

**Resource Management Amendment Bill
(No 2)**

Government Bill

As reported from the committee of whole House

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (majority)

Subject to this Act,

Text struck out by a majority

New (majority)

Subject to this Act,

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Hon Marian Hobbs

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Schedule 1

Consequential amendments to principal Act

Schedule 2

Enactments repealed

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Resource Management Amendment Act (No 2) **2003**.
- (2) In this Act, the Resource Management Act 1991¹ is called “the principal Act”.

¹ 1991 No 69

2 Commencement

- (1) **Sections 18 to 23** come into force on **((1 May 2003))** the day after the date on which it receives the Royal assent.
- (2) The rest of this Act comes into force on **1 August 2003**.

Part 1

Amendments to principal Act

Subpart 1—Interpretation and application

3 Interpretation

- (1) Section 2(1) of the principal Act is amended by inserting, after the definition of **best practicable option**, the following definition:

“**biological diversity** means the variability among living organisms, and the ecological complexes of which they are a

part, including diversity within species, between species, and of ecosystems”.

- (2) Section 2(1) of the principal Act is amended by omitting from the definition of **board of inquiry** the expression “46”, and substituting the expression “47”.
- (3) Section 2(1) of the principal Act is amended by inserting in the definition of **contaminant**, after the word “gases,”, the words “odorous compounds,”.
- (4) Section 2(1) of the principal Act is amended by repealing the definition of **controlled activity**, and substituting the following definition:
“controlled activity means an activity described in **section 77B(2)”**.
- (5) Section 2(1) of the principal Act is amended by repealing the definition of **discretionary activity**, and substituting the following definition:
“discretionary activity means an activity described in **section 77B(4)”**.
- (6) Section 2(1) of the principal Act is amended by omitting from the definition of **district rule** the expression “section 76”, and substituting the words **“sections 76 and 77A”**.
- (7) Section 2(1) of the principal Act is amended by inserting, after the definition of **heritage protection authority**, the following definition:
“historic heritage—
 “(a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:
 “(i) archaeological:
 “(ii) architectural:
 “(iii) cultural:
 “(iv) historic:
 “(v) scientific:

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“(vi) spiritual:

“(vii) technological; and

“(b) includes—

“(i) historic sites, structures, places, and areas; and

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“(ii) cultural landscapes; and

“(iii) archaeological sites; and

“(iv) sites of significance to Māori, including wāhi tapu (~~and ancestral landscapes~~); and

“(v) surroundings associated with the natural and physical resources”.

- (8) Section 2(1) of the principal Act is amended by repealing the definition of **non-complying activity**, and substituting the following definitions:

“**non-complying activity** means an activity described in **section 77B(5)**”

“**notice of decision** means—

“(a) a copy of a decision on—

“(i) an application for a resource consent; or

“(ii) a requirement for a designation; or

“(iii) a provision of a policy statement or plan; or

“(b) a notice summarising a decision under **paragraph (a)**”.

- (9) Section 2(1) of the principal Act is amended by repealing the definition of **permitted activity**, and substituting the following definition:

“**permitted activity** means an activity described in **section 77B(1)**”.

- (10) Section 2(1) of the principal Act is amended by repealing the definition of **prohibited activity**, and substituting the following definition:

“**prohibited activity** means an activity described in **section 77B(7)**”.

- (11) Section 2(1) of the principal Act is amended by repealing the definition of **public notice**, and substituting the following definition:

“**public notice** means a notice published in a newspaper circulating in the entire area likely to be affected by the proposal to which the notice relates”.

- (12) Section 2(1) of the principal Act is amended by adding to the definition of **regional rule** the words “and **section 77A**”.
- (13) Section 2(1) of the principal Act is amended by inserting, after the definition of **restricted coastal activity**, the following definition:
“**restricted discretionary activity** means an activity described in **section 77B(3)**”.
- (14) Section 2(1) of the principal Act is amended by inserting, after the definition of **ship**, the following definition:
“**soil conservation** means avoiding, remedying, or mitigating soil erosion and maintaining the physical, chemical, and biological qualities of soil”.
- (15) Section 2(1) of the principal Act is amended by repealing the definition of **working day**, and substituting the following definition:
“**working day** means any day except—
“(a) a Saturday, a Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
“(b) a day in the period beginning on 20 December in any year and ending with 10 January in the following year.”

Subpart 2—Purpose and principles

4 **Matters of national importance**

Section 6 of the principal Act is amended by adding the following paragraph:

- “(f) the protection of historic heritage from inappropriate subdivision, use, and development.”

5 **Other matters**

Section 7 of the principal Act is amended by repealing paragraph (e).

Subpart 3—Duties and restrictions under this Act

6 **Restrictions on use of coastal marine area**

Section 12(1) of the principal Act is amended by adding to paragraph (f) the word “; or” and also by adding the following paragraph:

“(g) destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on historic heritage—”.

7 Duty to avoid, remedy, or mitigate adverse effects

Section 17(1) of the principal Act is amended by inserting, after the words “resource consent,”, the words “a designation,”.

8 New sections 19 to 20A substituted

The principal Act is amended by repealing sections 19 to 20A, and substituting the following sections:

“19 Certain rules in proposed plans to be operative

- “(1) A rule in a proposed plan is to be treated as if it is operative and any previous rule is inoperative if the time for making submissions or lodging appeals on the rule has expired and—
- “(a) no submissions in opposition have been made or appeals have been lodged; or
 - “(b) all submissions in opposition and appeals have been determined; or
 - “(c) all submissions in opposition have been withdrawn and all appeals withdrawn or dismissed.
- “(2) Every reference in this Act or in regulations to a plan or an operative plan is to be treated as including a rule in a <proposed> plan that is operative in accordance with **subsection (1)**.

“20 Certain rules in proposed plans not to have effect

- “(1) A local authority may, before publicly notifying a proposed plan, resolve that any rule in the plan does not have effect until the plan becomes operative.
- “(2) Public notification of the plan must include the resolution.
- “(3) If the resolution is rescinded, the local authority must, as soon as possible, publicly notify—
- “(a) the rescission; and
 - “(b) the resolution to which it relates; and
 - “(c) the date of the rescission.
- “(4) A rule to which a rescinded resolution relates has effect as a rule in the plan for all purposes on and from the day after the date on which the rescission is publicly notified.

- “(5) A reference in this Act (except in the First Schedule) and in any regulations made under this Act to a proposed plan excludes a rule in the plan if—
- “(a) the rule is subject to a resolution under **subsection (1)**; and
 - “(b) the resolution has not been rescinded.

“20A Certain existing lawful activities allowed

- “(1) If, as a result of a rule in a proposed regional plan being notified, an activity requires a resource consent, the activity may continue until the rule becomes operative if,—
- “(a) before the rule was notified, the activity—
 - “(i) was a permitted activity or otherwise could have been lawfully carried on without a resource consent; and
 - “(ii) was lawfully established; and
 - “(b) the effects of the activity are the same or similar in character, intensity, and scale to the effects that existed before the rule was notified; and
 - “(c) the activity has not been discontinued for a continuous period of more than 6 months (or a longer period fixed by a rule in the proposed regional plan in any particular case or class of case by the regional council that is responsible for the proposed plan) since the rule was notified.
- “(2) If, as a result of a rule in a regional plan becoming operative, an activity requires a resource consent, the activity may continue after the rule becomes operative if,—
- “(a) before the rule became operative, the activity—
 - “(i) was a permitted activity or allowed to continue under **subsection (1)** or otherwise could have been lawfully carried on without a resource consent; and
 - “(ii) was lawfully established; and
 - “(b) the effects of the activity are the same or similar in character, intensity, and scale to the effects that existed before the rule became operative; and
 - “(c) the person carrying on the activity has applied for a resource consent from the appropriate consent authority within 6 months after the date the rule became operative and the application has not been decided or any appeals have not been determined.”

Subpart 4—Functions, powers, and duties of central and local government

9 Functions of regional councils under this Act

- (1) Section 30(1)(c) of the principal Act is amended by inserting, after subparagraph (iii), the following subparagraph:

“(iiia) the maintenance and enhancement of ecosystems in water bodies and coastal water:”.

- (2) Section 30(1) of the principal Act is amended by inserting, after paragraph (g), the following paragraph:

“(ga) the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity:”.

10 Functions of territorial authorities under this Act

- (1) Section 31 of the principal Act is amended by repealing paragraphs (b) and (c), and substituting the following paragraph:

“(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—

“(i) the avoidance or mitigation of natural hazards; and

“(ii) the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances; and

“(iii) the maintenance of indigenous biological diversity:”.

- (2) Section 31 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) The methods used to carry out any functions under subsection (1) may include the control of subdivision.”

11 New sections 32 and 32A substituted

The principal Act is amended by repealing section 32, and substituting the following sections:

“32 Consideration of alternatives, benefits, and costs

- “(1) In achieving the purpose of this Act, before a proposed plan, proposed policy statement, change, or variation is publicly notified, a national policy statement or New Zealand coastal

policy statement is notified under section 48, or a regulation is made, an evaluation must be carried out by—

- “(a) the Minister, for a national policy statement or regulations made under **section 43**; or
 - “(b) the Minister of Conservation, for the New Zealand coastal policy statement; or
 - “(c) the local authority, for a policy statement or a plan (except for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part II of the First Schedule); or
 - “(d) the person who made the request, for plan changes that have been requested and the request accepted under clause 25(2)(b) of Part II of the First Schedule.
- “(2) A further evaluation must also be made by—
- “(a) a local authority before making a decision under clause 10 or clause 29(4) of the First Schedule; and
 - “(b) the relevant Minister before issuing a national policy statement or New Zealand coastal policy statement.
- “(3) An evaluation must examine—
- “(a) the extent to which each objective is the most appropriate way to achieve the purpose of this Act; and

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- “(b) the efficiency and effectiveness of policies, rules, or other methods in achieving each objective.

New (majority)

- “(b) whether, having regard to their efficiency and effectiveness, the policies, rules, or other methods are the most appropriate for achieving the objectives.

- “(4) For the purposes of this examination, an evaluation must take into account—
- “(a) the benefits and costs of policies, rules, or other methods; and
 - “(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods.

