partially meets the quality assurance criteria.
- The RIS sets out individual problems with the EEZ regulatory regime, making it clear that the problems relate to uncertainty as to how the regime will operate, creating potential risks for the Crown and stakeholders.
- A range of possible options has been assessed in each case, and the trade-offs between them are illustrated by the options analysis. However, because costs and benefits of each option are not systematically weighed against the objectives, it is difficult to be certain that the most suitable option has been preferred in each case.
- Possibly because the regime is relatively new, the exact operation of the status quo is unclear, and there is only anecdotal or hypothetical evidence to indicate the scale or urgency of the problems. Furthermore there has been limited stakeholder consultation. This makes it unconvincing that all the potential impacts have been identified, underlining the

importance of the evaluation programme described at the end of the RIS.

RIS: Alignment of the Decision-Making Process for Nationally Significant Proposals and Notified Discretionary Marine Consents

- RIAT considers that the information and analysis summarised in the RIS "Alignment of the Decision-Making Processes for Nationally Significant Proposals and Notified Discretionary Marine Consents" partially meets the quality assurance criteria.
- RIAT notes that the proposed decision-making model is not supported by the analysis. Options are consistently assessed under well-established objectives, but the costs and benefits are not explained consistently across the proposals. This is particularly the case for the proposed changes to appeal rights.
- The absence of empirical evidence (again, possibly because of the newness of the EEZ regime) and the limited consultation means that it is difficult to assess how the proposals are likely to perform in practice. The monitoring, evaluation and review process set out at the end of the RIS will be important in this regard.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	**NO**

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	**NO**

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	**NO**
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	**NO**
Given the nature of the issues covered in the reform program, accurate quantification of the size of the problems and impacts has not been feasible across all policy options. It is also difficult to identify the exact impact from many of the proposals as they will affect tangata whenua, local government, stakeholders and communities to a varied degree and with a mix of direct and indirect costs and benefits. The available evidence, or best informed assumptions, that have informed the policy development, have been identified throughout the relevant RISs (linked above). Costs and benefits have also been identified in these documents, but are not quantified. A key assumption of the analysis is that the changes to different parts of the system will reinforce each other. The different parts of the package therefore rely on each other to provide the right set of incentives for change.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	**YES**
(b) the nature and level of regulator effort put into encouraging or securing compliance?	**YES**
There are a number of proposals in the reform package for which potential costs and benefits will likely be impacted by the level of effective compliance or non-compliance with applicable obligations	

or standards, and the nature and level of regulator effort put into encouraging or securing compliance. These are identified and discussed throughout the relevant RISs (linked above).

Much of the package relies on local authorities to implement. This includes encouraging and securing compliance. These efforts will be supported by regulations, a suite of guidance and a comprehensive implementation package. The implementation package has a budget of $8.9 million over four years and will be designed around the principle of ensuring smooth and efficient roll-out of the reforms. An overview of this implementation package will be reported back to Cabinet within four months following the introduction of the Bill.

Evaluation and monitoring frameworks will be developed for the proposals in the current reform package. Detailed consideration of the success indicators for each proposal or group of proposals will be undertaken. This will involve an assessment of the data required to measure the success of the proposals in the reform package and whether it is currently being collected.

The National Monitoring System, alongside other monitoring initiatives, will be utilised to monitor the implementation of the reform package. Further analysis of the data and more detailed studies through complimentary initiatives will then be undertaken to determine whether the intent of each proposal in the reform package has been achieved.

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
None. We did not consider that the policy behind the Bill materially impacts on New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
The Resource Legislation Amendment Bill complies with the Principles of the Treaty of Waitangi. It contains specific provisions that clarify that, where the RMA conflicts with Treaty legislation, the Treaty legislation prevails.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	**YES**
Advice provided to the Attorney-General by the Ministry of Justice is expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	**YES**
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	**YES**
The Bill introduces the ability to prescribe an infringement offence for the contravention of or non-compliance with any regulations prescribing measures to *exclude stock from water bodies* and sets a penalty of no more than $750 for such an infringement. A number of appeal rights have been removed from particular planning and consenting processes. Specific proposals include: • *Provide councils with an option to request a Streamlined Planning Process (SPP) for developing or amending a particular plan*. Appeal rights on decisions made under a SPP will not be available except for judicial review. This is necessary to reduce risk of delay and ensure the objectives of the streamlined process are not undermined. It also reinforces the role of elected decision-makers. • *Streamline the notification and hearings process for resource consent applications.* Under this proposal, councils would be required to identify the specific reasons for notification, and require any submissions that are not focussed or relevant to reasons for notification to be struck out. Submitters whose submissions have been struck out will not be able to advance appeals against the consent decision in the Environment Court. This is necessary to avoid the threat of appeal on irrelevant matters.	