Struck out (majority)

- “(5) A person required to carry out an evaluation under **subsection (1)** must prepare a report summarising the evaluation and giving reasons for being satisfied that—
- “(a) the objectives are the most appropriate ways to achieve the purpose of this Act; and
 - “(b) the policies, rules, or other methods are the most appropriate in achieving the objectives, having regard to efficiency and effectiveness.

New (majority)

- “(5) The person required to carry out an evaluation under **subsection (1)** must prepare a report summarising the evaluation and giving reasons for that evaluation.

- “(6) The report must be available for public inspection at the same time as the document to which the report relates is publicly notified or the regulation is made.

“32A Failure to carry out evaluation

- “(1) A challenge to an objective, policy, rule, or other method on the ground that **section 32** has not been complied with may be made only in a submission under the First Schedule or a submission under section 49.
- “(2) **Subsection (1)** does not preclude a person who is hearing a submission or an appeal on a proposed plan, proposed policy statement, change, or variation, or a submission on a national policy statement or New Zealand coastal policy statement, from taking into account the matters stated in **section 32**.”

12 Transfer of powers

- (1) Section 33 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) A local authority may transfer any one or more of its functions, powers, or duties under this Act, except this power of transfer, to another public authority in accordance with this section.”

- (2) Section 33 of the principal Act is amended by repealing subsections (3) and (5).

13 Delegation of functions, etc, by local authorities

Section 34 of the principal Act is amended by repealing subsections (3) to (6), and substituting the following subsection:

- “(3) Subsection (2) does not prevent a local authority delegating to a community board power to do anything before a final decision on the approval of a plan or any change to a plan.”

14 New section 34A inserted

The principal Act is amended by inserting, after section 34, the following section:

“34A **Delegation of powers and functions to employees and other persons**

- “(1) A local authority may delegate to an employee, or hearings commissioner appointed by the local authority (who may or may not be a member of the local authority), any functions, powers, or duties under this Act except the following:
- “(a) the approval of a policy statement or plan:
 - “(b) this power of delegation.
- “(2) A local authority may delegate to any other person any functions, powers, or duties under this Act except the following:
- “(a) the powers in **subsection (1)(a) and (b)**:
 - “(b) the decision on an application for a resource consent:
 - “(c) the making of a recommendation on a requirement for a designation.
- “(3) A delegation under this section must be made by the chief executive officer of the local authority or by a group of senior executive officers.
- “(4) Section 34(7), (8), (9), and (10) applies to a delegation under this section.
- “(5) **Subsection (1) or subsection (2)** does not prevent a local authority delegating to any person the power to do anything before a final decision on a matter referred to in those subsections.”

15 Duty to gather information, monitor, and keep records

- (1) Section 35(2) of the principal Act is amended by omitting paragraph (b), and substituting the following paragraph:

- “(b) the efficiency and effectiveness of policies, rules, or other methods in its policy statement or its plan; and”.
- (2) Section 35 of the principal Act is amended by inserting, after subsection (2), the following subsection:
- “(2A) Every local authority must, at intervals of not more than 5 years, compile and make available to the public a review of the results of its monitoring under **subsection (2)(b)**.”
- (3) Section 35(5) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraphs:
- “(g) records of all applications for resource consents received by it; and
- “(ga) records of all decisions under any of **sections 93 to 94C**; and
- “(gb) records of all resource consents granted within the local authority’s region or district; and
- “(gc) records of the transfer of any resource consent; and”.

16 Administrative charges

Section 36 of the principal Act is amended by inserting, after subsection (3), the following subsection:

- “(3A) A local authority must, upon request by any person liable to pay a charge under this section, provide an estimate of any additional charge likely to be imposed under subsection (3).”

17 New sections 37 to 37B substituted

The principal Act is amended by repealing section 37, and substituting the following sections:

“37 Power of waiver and extension of time limits

- “(1) A consent authority or local authority may, in any particular case,—
- “(a) extend a time period specified in this Act or in regulations, whether or not the time period has expired; or
- “(b) waive a failure to comply with a requirement under this Act, regulations, or a plan for the time or method of service of documents.
- “(2) If a person is required to provide information under this Act, regulations, or a plan and the information is inaccurate or omitted, or a procedural requirement is omitted, the consent authority or local authority may—
- “(a) waive compliance with the requirement; or

“(b) direct that the omission or inaccuracy be rectified on such terms as the consent authority or local authority thinks fit.

“37A Requirements for waivers and extensions

“(1) A consent authority or local authority must not extend a time limit or waive compliance with a time limit, a method of service, or the service of a document in accordance with **section 37** unless it has taken into account—

“(a) the interests of any person who, in its opinion, may be directly affected by the extension or waiver; and

“(b) the interests of the community in achieving adequate assessment of the effects of a proposal, policy statement, or plan; and

“(c) its duty under section 21 to avoid unreasonable delay.

“(2) A time period may be extended under **section 37** for—

“(a) a time not exceeding twice the maximum time period specified in this Act; or

“(b) a time exceeding twice the maximum time period specified in this Act if the applicant or requiring authority requests or agrees.

“(3) A consent authority or a local authority, must ensure that every person who in its opinion is directly affected by the extension of a time limit or the waiver of compliance with a time limit, a method of service, or the service of a document is notified of the extension.

“37B Persons to have powers of consent authority for purposes of sections 37 and 37A

The following bodies have the powers of a consent authority under **sections 37 and 37A** for the following matters:

“(a) the Minister, for a direction given under section 140:

“(b) the board of inquiry appointed under section 146, for all matters while carrying out its functions:

“(c) a special tribunal appointed under section 202, for all matters while carrying out its functions.”

Subpart 5—Standards, policy statements, and plans

18 New sections 43 to 44 substituted

The principal Act is amended by repealing sections 43 and 44, and substituting the following sections:

“43 Regulations prescribing national environmental standards

“(1) The Governor-General may, by Order in Council, make regulations, to be known as national environmental standards, that prescribe any or all of the following technical standards, methods, or requirements:

“(a) standards for the matters referred to in section 9, section 12, section 13, section 14, or section 15, including, but not limited to—

“(i) contaminants:

“(ii) water quality, level, or flow:

“(iii) air quality:

“(iv) soil quality in relation to the discharge of contaminants:

“(b) standards for noise:

“(c) standards, methods, or requirements for monitoring.

“(2) The regulations may include:

“(a) qualitative or quantitative standards:

“(b) standards for any discharge or the ambient environment:

“(c) methods for classifying a natural or physical resource:

“(d) methods, processes, or technology to implement standards:

“(e) exemptions from standards:

“(f) transitional provisions for standards, methods, or requirements.

“(3) Section 360(2) applies to all regulations made under this section.

“43A Additional powers to implement national environmental standards

“(1) Regulations made under **section 43** may—

“(a) prohibit an activity:

“(b) allow an activity, subject to compliance with—

“(i) the rules in any relevant regional or district plan, or any relevant proposed regional or district plan; and

“(ii) the terms or conditions (if any) specified in the regulations:

“(c) restrict the making of a rule or the granting of a resource consent to matters specified in the regulations:

- “(d) require a person to obtain a certificate from a specified person stating that an activity complies with a term or condition imposed by the regulations:
 - “(e) specify, in relation to a rule made before the commencement of the regulations,—
 - “(i) the extent to which any matter to which the regulation applies continues to have effect; or
 - “(ii) the time period during which any matter to which the regulation applies continues to have effect:
 - “(f) require local authorities to review, under **section 128(1)**, all or any of the permits to which **paragraph (ba)** of that subsection applies as soon as practicable or within the time specified in the regulations.
- “(2) If regulations made under **section 43** allow a resource consent to be granted for an activity, the regulations may state—
- “(a) that the activity is a controlled, restricted discretionary, discretionary, or non-complying activity; and
 - “(b) the matters over which control is reserved or discretion is restricted.

“43B Relationship between standards and rules

- “(1) To the extent that an activity permitted by or under a rule or by a resource consent is prohibited or not authorised by or under regulations made under **section 43**, the regulations prevail.
- “(2) To the extent that an activity permitted by or under regulations made under **section 43** is prohibited or not authorised by or under a rule or by a resource consent, the rule or resource consent prevails.

“43C Incorporation of material by reference

- “(1) Regulations made under **section 43** may incorporate by reference all or any part of any—
 - “(a) standards, requirements, or recommended practices of international organisations;
 - “(b) any other written material or document that, in the opinion of the Minister, is too large or impractical to be printed as part of the regulations.
- “(2) Material incorporated into regulations by reference forms part of the regulations for all purposes.
- “(3) Unless otherwise provided in the regulations, every amendment to material incorporated by reference that is made by the

person or organisation originating the material is, subject to **subsection (4)**, part of the regulations.

- “(4) The Minister must, by notice in the *Gazette*, specify the date on which an amendment to material incorporated by reference takes effect.

“43D **Description of discharges in regulations prescribing national environmental standards for discharges**

Regulations made under **section 43** for an activity that is a discharge may describe the discharge by referring to—

- “(a) particular contaminants or sources of contaminants in a discharge; or
“(b) the circumstances or sources of a discharge.

“43E **Transitional matters relating to national environmental standards**

- “(1) If regulations made under **section 43** prescribe transitional provisions relating to a rule in a proposed plan or a resource consent <application> notified before the commencement of the regulations, the rule or resource consent concerned has effect only to the extent (if any) specified in the regulations.
- “(2) If regulations made under **section 43** require a resource consent to be obtained for an activity, **section 20A(2)** applies to the activity as if the regulation were a rule in a regional plan that had become operative.
- “(3) Regulations made under **section 43** do not apply to a resource consent in existence before the commencement of the regulations until the consent is reviewed under **section 128(1)(ba)**.
- “(4) Regulations made under **section 43** that apply to water do not limit a person’s obligations to comply with a water conservation order.
- “(5) **Subsection (1)** does not override **section 43B**.

“44 **Restriction on power to make regulations prescribing national environmental standards**

The Minister must not recommend to the Governor-General the making of any regulations under section 43 unless the Minister has—

- “(a) notified the public of—

- “(i) the proposed subject-matter of the regulations;
and
 - “(ii) the Minister’s reasons for considering that the regulations are consistent with the purpose of the Act; and
- “(b) established a process that—
- “(i) the Minister considers gives the public adequate time and opportunity to comment on the proposed subject-matter of the regulations; and
 - “(ii) requires a report and recommendation to be made to the Minister on those comments and the proposed subject-matter of the regulations; and
- “(c) publicly notified that report and recommendation.”