- *No appeals to Environment Court for: boundary infringements and subdivisions (unless non-complying activities); and residential activities in a residential zone.* Environment Court appeals would be precluded for boundary activities, where they meet the criteria in the Act, unless they are non-complying, and for residential activities in residential zones for controlled, restricted discretionary and discretionary activities. Appeal rights will be retained for non-complying boundary activities and non-complying residential activities, reflecting that (in many cases) a non-complying status indicates a development is not consistent with the objectives and policies of the plan.
- *Under the proposed EEZ Act amendments, for marine consent decisions made by a Board of Inquiry, no appeal may be made to the Court of Appeal from a determination of the High Court.* Appeals to the High Court on questions of law will remain. A party may appeal to the Supreme Court for leave to bring an appeal to that court against a determination of the High Court. This proposal aligns with the appeals process for decisions on Nationally Significant Proposals under the RMA.

3.4.1. Was the Ministry of Justice consulted about these provisions?	**YES**

The Ministry of Justice (MoJ) has been consulted on relevant Cabinet Papers, previous iterations of the reforms, and has been included in informal discussions on the development of the revised reform package. Specifically, it originally raised natural justice and fairness concerns with the following proposals:

- *Provide councils with an option to request a Streamlined Planning Process for developing or amending a particular plan*
- *Streamline the notification and hearing process*
- *No appeals to Environment Court for: boundary infringements and subdivisions (unless non-complying activities); and residential activities in a residential zone.*

Appeal rights have been removed in the new streamlined planning process, in the interest of ensuring the planning process can be responsive to urgent issues. However checks and balances have been provided in the form of a Minister's decision on the council's proposed planning instrument, statutory tests and entry criteria in the process and judicial review is still available. Appeal rights have also been restricted as part of the collaborative planning process, however the collaborative nature of this process means that this is also justified. Restricted appeal rights are necessary to both incentivise the collaborative group to reach consensus and to ensure their time and efforts in reaching consensus cannot be undermined by an automatic right of appeal.

Appeal rights have also been narrowed in relation to resource consents. We consider this narrowing to be justified, given the benefits this will produce in relation to the time and cost of affected consents and the scope of the proposals.

The Ministry of Justice has since indicated that any initial concerns with the Bill have been adequately resolved.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	**NO**

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	**YES**

Many of these proposals have been informed by public consultation through two proposal papers; *Improving our resource management system* and *Freshwater reform 2013 and beyond*, released in February and March 2013 respectively. There are some proposals which have not changed, some

which have been amended but not consulted on, and some which are new and not consulted on (see the Consultation section of the *Resource Legislation Amendment Bill 2015* RIS for more details).

The following Government departments and Crown entities have been consulted on relevant Cabinet Papers and previous iterations of the reforms, and have been included in informal discussions on the development of the revised reform package: the Treasury, Ministry of Business, Innovation and Employment (MBIE), Department of Conservation (DOC), Department of Internal Affairs, Te Puni Kōkiri (TPK), Ministry of Transport, the New Zealand Transport Agency (NZTA); Ministry of Justice, the Ministry for Primary Industries, Land Information New Zealand, Ministry for Culture and Heritage, Heritage New Zealand, Ministry of Education, Ministry of Health, the Environmental Protection Authority, Ministry of Civil Defence & Emergency Management, and Maritime New Zealand. The Department of the Prime Minister and Cabinet has been informed.

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	**NO**

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	**NO**

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	**YES**

A number of proposals create a new power to impose a fee, levy or charge. These include:

- If the EPA provides secretarial and support services, the actual and reasonable costs incurred in providing the services can be recovered.
- Local authorities can charge for monitoring of permitted activities from person carrying out that activity if the local authority is empowered to charge for that monitoring by a National Environmental Standard.
- The Bill also authorises local authorities to charge for the following:
    a. the cost of a local authority determining that a boundary activity is a permitted activity or otherwise deciding that an activity is a permitted activity
    b. the cost of an objection being considered by a hearings commissioner

Amended powers

A number of changes have been made to the way in which administrative charges can be set by a local authority. There is a new requirement for consent authorities to fix the fees for processing certain consent applications, and for hearings panels to have a fixed budget and remuneration if required to do so by regulations.