19 Purpose of national policy statements (other than New Zealand coastal policy statements)

Section 45(1) of the principal Act is amended by omitting the words “policies on”, and substituting the words “objectives and policies for”.

20 New sections 46 and 47 substituted

The principal Act is amended by repealing sections 46 and 47, and substituting the following sections:

“46 Proposed national policy statement

If the Minister considers it desirable to issue a national policy statement, the Minister must—

- “(a) seek and consider comments from the persons and organisations that the Minister considers appropriate;
and
- “(b) then prepare a proposed national policy statement.

“47 Board of inquiry

- “(1) The Minister must appoint a board of inquiry to inquire into, and report on, the proposed national policy statement.
- “(2) The Minister may, as the Minister sees fit,—
 - “(a) set terms of reference for the board of inquiry; and
 - “(b) set the rate of remuneration to be paid to members of the board of inquiry.”

21 Public notification of inquiry

- (1) The heading to section 48 of the principal Act is amended by inserting, after the word “of”, the words “**proposed national policy statement and**”.
- (2) Section 48(1) of the principal Act is amended by inserting, after the words “notice of the”, the words “proposed national policy statement and the”.
- (3) Section 48(2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

“(ab) places at which the proposed national policy statement may be inspected or purchased; and”.
- (4) Section 48(2)(b) of the principal Act is amended by omitting the word “application”, and substituting the words “proposed national policy statement”.

22 New sections 50 to 52 substituted

The principal Act is amended by repealing sections 50 to 52, and substituting the following sections:

“50 Conduct of hearing

- “(1) Sections 39 to 42A apply, with all necessary modifications, in respect of an inquiry by a board of inquiry into a proposed national policy statement as if every reference in those sections to—
 - “(a) a consent authority or local authority were a reference to a board of inquiry; and
 - “(b) a proposed policy statement were a reference to a proposed national policy statement.
- “(2) The board of inquiry must give at least 10 working days’ notice of the dates, times, and place of the hearing of the inquiry.
- “(3) A person who made a submission has the right to be heard at the hearing.

“51 Matters to be considered and board of inquiry’s report

- “(1) The board of inquiry must consider the following matters:
 - “(a) the matters in Part II; and
 - “(b) the proposed national policy statement; and
 - “(c) any submissions received on the proposed national policy statement; and
 - “(d) any evidence received; and

“(e) any other relevant matter.

“(2) After considering the matters, the board of inquiry must arrange for a report and recommendations to be made to the Minister within any terms of reference set by the Minister.

52 Consideration of recommendations and approval of statement

“(1) The Minister must consider a report and any recommendations made to him or her by a board of inquiry under **section 51** and then may (but need not) make any changes to the proposed national policy statement that he or she thinks fit.

“(2) The Governor-General in Council may, on the recommendation of the Minister, approve a national policy statement.

“(3) The Minister must, as soon as practicable after a national policy statement has been approved,—

“(a) issue the statement by notice in the *Gazette*; and

“(b) publicly notify the statement and the report in whatever form he or she thinks appropriate and send a copy to every local authority; and

“(c) provide every person who made a submission on the statement with a summary of the recommendations and of the Minister’s decision on the recommendations; and

“(d) present a copy of the statement to the House of Representatives.”

23 New section 55 substituted

The principal Act is amended by repealing section 55, and substituting the following section:

55 Local authority recognition of national policy statements

“(1) A local authority must amend a regional policy statement or a plan, as soon as practicable or within the time, or before the occurrence of an event, specified in a national policy statement, to give effect to a provision in the national policy statement that affects a regional policy statement or a plan.

“(2) A national policy statement must state whether a local authority is required to use the process set out in the First Schedule to amend a regional policy statement or a plan under **subsection (1)**.

“(3) A local authority must also take any other action that is specified in the national policy statement.

“(4) A national policy statement may include transitional provisions for any matter, including its effect on existing matters or proceedings.”

24 Matters to be considered by regional council

(1) Section 61(2)(a) of the principal Act is amended by repealing subparagraphs (ii) and (iv).

(2) Section 61 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) A regional council must, when preparing or changing a regional policy statement, take into account any relevant planning document recognised by an iwi authority, and lodged with the council, to the extent that its content has a bearing on resource management issues of the region.”

25 New section 62 substituted

The principal Act is amended by repealing section 62, and substituting the following section:

“62 Contents of regional policy statements

“(1) A regional policy statement must state—

“(a) the significant resource management issues for the region; and

“(b) the resource management issues of significance to iwi authorities in the region; and

“(c) the objectives sought to be achieved by the statement; and

“(d) the policies for those issues and objectives and an explanation of those policies; and

“(e) the methods (excluding rules) used, or to be used, to implement the policies; and

“(f) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the statement; and

“(g) the environmental results anticipated from implementation of those policies and methods; and

“(h) the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities or between regions; and

“(i) the local authority responsible in the whole or any part of the region for specifying the objectives, policies, and methods for the control of the use of land—

- “(i) to avoid or mitigate natural hazards or any group of hazards; and
 - “(ii) to prevent or mitigate the adverse effects of the storage, use, disposal, or transportation of hazardous substances; and
 - “(iii) to maintain indigenous biological diversity; and
 - “(j) the procedures used to monitor the efficiency and effectiveness of the policies or methods contained in the statement; and
 - “(k) any other information required for the purpose of the regional council’s functions, powers, and duties under this Act.
- “(2) If no responsibilities are specified in the regional policy statement for functions described in **subsection (1)(i)(i) or (ii)**, the regional council retains primary responsibility for the function in **subsection (1)(i)(i)** and the territorial authorities of the region retain primary responsibility for the function in **subsection (1)(i)(ii)**.
- “(3) A regional policy statement must not be inconsistent with any water conservation order and must give effect to a national policy statement or New Zealand coastal policy statement.”

26 Preparation and change of other regional plans

Section 65 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

- “(1) A regional council may prepare a regional plan for the whole or part of its region for any function specified in section 30(1)(c), (e), (f), (g), **or (ga)**.
- “(2) A plan must be prepared in accordance with the First Schedule.”

27 Matters to be considered by regional council

- (1) Section 66(2)(c) of the principal Act is amended by repealing subparagraphs (ii) and (iv).
- (2) Section 66 of the principal Act is amended by inserting, after subsection (2), the following subsection:
 - “(2A) A regional council must, when preparing or changing a regional plan, take into account any relevant planning document recognised by an iwi authority, and lodged with the

council, to the extent that its content has a bearing on resource management issues of the region.”

28 New section 67 substituted

The principal Act is amended by repealing section 67, and substituting the following section:

“67 Contents of regional plans

“(1) A regional plan must state—

- “(a) the issues to be addressed in the plan; and
- “(b) the objectives sought to be achieved by the plan; and
- “(c) the policies for those issues and objectives, and an explanation of the policies; and
- “(d) the methods (including rules, if any) to implement the policies; and
- “(e) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the plan; and
- “(f) the information to be included with an application for a resource consent; and
- “(g) the environmental results anticipated from the implementation of these policies and methods; and
- “(h) the processes to be used to deal with issues that cross local authority boundaries, and issues between territorial authorities and between regions; and
- “(i) the procedures used to monitor the efficiency and effectiveness of the policies, rules, or other methods contained in the plan; and
- “(j) any other information required for the purpose of the regional council’s functions, powers, and duties under this Act.

“(2) A regional plan must give effect to any national policy statement or any New Zealand coastal policy statement and must not be inconsistent with—

- “(a) a water conservation order; or
- “(b) the regional policy statement or any other regional plan for that region.”

29 Regional rules

(1) Section 68(1) of the principal Act is amended by omitting the words “in a regional plan rules which prohibit, regulate, or

allow activities”, and substituting the words “rules in a regional plan”.

- (2) Section 68(3) of the principal Act is amended by omitting the words “; and rules may accordingly provide for permitted activities, controlled activities, discretionary activities, non-complying activities, prohibited activities, and restricted coastal activities”.
- (3) Section 68 of the principal Act is amended by repealing subsections (3A) and (3B).
- (4) Section 68(4) of the principal Act is amended by omitting the words “Notwithstanding subsection (3), a”, and substituting the word “A”.
- (5) Section 68(5) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

“(e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.”

30 Aquaculture activities

Section 68A of the principal Act is amended by adding the following subsection:

- “(3) To avoid doubt, **subsection (2)**—
- “(a) does not apply to a proposed regional coastal plan notified under clause 5 of the First Schedule before 26 March 2002; but
 - “(b) does apply to a variation to a proposed regional coastal plan referred to in **paragraph (a)** if the variation is notified on or after 26 March 2002.”

31 Matters to be considered by territorial authority

- (1) Section 74(2)(b) of the principal Act is amended by repealing subparagraph (ii).
- (2) Section 74 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) A territorial authority must, when preparing or changing a district plan, take into account any relevant planning document recognised by an iwi authority, and lodged with the authority, to the extent that its content has a bearing on resource management issues of the district.”

32 New section 75 substituted

The principal Act is amended by repealing section 75, and substituting the following section:

“75 Contents of district plans

“(1) A district plan must state—

“(a) the significant resource management issues for the district; and

“(b) the objectives sought to be achieved by the plan; and

“(c) the policies for those issues and objectives, and an explanation of the policies; and

“(d) the methods (including rules if any) to implement the policies; and

“(e) the principal reasons for adopting the objectives, policies, and methods of implementation set out in the plan; and

“(f) the information to be included with an application for a resource consent; and

“(g) the environmental results anticipated from the implementation of these policies and methods; and

“(h) the processes to be used to deal with issues that cross territorial authority boundaries; and

“(i) the procedures used to monitor the efficiency and effectiveness of the policies, rules, or other methods contained in the plan; and

“(j) any other information for the purpose of the territorial authority’s functions, powers, and duties under this Act.

“(2) A district plan must give effect to any national policy statement or a New Zealand coastal policy statement and must not be inconsistent with—

“(a) a water conservation order; or

“(b) the regional policy statement; or

“(c) a regional plan for any matter specified in section 30(1).”

33 District rules

(1) Section 76(1) of the principal Act is amended by omitting the words “in its district plan rules which prohibit, regulate, or allow activities”, and substituting the words “rules in a district plan”.

(2) Section 76(3) of the principal Act is amended by omitting the words “; and rules may accordingly provide for permitted

activities, controlled activities, discretionary activities, non-complying activities, and prohibited activities”.

- (3) Section 76 of the principal Act is amended by repealing subsections (3A) and (3B).
- (4) Section 76(4) of the principal Act is amended by repealing paragraph (e), and substituting the following paragraph:

“(e) require a resource consent to be obtained for an activity causing, or likely to cause, adverse effects not covered by the plan.”

34 New heading and sections 77A to 77D inserted

The principal Act is amended by inserting, after section 77, the following heading and sections:

“Additional provisions for regional rules and district rules

“77A Power to include rules in plans

- “(1) A local authority may make rules describing an activity as an activity in **section 77B**.
- “(2) When an activity in a plan or proposed plan is described as an activity in **section 77B**, the requirements, restrictions, permissions, and prohibitions specified for that type of activity apply to that activity in that plan or proposed plan.
- “(3) The power to specify conditions in a plan or proposed plan is limited to conditions for the matters in section 108 or section 220.

“77B Types of activities

- “(1) If an activity is described in this Act, regulations, or a plan or proposed plan as a permitted activity, a resource consent is not required for the activity if it complies with the standards, terms, or conditions, if any, specified in the plan or proposed plan.
- “(2) If an activity is described in this Act, regulations, or a plan or proposed plan as a controlled activity,—
 - “(a) a resource consent is required for the activity, and the consent authority has no power to decline that resource consent; and
 - “(b) the consent authority must specify in the plan or proposed plan matters over which it has reserved control; and

- “(c) the consent authority’s power to impose conditions on the resource consent is restricted to the matters that have been specified under **paragraph (b)**; and
 - “(d) the activity must comply with the standards, terms, or conditions, if any, specified in the plan or proposed plan.
- “(3) If an activity is described in this Act, regulations, or a plan or proposed plan as a restricted discretionary activity,—
- “(a) a resource consent is required for the activity; and
 - “(b) the consent authority must specify in the plan or proposed plan matters to which it has restricted its discretion; and
 - “(c) the consent authority’s powers to decline a resource consent and to impose conditions are restricted to matters that have been specified under **paragraph (b)**; and
 - “(d) the activity must comply with the standards, terms, or conditions, if any, specified in the plan or proposed plan.
- “(4) If an activity is described in this Act, regulations, or a plan or proposed plan as a discretionary activity,—
- “(a) a resource consent is required for the activity; and
 - “(b) the consent authority may grant the resource consent with or without conditions or decline the resource consent; and
 - “(c) the activity must comply with the standards, terms, or conditions, if any, specified in the plan or proposed plan.
- “(5) If an activity is described in this Act, regulations, or a plan or proposed plan as a non-complying activity,—
- “(a) a resource consent is required for the activity; and
 - “(b) the consent authority may grant the resource consent with or without conditions or decline the resource consent.
- “(6) Particular restrictions for non-complying activities are in **section 104A**.
- “(7) If an activity is described in this Act, regulations, or a plan as a prohibited activity, no application may be made for that activity and a resource consent must not be granted for it.

“77C Certain activities to be treated as discretionary activities or prohibited activities

- “(1) An application for a resource consent for an activity must, with the necessary modifications, be treated as an application for a resource consent for a discretionary activity if—
- “(a) Part III requires a resource consent to be obtained for an activity and there is no plan or proposed plan, or no relevant rule in a plan or proposed plan; or
 - “(b) a plan or proposed plan requires a resource consent to be obtained for an activity, but does not classify the activity as *<an activity>* <controlled, restricted discretionary, discretionary, or non-complying> *<in>* *<under>* **section 77B**; or
 - “(c) a rule in a proposed plan describes the activity as a prohibited activity and that rule has not become operative.
- “(2) Prospecting, exploring, or mining for Crown owned minerals in the internal waters (as defined in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977) of the Coromandel Peninsula, other than those prospecting, exploring, or mining activities set out in section 61(1A) of the Crown Minerals Act 1991, must be treated as a prohibited activity.
- “(3) An activity prohibited by section 105(2)(b) of the Historic Places Act 1993 must be treated as a prohibited activity.

“77D Rules for certain activities may include restrictions on notification

A rule for a controlled activity or a restricted discretionary activity may state whether applications for a resource consent for the activity may be decided without notification under **section 93** or without service under **section 94(1)**.”

35 New section 78A inserted

The principal Act is amended by inserting, before section 79, the following section:

“78A Combined regional and district documents

- “(1) A local authority may prepare a document that meets the requirements of 2 or more of the following:
- “(a) a regional policy statement;
 - “(b) a regional plan;

“(c) a district plan.

“(2) **Subsection (1)** is subject to sections 60, 64, 65, and 73.”

36 New section 82 substituted

The principal Act is amended by repealing section 82, and substituting the following section:

“82 Disputes

“(1) Subsection (2) applies if there is a dispute about—

“(a) whether there is an inconsistency between a water conservation order and a regional policy statement or a plan; or

“(b) whether there is an inconsistency between a regional policy statement or a regional plan and a district plan (including any rules of a plan) on a matter of regional significance; or

“(c) whether a regional policy statement or a plan gives effect to a national policy statement or New Zealand coastal policy statement.

“(2) A Minister or local authority responsible for a relevant national policy statement, New Zealand coastal policy statement, policy statement, plan, or order may refer a dispute to the Environment Court for a decision resolving the matter.

“(3) If, after considering the matter referred to it under **subsection (2)**, the Court considers that there is an inconsistency as described in **subsection (1)(a) or (b)**, or the statement or plan does not give effect to a national policy statement or New Zealand coastal policy statement as referred to in **subsection (1)(c)**,—

“(a) the Court must order the authority responsible for the policy statement or plan to initiate a change to the policy statement or plan; or

“(b) if the Court considers that it is of minor significance that does not affect the general intent and purpose of the policy statement, plan, or order concerned, the Court may allow it to remain.”

Subpart 6—Resource consents

37 New section 88 substituted

The principal Act is amended by repealing section 88, and substituting the following section:

88 Making an application

- “(1) A person may apply to the relevant local authority for a resource consent.
- “(2) An application must—
- “(a) be made in the prescribed form and manner; and
 - “(b) include, in accordance with the Fourth Schedule, an assessment of environmental effects in such detail as corresponds with the scale and significance of the effects that the activity may have on the environment.
- “(3) If an application does not include an adequate assessment of environmental effects or the information required by regulations, a local authority may, within 5 working days after the application was first lodged, determine that the application is incomplete and return the application, with written reasons for the determination, to the applicant.
- “(4) If, after an application has been returned as incomplete, that application is lodged again with the relevant local authority, that application is to be treated as a new application.
- “(5) Sections 357 and 358 apply to a determination that an application is incomplete.”

38 Description of type of activity to remain the same

- (1) Section 88A of the principal Act is amended by repealing subsection (1), and substituting the following subsections:
- “(1) **Subsection (1A)** applies if—
- “(a) an application for a resource consent has been made under section 88; and
 - “(b) the type of activity (being controlled, restricted, discretionary, or non-complying) for which the application was made under section 88, or for which the activity is treated under **section 77C**, is altered after the application was first lodged as a result of—
 - “(i) a proposed plan being notified; or
 - “(ii) a decision being made under clause 10(3) of the First Schedule; or
 - “(iii) otherwise.
- “(1A) The application continues to be processed, considered, and decided as an application for the type of activity that it was for, or was treated as being for, at the time the application was first lodged.”

- (2) Section 88A(2) of the principal Act is amended by omitting the expression “104”, and substituting the expression “**104(1)(b)**”.

39 New section 88B inserted

The principal Act is amended by inserting, after section 88A, the following section:

“88B Calculating time limits for processing applications

The following time periods must be excluded from the calculation of time limits in **sections 95, 101(2A), and 115(b)**:

- “(a) the time taken by an applicant to provide further information to a consent authority once a request for further information is made under **section 92** and to resolve objections or appeals on that request (under sections 357 and 358);
- “(b) the time taken by the applicant to obtain the approval of persons who may be adversely affected (for the purposes of **section 94**), whether or not the approvals are obtained.”

40 Section 90 repealed

Section 90 of the principal Act is repealed.

41 New sections 92 to 95 substituted

The principal Act is amended by repealing sections 92 to 95, and substituting the following sections:

“92 Further information may be required

- “(1) A consent authority may, at any reasonable time before the hearing of an application for a resource consent or before the decision to grant or refuse the application (if there is no hearing), by written notice, require the applicant for the consent to provide further information relating to the application.
- “(2) A consent authority may commission a report from any person on any matters raised in relation to the application, including a review of any information provided in an application under **section 88** or under this section if,—
- “(a) in the opinion of the consent authority, the activity for which the resource consent is sought may have a significant adverse environmental effect; and
- “(b) the applicant is notified before the report is commissioned.

- “(3) Any further information requested or a report commissioned under this section must be available at the office of the consent authority no later than 10 working days before the hearing of an application.
- “(4) This section does not apply to reports prepared under section 42A.
- “(5) Sections 357 and 358 apply to **subsections (1) and (2)**.

“93 **When public notification of consent applications is required**

- “(1) A consent authority must notify an application for a resource consent unless—
 - “(a) the application is for a controlled activity; or
 - “(b) the consent authority is satisfied that the adverse effects of the activity on the environment will be minor.
- “(2) If **subsection (1)** applies, the consent authority must notify the application by—
 - “(a) publicly notifying it in the prescribed form; and
 - “(b) serving notice of it on every person prescribed in regulations.

“94 **When public notification of consent applications is not required**

- “(1) If notification is not required under **section 93(1)**, the consent authority must serve notice of the application on all persons who, in the opinion of the consent authority, may be adversely affected by the activity, even if some of those persons have given their written approval to the activity.
- “(2) However, a consent authority is not required to serve notice of the application under **subsection (1)** if all persons who, in the opinion of the consent authority, may be adversely affected by the activity have given their written approval to the activity.