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	**NO**

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	**NO**
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	**NO**

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	**NO**

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a	**YES**

determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	

A number of proposals create or amend a decision-making power to make a determination about a person's rights or interests. Specifically:

- *Remove the ability for Heritage Protection Authorities (HPAs) that are bodies corporate to give notice of a heritage protection order (HPO) over private land, and allow for Ministerial transfer of HPOs.* This proposal would remove the ability of body corporate HPAs to regulate private land through heritage orders, and introduce new transfer provisions which provides the Minister for the Environment the ability to transfer responsibility for a heritage order to another HPA.
- *New regulation making power specifying non-notification of certain applications and limited involvement of affected parties.* This proposal would enable new regulations to be made to provide a national list of consent applications that would be considered on a non-notified basis, or specify the parties who can be considered affected parties, in order to provide national consistency on the notification requirements for specific proposals.

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	**NO**
4.8. Does this Bill create or amend any other powers to make delegated legislation?	**YES**

The Bill creates a number of new regulation making powers for the Minister for the Environment:

- *New regulation making powers to provide national direction through regulation.* These powers will be able to be used to:
    a. prevent and remove council planning provisions that duplicate the functions, or have the effect of overriding other legislation
    b. Prevent and remove council planning provisions that impose land-use restrictions that are not reasonably necessary to achieve the purpose of the RMA.
    c. Permit certain land use activities.

The exercise of this power would be subject to a statutory consultation requirement, a section 32 evaluation, and the full range of safeguards that apply to all secondary legislation.

In the case of b) and c) above the regulation making power is limited to land use rules. A sunset clause coinciding with the implementation of the National Planning Template will apply. Regulations made under b) are further limited to only residential land use rules and the regulations themselves will expire when the National Planning Template is implemented.

- *New regulation making power to require stock to be excluded from water bodies.* This proposal would enable regulations to be made that require all dairy cattle to be excluded from water bodies by 1 July 2017.
- *Require fixed fees for resource consent decisions.* This proposal would enable regulations to be made that would provide the framework under which consent fees must be set. However, consent authorities would still be responsible for determining the actual fees.
- *New regulation making power specifying non-notification of certain applications and limited involvement of affected parties.* This proposal would enable new regulations to be made to provide a national list of consent applications that would be considered on a non-notified basis, or specify the parties who can be considered affected parties.
- *10-day fast-track process for simple applications.* This proposal would enable new

regulations to be made to specify the types of activities, or criteria for what would constitute a simple activity, which must be processed in the truncated 10 working day consent process.

- *EEZ Policy Statements*. The Bill amends the EEZ Act to allow the Minister for the Environment to issue national direction to support decision-making on applications for marine consents.

The Bill amends the follow regulation making power:

- *Enhanced council monitoring requirements.* This will enable the Minister to make new regulations prescribing how councils must carry out their monitoring obligations, including what information must be collected, what methodologies must be used, and how and when the information is to be reported.

The Bill also makes minor changes to the processes for developing National Policy Statements (NPSs) and National Environmental Standards (NESs):

- *Changes to NESs and NPSs.* These changes are aimed at addressing issues which have been identified as limiting development of national direction instruments. These changes will:
    a. introduce a combined development process for NPSs and NESs, through joint consultation, development and publication;
    b. clarify and expand scope for NPSs to give more specific direction about how objectives and policies should be implemented in plans;
    c. allow NPSs and NESs to be developed in relation to a specific area to address a local resource management issue that has national significance;
    d. enable council rules to be more lenient than an NES;
    e. allow NESs to specify councils may change to monitor activities permitted by an NES;
    f. enable NESs to specify requirements for councils.

Finally, the Bill provides for *the introduction of the National Planning Template*, which will set out requirements or other provisions relating to any aspect of the structure, format, or content of regional policy statements and plans to address matters that the Minister considers are nationally significant or require national consistency.

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	**YES**
This Bill (as does the RMA in general) intersects to a substantial extent with Treaty settlement legislation. It presents challenges in terms of maintaining durability of settlements which the policy development has always been cognisant of. It also presents opportunities in terms of raising visibility of Māori involvement.	