“94A **Forming opinion as to whether adverse effects are minor or more than minor**

When forming an opinion, for the purpose of **section 93**, as to whether the adverse effects of an activity on the environment will be minor or more than minor, a consent authority—

- “(a) may disregard an adverse effect of the activity on the environment if the plan *<or proposed plan>* permits an activity with that effect; and
 - “(b) for a restricted discretionary activity, must disregard an adverse effect of the activity on the environment that does not relate to a matter specified in the plan or proposed plan as a matter for which discretion is restricted for the activity.
- “94B **Forming opinion as to who may be adversely affected**
- “(1) **Subsections (2) and (3)** apply when a consent authority is forming an opinion, for the purpose of **section 94(1)**, as to who may be adversely affected by the activity.
 - “(2) The consent authority must have regard to every relevant statutory acknowledgement, within the meaning of an Act specified in Schedule 11, made in accordance with the provisions of that Act.
 - “(3) A person—
 - “(a) may be treated as not being adversely affected if, in relation to the adverse effects of the activity on the person, the plan *<or proposed plan>* permits an activity with that effect; or
 - “(b) in relation to a controlled or restricted discretionary activity, must not be treated as being adversely affected if the adverse effects of the activity on the environment do not relate to a matter specified in the plan or proposed plan as a matter for which—
 - “(i) control is reserved for the activity; or
 - “(ii) discretion is restricted for the activity; or
 - “(c) must not be treated as being adversely affected if it is unreasonable in the circumstances to seek the written approval of that person.
- “94C **Public notification if applicant requests or if special circumstances exist**
- “(1) If an applicant requests, a consent authority must notify an application for a resource consent by—
 - “(a) publicly notifying it in the prescribed form; and
 - “(b) serving notice of it on every person prescribed in regulations.

- “(2) If a consent authority considers that special circumstances exist, a consent authority may notify an application for a resource consent by—
- “(a) publicly notifying it in the prescribed form; and
 - “(b) serving notice of it on every person prescribed in regulations.

“94D **When public notification and service requirements may be varied**

- “(1) Despite **section 93(1)(a)**, a consent authority must notify an application for a resource consent for a controlled activity in accordance with **section 93(2)** if a rule in a plan or proposed plan expressly provides that such an application must be notified.
- “(2) Despite **section 93(1)(b)**, a consent authority is not required to notify an application for a resource consent for a restricted discretionary activity if a rule in a plan or proposed plan expressly provides that such an application does not need to be notified.
- “(3) Despite **section 94(1)**, a consent authority is not required to ~~service~~ serve notice of an application for a resource consent for a controlled or restricted discretionary activity if a rule in a plan or proposed plan expressly provides that notice of such applications does not need to be served.

“95 **Time limit for notification**

If an application for a resource consent is required to be publicly notified or notice of the application is required to be served on any person, that notice must be given or served within 10 working days of the date the application is first lodged.”

42 Making of submissions

Section 96 of the principal Act is amended by repealing subsections (1) and (2), and substituting the following subsections:

- “(1) The following persons may make submissions to a consent authority about an application for a resource consent:
- “(a) if the application is publicly notified in accordance with **section 93 or section 94C**, any person:

- “(b) if notice of the application is served under **section 94(1)**, any person served with the notice of the application.
- “(2) A submission must be in the prescribed form and served on the local authority.”

43 Hearing date and notice

Section 101 of the principal Act is amended by repealing subsection (2A), and substituting the following subsection:

- “(2A) If the application was not notified <or if notice was not served>, the date for the commencement of any hearing must be not later than 25 working days after the date the application was first lodged with the consent authority.”

44 New sections 104 to 106 substituted

The principal Act is amended by repealing sections 104 to 106, and substituting the following sections:

104 Consideration of applications

- “(1) When considering an application for a resource consent and any submissions received, the consent authority must, subject to Part II, have regard to—
- “(a) any actual and potential effects on the environment of allowing the activity; and
- “(b) any relevant provisions of—
- “(i) a national policy statement:
- “(ii) a New Zealand coastal policy statement:
- “(iii) a regional policy statement or proposed regional policy statement:
- “(iv) a plan or proposed plan; and
- “(c) any other matter the consent authority considers relevant and reasonably necessary to determine the application.

New (majority)

- “(1A) When forming an opinion for the purposes of **subsection (1)(a)**, a consent authority may disregard an adverse effect of the activity on the environment if the plan permits an activity with that effect.

Struck out (majority)

- “(2) When considering an application for a resource consent for a controlled activity, a consent authority must grant the application but may impose conditions on the consent under section 108 for matters over which it has reserved control in its plan or proposed plan.
- “(3) When considering an application for a resource consent for a restricted discretionary activity, a consent authority—
- “(a) must consider only those matters specified in the plan or proposed plan to which it has restricted the exercise of its discretion; and
 - “(b) may grant or refuse the application; and
 - “(c) if it grants the application, may impose conditions under section 108 only for those matters specified in the plan or proposed plan over which it has restricted the exercise of its discretion.
- “(4) After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—
- “(a) may grant or refuse the application; and
 - “(b) if it grants the application, may impose conditions under section 108.
- “(5) A consent authority must not—
- “(a) have regard to trade competition when considering an application;
 - “(b) when considering an application, have regard to any effect on a person who has given written approval to the application;
 - “(c) grant a resource consent contrary to the provisions of ~~sections 107 or 217~~ section 107 or section 217, any Order in Council in force under section 152, or under any regulations;
 - “(d) grant a resource consent if the application should have been publicly notified and was not.
- “(6) **Subsection (5)(b)** does not apply if a person has given written approval in accordance with that paragraph but, before the date of the hearing (if a hearing is held) or otherwise before the determination of the application, that person gives notice

in writing to the consent authority that the approval is withdrawn.

- “(7) A consent authority may grant a resource consent on the basis that the activity is a controlled activity, a restricted discretionary activity, a discretionary activity, or a non-complying activity, regardless of what type of activity the application was expressed to be for.

New (majority)

“104AA Determination of applications for controlled activities

After considering an application for a resource consent for a controlled activity, a consent authority—

- “(a) must grant the application; but
“(b) may impose conditions on the consent under section 108 for matters over which it has reserved control in its plan or proposed plan.

“104AB Determination of applications for discretionary or non-complying activities

After considering an application for a resource consent for a discretionary activity or non-complying activity, a consent authority—

- “(a) may grant or refuse the application; and
“(b) if it grants the application, may impose conditions under section 108.

“104AC Particular restrictions for restricted discretionary activities

When considering an application for a resource consent for a restricted discretionary activity, a consent authority—

- “(a) must consider only those matters specified in the plan or proposed plan to which it has restricted the exercise of its discretion; and
“(b) may grant or refuse the application; and
“(c) if it grants the application, may impose conditions under section 108 only for those matters specified in the plan or proposed plan over which it has restricted the exercise of its discretion.

Struck out (majority)**“104A Particular restrictions for non-complying activities**

Despite any decision made for the purpose of **section 93** in relation to minor effects, a consent authority must not grant a resource consent for a non-complying activity unless it is satisfied that—

- “(a) the adverse effects of the activity on the environment (other than any effect to which **section 104(5)(b)** applies) will be minor; or
- “(b) the application is for an activity that will not be contrary to the objectives and policies of—
 - “(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
 - “(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or
 - “(iii) the relevant plan, if there is both a plan and a proposed plan in respect of the activity; or
 - “(iv) the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

New (majority)**“104A Particular restrictions for non-complying activities**

“(1) Despite any decision made for the purpose of **section 93** in relation to minor effects, a consent authority may grant a resource consent for a non-complying activity only if it is satisfied that either—

- “(a) the adverse effects of the activity on the environment (other than any effect to which **section 104(5)(b)** applies) will be minor; or
- “(b) the application is for an activity that will not be contrary to the objectives and policies of—
 - “(i) the relevant plan, if there is a plan but no proposed plan in respect of the activity; or
 - “(ii) the relevant proposed plan, if there is a proposed plan but no relevant plan in respect of the activity; or

New (majority)

“(iii) both the relevant plan and the relevant proposed plan, if there is both a plan and a proposed plan in respect of the activity.

New

“(2) To avoid doubt, **section 104(1A)** applies to the determination of an application for a non-complying activity.

“105 Matters relevant to certain applications

“(1) If an application is for a discharge permit or coastal permit to do something that would contravene section 15 or section 15B, the consent authority must, in addition to the matters in section 104<(1)>, have regard to—

- “(a) the nature of the discharge and the sensitivity of the receiving environment to adverse effects; and
- “(b) the applicant’s reasons for the proposed choice; and
- “(c) any possible alternative methods of discharge, including discharge into any other receiving environment.

“(2) If an application is for a resource consent for a reclamation, the consent authority must, in addition to the matters in section 104<(1)>, consider whether an esplanade reserve or esplanade strip is appropriate and, if so, impose a condition under section 108(2)(g) on the resource consent.

“106 Consent authority may refuse subdivision consent in certain circumstances

“(1) Despite **section 77B**, a consent authority may refuse to grant a subdivision consent, or may grant a subdivision consent subject to conditions, if it considers that—

- “(a) the land in respect of which a consent is sought, or any structure on the land, is or is likely to be subject to material damage by erosion, falling debris, subsidence, slippage, or inundation from any source; or
- “(b) any subsequent use that is likely to be made of the land is likely to accelerate, worsen, or result in material damage to the land, other land, or structure by erosion,

falling debris, subsidence, slippage, or inundation from any source; or

“(c) sufficient provision has not been made for legal and physical access to each allotment to be created by the subdivision.”

- (2) Conditions under **subsection (1)** must be—
- (a) for the purposes of avoiding, remedying, or mitigating the effects referred to in **subsection (1)**; and
 - (b) of a type that could be imposed under section 108.

45 Conditions of resource consents

- (1) Section 108(2) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:

“(b) a condition requiring provision of a bond (and describing the terms of that bond) in accordance with **section 108A**.”

- (2) Section 108(2)(f) of the principal Act is amended by omitting the words “section 105(1)(a) or (b)”, and substituting the words “**section 77B(2)(c) or (3)(c)**”.
- (3) Section 108 of the principal Act is amended by repealing subsection (6).
- (4) Section 108(10)(a) of the principal Act is amended by inserting, after the word “plan”, the words “or proposed plan”.
- (5) Section 108(10)(b) of the principal Act is amended by inserting, after the word “plan”, the words “or proposed plan”.

46 New section 108A inserted

The principal Act is amended by inserting, after section 108, the following section:

“108A Bonds

- “(1) A bond required under **section 108(2)(b)** may be given for the performance of any 1 or more conditions the consent authority considers appropriate and may continue after the expiry of the resource consent to secure the ongoing performance of conditions relating to long-term effects, including—

“(a) a condition relating to the alteration or removal of structures:

- “(b) a condition relating to remedial, restoration, or maintenance work:
 - “(c) a condition providing for ongoing monitoring of long-term effects.
- “(2) A condition describing the terms of the bond to be entered into under section 108(2)(b) may—
- “(a) require that the bond be given before the resource consent is exercised or at any other time:
 - “(b) require that section 109(1) apply to the bond:
 - “(c) provide that the liability of the holder of the resource consent is not limited to the amount of the bond:
 - “(d) require the bond to be given to secure performance of conditions of the consent including conditions relating to any adverse effects on the environment that become apparent during or after the expiry of the consent:
 - “(e) require the holder of the resource consent to provide such security as the consent authority thinks fit for the performance of any condition of the bond:
 - “(f) require the holder of the resource consent to provide a guarantor (acceptable to the consent authority) to bind itself to pay for the carrying out of a condition in the event of a default by the holder or the occurrence of an adverse environmental effect requiring remedy:
 - “(g) provide that the bond may be varied or cancelled or renewed at any time by agreement between the holder and the consent authority.
- “(3) If a consent authority considers that an adverse effect may continue or arise at any time after the expiration of a resource consent granted by it, the consent authority may require that a bond continue for a specified period that the consent authority thinks fit.”

47 Special provisions in respect of bonds or covenants

Section 109(4) of the principal Act is amended by inserting, after the word “given”, the words “(including completion of any interim monitoring required)”.

48 New section 114 substituted

The principal Act is amended by repealing section 114, and substituting the following section:

“114 Notification

- “(1) A consent authority must ensure that a copy of a decision on an application for a resource consent and a statement of the time within which an appeal against the decision may be lodged is served on the applicant.
- “(2) A consent authority must ensure that a notice of decision on an application for a resource consent and a statement of the time within which an appeal against the decision may be lodged is served on—
- “(a) persons who made a submission; and
 - “(b) other persons and authorities that it considers appropriate.
- “(3) If the consent authority serves a notice summarising a decision, it must—
- “(a) make a copy of the decision available (whether physically or by electronic means) at all its offices and all public libraries in the district (if the consent authority is a territorial authority) or region (in all other cases); and
 - “(b) include with the notice a statement of the places where a copy of the decision is available; and
 - “(c) send or provide, on request, a copy of the decision within 3 working days after the request is received.”

49 New section 115 substituted

The principal Act is amended by repealing section 115 and substituting the following section:

“115 Time limits for notification of decision

Notice of a decision on an application for a resource consent must be given in accordance with section 114,—

- “(a) if a hearing is held, no later than 15 working days after the conclusion of the hearing; or
- “(b) if a hearing is not held,—
 - “(i) for applications that are not notified at all or notice of the application is not served on any person, no later than 20 working days after the date the application was first lodged with the local authority; or
 - “(ii) for applications that are notified under **section 93 or 94C** or if notice of the application is served under **section 94**, no later than 20 working days after the closing date for submissions.”

50 When a resource consent commences

- (1) Section 116(1A) of the principal Act is amended by omitting the words “shall apply”, and substituting the words “applies, or an objection has been made under section 357, in which case **subsection (1AB)** applies”.
- (2) Section 116 of the principal Act is amended by inserting after subsection (1A), the following subsection:
- “(1AB) If an objection has been made under section 357, the resource consent commences when the objection, and any appeal under section 358, has been decided or withdrawn.”

51 Lapsing of consent

Section 125 of the principal Act is amended by repealing subsection (1), and substituting the following subsections:

- “(1) A resource consent lapses on the date specified in the consent or, if no date is specified, 5 years after the date of commencement of the consent unless, before the consent lapses,—
- “(a) the consent is given effect to; or
 - “(b) an application is made to the consent authority to extend the period after which the consent lapses, and the consent authority decides to grant an extension after taking into account—
 - “(i) whether substantial progress or effort has been, and continues to be, made towards giving effect to the consent; and
 - “(ii) whether the applicant has obtained approval from persons who may be adversely affected by the granting of an extension; and
 - “(iii) the effect of the extension on the policies and objectives of any plan or proposed plan.

“(1A) Sections 357 and 358 apply to **subsection (1)(b)**.”

52 New section 126 substituted

The principal Act is amended by repealing section 126, and substituting the following section:

“126 Cancellation of consent

- “(1) A consent authority may cancel a resource consent by written notice served on the consent holder if the resource consent has

been exercised in the past but has not been exercised during the preceding 5 years.

- “(2) **Subsection (1)** does not apply if—
- “(a) the resource consent expressly provides otherwise; or
 - “(b) within 3 months after service of the notice, an application is made to the consent authority to revoke the notice and the consent authority decides to revoke the notice and state a period after which a new notice may be served under **subsection (1)**, after taking into account—
 - “(i) whether the applicant has obtained approval from persons who may be adversely affected by the revocation of the notice; and
 - “(ii) the effect of the revocation of the notice on the policies and objectives of any plan or proposed plan.
- “(3) Sections 357 and 358 apply to this section.”

53 Change or cancellation of consent condition on application by consent holder

- (1) Section 127 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) The holder of a resource consent may apply to a consent authority for a change or cancellation of a condition of the consent (other than any condition as to the duration of the consent).”
- (2) Section 127 of the principal Act is amended by repealing subsections (3) and (4), and substituting the following subsections:
- “(3) Sections 88 to 121 apply, with all necessary modifications, as if—
- “(a) the application were an application for a resource consent for a discretionary activity; and
 - “(b) the references to a resource consent and to the activity were references only to the change or cancellation of a condition and the effects of the change or cancellation respectively.
- “(4) For the purposes of determining who is adversely affected by the change or cancellation, the local authority must consider, in particular, every person who—

- “(a) made a submission on the original application; and
- “(b) may be affected by the change or cancellation.”

54 Circumstances when consent conditions can be reviewed

Section 128(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

- “(ba) in the case of a water, coastal, or discharge permit, when relevant national environmental standards have been made under section 43; or”.

55 Notice of review

- (1) Section 129(1)(c) of the principal Act is amended by omitting the expression “128(a)”, and substituting the words “128(1)(a) or (ba)”.
- (2) Section 129 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:
 - “(2) If notification of the review is required under section 130, the notification must include a summary of the notice served under section 128, and must be served within—
 - “(a) 30 working days after the service of the notice (if the consent holder is invited to propose new conditions); or
 - “(b) 10 working days after the service of the notice (if the consent holder is not invited to propose new conditions).”

56 Public notification, submissions, and hearing, etc

- (1) Section 130 of the principal Act is amended by omitting subsection (3), and substituting the following subsection:
 - “(3) **Sections 93 to 94C** apply, with all necessary modifications, as if—
 - “(a) the review of consent conditions were an application for a resource consent for a discretionary activity; and
 - “(b) the references to a resource consent and to the activity were references only to the review of the conditions and to the effects of the change of conditions respectively.”
- (2) Section 130(4)(b) of the principal Act is amended by inserting, after the word “controlled,”, the words “restricted discretionary,”.
- (3) Section 130 of the principal Act is amended by repealing subsection (5), and substituting the following subsection:

- “(5) If a regional plan or regional coastal plan states that a rule will affect the exercise of existing resource consents under section 68(7), a consent authority—
- “(a) is not required to comply with **section 93(2) or section 94(1)**; but
 - “(b) must hear submissions only from the consent holder if the consent holder requests (within 20 working days of service of the notice under section 129) to be heard.”
- (4) Section 130 of the principal Act is amended by adding the following subsection:
- “(8) When reviewing the conditions of a resource consent under **section 128(1)(ba)**, the consent authority must serve on the Minister notice of the review, and the Minister may—
- “(a) make a submission to the consent authority; and
 - “(b) request to be heard.”

57 Form and effect of Minister’s direction

Section 141 of the principal Act is amended by adding the following subsections:

- “(3) The Minister may recover from an applicant for a resource consent the actual and reasonable costs incurred by the Minister in exercising the Minister’s powers under sections 140 to 150.
- “(4) The following sections apply to the recovery of costs under **subsection (3)** as if reference to charges were references to the recovery of costs and references to the local authority were references to the Minister:
- “(a) **section 36(3A)** (which provides for local authorities to provide estimates); and
 - “(b) section 36(4) (which sets out the criteria a local authority must have regard to when fixing charges).”
- “(5) Sections 357 and 358 apply to a requirement to pay costs under this section.”

58 Consent authority’s obligations

Section 143 of the principal Act is amended by adding, as subsections (2), (3), and (4), the following subsections:

- “(2) A consent authority may recover from an applicant for a resource consent the actual and reasonable costs incurred by the consent authority in complying with this section.

- “(3) The following sections apply in respect of the recovery of costs under **subsection (2)** as if reference to charges were references to the recovery of costs:
- “(a) **section 36(3A)** (which provides for local authorities to provide estimates); and
 - “(b) section 36(4) (which sets out the criteria a local authority must have regard to when fixing charges).
- “(4) Section 357 and 358 apply to a requirement to pay costs under this section.”

Subpart 7—Coastal tendering

59 Application of Order in Council

Section 153(b) of the principal Act is amended by repealing subparagraphs (i) and (ii), and substituting the following subparagraphs:

- “(i) that otherwise would contravene section 14, section 15, section 15A, or section 15B; or
- “(ii) that otherwise would contravene section 12 (other than something described in section 152(1)(a) to (c) that is the subject of the Order in Council):”.

Subpart 8—Designations and heritage orders

60 Notice of requirement to territorial authority

- (1) Section 168(1) of the principal Act is amended by inserting after the words “give notice”, the words “in the prescribed form”.
- (2) Section 168(2) of the principal Act is amended by inserting after the words “give notice”, the words “in the prescribed form”.
- (3) Section 168 of the principal Act is amended by repealing subsection (3).

61 Notice of requirement by territorial authority

- (1) Section 168A(1) of the principal Act is amended by omitting the words “publicly notify the requirement”, and substituting the words “notify the requirement in accordance with **section 93(2)**”.
- (2) Section 168A(2) of the principal Act is amended by omitting the expression “93”.

- (3) Section 168A of the principal Act is amended by repealing subsections (3) and (4), and substituting the following subsections:
- “(3) When considering a requirement and any submissions received, a territorial authority must, subject to Part II, consider the effects on the environment of allowing the requirement, having particular regard to—
- “(a) any relevant provisions of—
- “(i) a national policy statement;
- “(ii) a New Zealand coastal policy statement;
- “(iii) a regional policy statement or proposed regional policy statement;
- “(iv) a plan or proposed plan; and
- “(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
- “(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
- “(ii) it is likely that the <designation> <work> will have a significant adverse effect on the environment; and
- “(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
- “(d) any other matter the territorial authority considers reasonably necessary in order to make a decision on the requirement.
- “(4) The territorial authority may decide to—
- “(a) confirm the requirement;
- “(b) modify the requirement;
- “(c) impose conditions;
- “(d) withdraw the requirement.
- “(5) Sections 173, 174, and 175 apply, with all necessary modifications, in respect of a decision made under **subsection (4)**.”

62 New section 169 substituted

The principal Act is amended by repealing section 169, and substituting the following section:

“169 Further information, public notification, submissions, and hearing

- “(1) Subject to section 170, sections 92, 95 to 103, and 115 apply with all necessary modifications in respect of a requirement notified under section 168.
- “(2) A territorial authority must notify the requirement in accordance with **section 93(2)**.”

63 New section 171 substituted

The principal Act is amended by repealing section 171, and substituting the following section:

“171 Recommendation by territorial authority

- “(1) When considering a requirement and any submissions received, a territorial authority must, subject to Part II, consider the effects on the environment of allowing the requirement, having particular regard to—
- “(a) any relevant provisions of—
 - “(i) a national policy statement;
 - “(ii) a New Zealand coastal policy statement;
 - “(iii) a regional policy statement or proposed regional policy statement;
 - “(iv) a plan or proposed plan; and
 - “(b) whether adequate consideration has been given to alternative sites, routes, or methods of undertaking the work if—
 - “(i) the requiring authority does not have an interest in the land sufficient for undertaking the work; or
 - “(ii) it is likely that the *<designation>* *<work>* will have a significant adverse effect on the environment; and
 - “(c) whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority for which the designation is sought; and
 - “(d) any other matter the territorial authority considers reasonably necessary in order to make a recommendation on the requirement.
- “(2) The territorial authority may recommend to the requiring authority that it—
- “(a) confirm the requirement;
 - “(b) modify the requirement;
 - “(c) impose conditions;

“(d) withdraw the requirement.

“(3) The territorial authority must give reasons for its recommendation under **subsection (2)**.”

64 New section 173 substituted

The principal Act is amended by repealing section 173, and substituting the following section:

173 Notification of decision on designation

“(1) A territorial authority must ensure that, within 15 working days after a decision is made by a requiring authority under section 172, a notice of decision and a statement of the time within which an appeal against the decision may be lodged is served on—

“(a) persons who made a submission; and

“(b) land owners and occupiers directly affected by the decision.

“(2) If the territorial authority gives a notice summarising a decision, it must—

“(a) make a copy of the decision available (whether physically or by electronic means) at all its offices and all public libraries in the district; and

“(b) include with the notice a statement of the places where a copy of the decision is available; and

“(c) send or provide, on request, a copy of the decision within 3 working days after the request is received.”

65 Effect of designation

Section 176 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

“(1) If a designation is included in a district plan, then—

“(a) section 9(1) does not apply to ~~((work))~~ a public work or project or work undertaken by a requiring authority under the designation; and

“(b) no person may, without the prior written consent of that requiring authority, do anything in relation to the land that is subject to the designation that would prevent or hinder ~~((the work))~~ a public work or project or work to which the designation relates, including—

“(i) undertaking any use of the land described in section 9(4); and

“(ii) subdividing the land; and

“(iii) changing the character, intensity, or scale of the use of the land.”

66 Alteration of designation

- (1) Section 181(3) of the principal Act is amended by inserting, after the word “plan”, the words “or a requirement in its proposed district plan”.
- (2) Section 181(3)(a)(ii) of the principal Act is amended by inserting after the word “designation”, the words “or requirement”.
- (3) Section 181(3) of the principal Act is amended by omitting the word “change” in the last place where it appears, and substituting the word “alteration”.
- (4) Section 181(4) of the principal Act is amended by inserting, after the word designation, the words “or requirement”.

67 Compulsory acquisition powers

Section 186 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:

- “(1) A network utility operator that is a requiring authority may apply to the Minister of Lands to have land required for a project or work acquired or taken under Part II of the Public Works Act 1981 as if the project or work were a Government work within the meaning of that Act and, if the Minister of Lands agrees, that land may be taken or acquired.”

68 Further information, public notification, submissions, and hearing

- (1) Section 190 of the principal Act is amended by omitting the expression “93,”.
- (2) Section 190 of the principal Act is amended by adding, as subsection (2), the following subsection:

“(2) A territorial authority must notify the requirement in accordance with **section 93(2)**.”

Subpart 9—Subdivision and reclamations

69 **Meaning of subdivision of land**

Section 218(1)(a) of the principal Act is amended by repealing subparagraph (iii), and substituting the following subparagraph:

“(iii) by a lease of part of the allotment which, including renewals, is or could be for a term of more than 35 years; or”.

70 **Section 219 repealed**

Section 219 of the principal Act is repealed.

71 **Approval of survey plan by territorial authority**

Section 223 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) Within 10 working days after receiving a survey plan submitted to it under subsection (1), a territorial authority must either—

“(a) approve the survey plan; or

“(b) decline the survey plan.”

72 **Restriction upon issue of certificates of title for subdivision**

Section 226(1)(e) of the principal Act is amended by omitting the words “certified on the survey plan or a copy of the survey plan”, and substituting the words “given a certificate signed by the principal administrative officer or other authorised officer to the effect”.

73 **Savings in respect of cross leases, company leases, and retirement village leases**

Section 226A(1) of the principal Act is amended by adding the following paragraph:

“(c) to the renewal or substitution of a company lease in respect of a building or part of a building if the original company lease was in existence before the commencement of this Act (whether or not the renewal or substitution is part of the original company lease or a subsequent company lease).”

74 Creation of esplanade strips by agreement

Section 235(1) of the principal Act is amended by inserting, after the expression “232,”, the expression “233,”.

Subpart 10—Environment Court**75 Section 271A repealed**

Section 271A of the principal Act is repealed.

76 New section 274 substituted

The principal Act is amended by repealing section 274, and substituting the following section:

“274 Representation at proceedings

“(1) The following persons may be a party to any proceedings before the Environment Court:

“(a) the Minister:

“(b) a local authority:

“(c) a person who has an interest in the proceedings that is greater than the public generally:

“(d) a person representing a relevant aspect of the public interest:

“(e) a person who made a submission in the previous proceedings on the same matter.

“(2) A person described in **subsection (1)** may become a party to the proceedings by giving notice to the Environment Court and to all parties within 30 working days after the notice of appeal or notice of inquiry is lodged, or other proceedings are commenced.

“(3) The notice given under **subsection (2)** must state—

“(a) the proceedings in which the person has an interest; and

“(b) whether the person supports or opposes the relief sought and the reasons for that support or opposition; and

“(c) if applicable, the grounds for seeking representation under **subsection (1)(c) or (d)**; and

“(d) an address for service.

“(4) A person who becomes a party to the proceedings under this section may appear and call evidence only on—

“(a) matters within the scope of the appeal, inquiry, or other proceeding; and

- “(b) in the case of *persons* *a person* described in **subsection (1)(e)**, matters arising out of *the* *that* person’s submissions in the previous related proceedings, and any matter on which *the* *that* person could have appealed *himself or herself*.”
- “(5) A person who becomes a party to the proceedings under this section may not oppose the withdrawal or abandonment of the proceedings unless the proceedings were brought by a person who made a submission in the previous proceedings on the same matter.
- “(6) For the purposes of determining whether a person has an interest in proceedings greater than the public generally, the Environment Court must have regard to every relevant statutory acknowledgment (within the meaning of an Act specified in Schedule 11) in accordance with the provisions of the relevant Act in that schedule.
- “(7) **Subsection (2)** is subject to section 281.”

77 New section 276A inserted

The principal Act is amended by inserting, after section 276, the following section:

“276A Evidence of documents

A copy of, or extract from, a policy statement or plan, certified to be a true copy by the principal administrative officer or by any other authorised officer of the relevant local authority, is admissible in evidence in legal proceedings to the same extent as the original document.”

78 Powers of Environment Commissioner sitting without Environment Judge

Section 280 of the principal Act is amended by repealing subsection (1A).

79 Waivers and directions

Section 281(1)(a) of the principal Act is amended by repealing subparagraph (ii), and substituting the following subparagraphs:

- “(ii) the time within which an appeal or submission to the Environment Court must be lodged; or

“(ia) the time within which a person must give notice under **section 274** that the person wishes to be a party to the proceedings; or”.

80 New section 284A inserted

The principal Act is amended by inserting, after section 284, the following section:

“284A **Security for costs**

- “(1) The Environment Court does not have the power to order a party to give security for costs.
- “(2) **Subsection (1)** overrides any other enactment relating to security for costs.”

81 Court may order change to policy statements and plans

Section 293 of the principal Act is amended by repealing subsection (4), and substituting the following subsections:

- “(4) **Subsection (5)** applies if the Court finds that a policy statement or plan before it departs from a national policy statement or New Zealand coastal policy statement or another policy statement or plan or a water conservation order.
- “(5) The Court may allow the departure to remain if it considers that it is of minor significance and does not affect the general intent and purpose of the policy statement or plan.
- “(6) In **subsections (4) and (5)**, **departs** or **departure** means that a policy statement or plan—
- “(a) does not give effect to a national policy statement or New Zealand coastal policy statement; or
- “(b) is inconsistent with another policy statement or plan or water conservation order.”

Subpart 11—Declarations, enforcement, and ancillary powers

82 Scope and effect of declaration

- (1) Section 310 of the principal Act is amended by omitting paragraph (b), and substituting the following paragraph:
- “(b) whether a provision or proposed provision of a regional policy statement, or regional or district plan,—
- “(i) does not, or is not likely to, give effect to a provision or proposed provision of a national

policy statement or New Zealand coastal policy statement contrary to **sections 62(3), 67(2), and 75(2)**;
or

“(ii) is, or is likely to be, inconsistent with a provision or proposed provision of a regional policy statement, regional or district plan, or a water conservation order contrary to **sections 62(3), 67(2), and 75(2)**; or”.

- (2) Section 310(c) of the principal Act is amended by inserting, after the word “Act”, the words “, regulations made under this Act,”.
- (3) Section 310 of the principal Act is amended by adding the following paragraph:
- “(h) any other issue or matter relating to the interpretation, administration, and enforcement of this Act, except for an issue as to whether any of **sections 93 to 94C** have been, or will be contravened.”

83 Decision on application

Section 319 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

- “(2) Except as provided in **subsection (3)**, the Environment Court must not make an enforcement order under section 314(1)(a)(ii), (b)(ii), (c), (d)(iv), or (da) against a person if—
- “(a) that person is acting in accordance with—
- “(i) a rule in a plan; or
- “(ii) a resource consent; or
- “(iii) a designation; and
- “(b) the adverse effects in respect of which the order is sought were expressly recognised by the person who approved the plan, or granted the resource consent, or approved the designation, at the time of the approval or granting, as the case may be.
- “(3) The Environment Court may make an enforcement order if—
- “(a) the Court considers it appropriate after having regard to the time that has elapsed and any change in circumstances since the approval or granting, as the case may be; or
- “(b) the person was acting in accordance with a resource consent that has been changed or cancelled under section 314(1)(e).”

84 Appeals

Section 325 of the principal Act is amended by repealing subsection (5), and substituting the following subsections:

- “(5) Except as provided in **subsection (6)**, the Environment Court must not confirm an abatement notice that is the subject of an appeal if—
- “(a) the person served with the abatement notice was acting in accordance with—
 - “(i) a rule in a plan; or
 - “(ii) a resource consent; or
 - “(iii) a designation; and
 - “(b) the adverse effects in respect of which the notice was served were expressly recognised by the person who approved the plan, or notified the proposed plan, or granted the resource consent, or approved the designation, at the time of the approval, notification, or granting, as the case may be.
- “(6) The Environment Court may confirm an abatement notice, that is the subject of an appeal, if the Court considers it appropriate after having regard to the time that has elapsed and any change in circumstances since the approval, notification, or granting, as the case may be.”

85 Meaning of excessive noise

Section 326 of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- “(2) Without limiting subsection (1), **excessive noise**—
- “(a) includes noise that exceeds a standard for noise prescribed by regulations made under **section 43**; and
 - “(b) may include noise emitted by—
 - “(i) a musical instrument; or
 - “(ii) an electrical appliance; or
 - “(iii) a machine, however powered; or
 - “(iv) a person or group of persons; or
 - “(v) an explosion or vibration.”

Subpart 12—Miscellaneous provisions

86 Matters may be determined by arbitration

- (1) Section 356(3) of the principal Act is amended by omitting the words “or make any reference to the Court under clause 14 of the First Schedule,”.

- (2) Section 356 of the principal Act is amended by repealing subsection (6).

87 Objections to certain decisions and requirements of consent authorities

- (1) Section 357 of the principal Act is amended by inserting, after subsection (1), the following subsections:

“(1A) An applicant for a resource consent has a right of objection to a consent authority in respect of a decision made by the authority under the following sections:

“(a) **section 88(3)** (which relates to a determination that a resource consent is incomplete):

“(b) section 143 (which relates to cost recovery).

“(1B) A person has a right of objection to a regional council in respect of a public notice given by the council under section 369(11) (which relates to the authorisation or prohibition of certain fuel or fuel-burning equipment in a clean air zone).”

- (2) Section 357 of the principal Act is amended by repealing subsection (2), and substituting the following subsections:

“(2) An applicant or consent holder has a right of objection to a consent authority in respect of the authority’s decision on an application or review if—

“(a) the application or review was not notified or notice of the application or review was not served (in accordance with **section 93**, **section 94**, **section 127(3)**, or section 130); or

“(b) the application or review was notified and—

“(i) no submissions were received; or

“(ii) any submissions received were withdrawn.

“(2A) Subject to subsection (3), **subsection (2)** applies to—

“(a) an application made under **section 88** for a resource consent; or

“(b) an application made under section 127 for a change or cancellation of a resource consent; or

“(c) a review of the conditions of a resource consent under sections 128 to 132.”

- (3) Section 357(3) of the principal Act is amended by—

Struck out (majority)

- (a) omitting the expression “105”, and substituting the expression “104”:

New (majority)

- (a) omitting the expression “section 105”, and substituting the expression “**sections 104AB and 104AC**”:

- (b) omitting the expression “34”, and substituting the expression “34A”.

- (4) Section 357 of the principal Act is amended by inserting, after subsection (4A), the following subsection:

“(4B) A person who has been required by the Minister to pay costs under section 141 has a right of objection to the Minister in respect of that requirement.”

88 Regulations

- (1) Section 360(1) of the principal Act is amended by inserting, after paragraph (ab), the following paragraph:

“(ac) prescribing the methods of making an application or requirement for a designation, the persons to be served, the times of service, and the form of application and notice required:”.

- (2) Section 360(1)(ha)(i) of the principal Act is amended by inserting, after the words “controlled activities,”, the words “restricted discretionary activities,”.

Subpart 13—Transitional provisions in principal Act**89 Provisions deemed to be regional rules**

Section 369 of the principal Act is amended by adding the following subsection:

- “(13) Sections 357 and 358 (which deal with rights of objection and appeal against certain decisions) apply, with all necessary modifications, in respect of every public notice under subsection (11).”

90 Power of Minister of Conservation to give directions relating to restricted coastal activities

Section 372(3)(c) of the principal Act is amended by omitting the words “notified under clause 5”, and substituting the words “made operative under clause 20”.

91 Grounds of refusal of subdivision consent

- (1) Section 406(1)(a) of the principal Act is amended by omitting the words “Shall not grant”, and substituting the words “may refuse to grant”.

Subpart 14—Schedules to principal Act

92 First Schedule amended

- (1) Clause 4 of the First Schedule of the principal Act is amended by adding the following subclauses:
- “(9) A requiring authority may withdraw a requirement for a designation in accordance with section 168(4) and a heritage protection authority may withdraw a requirement for a heritage order in accordance with section 189(4).
- “(10) If a territorial authority receives notice from a requiring authority that a requirement has been withdrawn, the territorial authority must, as soon as reasonably practicable and without further formality, amend its proposed district plan accordingly.”
- (2) Clause 8D(1) of the First Schedule of the principal Act is amended by repealing paragraphs (a) and (b), and substituting the following paragraphs:
- “(a) if an appeal has not been made to the Environment Court under clause 14, or the appeal has been withdrawn, before the policy statement or plan is approved by the local authority; or
- “(b) if an appeal has been made to the Environment Court, before the Environment Court hearing commences.”
- (3) Clause 9(3) of the First Schedule of the principal Act is amended by omitting the word “require”, and substituting the word “allow”.
- (4) Clause 11 of the First Schedule of the principal Act is amended by omitting from subclause (1) the words “a copy of its decision”, and substituting the words “a notice of decision

- and a statement of the time within which an appeal may be lodged”.
- (5) Clause 11 of the First Schedule of the principal Act is amended by omitting from subclause (2), the word “notify”, and substituting the words “send or provide a notice of decision to”.
- (6) Clause 11 of the First Schedule of the principal Act is amended by adding the following subclause:
- “(3) If the local authority gives a notice summarising a decision, it must—
- “(a) make a copy of the decision available (whether physically or by electronic means) at all its offices, and all public libraries in the district (if it relates to a district plan) or region (in all other cases); and
 - “(b) include with the notice a statement of the places where a copy of the decision is available; and
 - “(c) send or provide, on request, a copy of the decision within 3 working days after the request is received.”
- (7) Clause 13 of the First Schedule of the principal Act is amended by omitting from subclause (4) the words “a copy of the decision by the requiring authority or heritage protection authority”, and substituting the words “a notice of decision by the requiring authority or heritage protection authority and a statement of the time within which an appeal may be lodged”.
- (8) Clause 13 of the First Schedule of the principal Act is amended by adding the following subclause:
- “(6) If a notice summarising a decision is served, the territorial authority must—
- “(a) make a copy of the decision available (whether physically or by electronic means) at all its offices, and all public libraries in the district; and
 - “(b) include with the notice a statement of the places where a copy of the decision is available; and
 - “(c) send, or provide, on request, a copy of the decision within 3 working days after the request is received.”
- (9) The First Schedule of the principal Act is amended by repealing clause 14, and substituting the following clause:

“14 Appeals to Environment Court

- “(1) A person who made a submission on a proposed policy statement or plan may appeal to the Environment Court in respect of—
- “(a) a provision included in the proposed policy statement or plan; or
 - “(b) a provision that the decision on submissions proposes to include in the policy statement or plan; or
 - “(c) a matter excluded from the proposed policy statement or plan; or
 - “(d) a provision that the decision on submissions proposes to exclude from the policy statement or plan.
- “(2) However, a person may appeal under **subclause (1)** only if the person referred to the provision or the matter in the person’s submission on the proposed policy statement or plan.
- “(3) The following persons may appeal to the Environment Court against any aspect of a requiring authority’s or heritage protection authority’s decision:
- “(a) any person who made a submission on the requirement that referred to that matter:
 - “(b) the territorial authority.
- “(4) Any appeal to the Environment Court under this clause must be in the prescribed form and lodged with the Environment Court within 30 working days of service of the notice of decision of the local authority under clause 11 or service of the notice of decision of the requiring authority or heritage protection authority under clause 13, as the case may be.
- “(5) The appellant must serve a copy of the notice in the prescribed manner.”
- (10) Clause 15 of the First Schedule of the principal Act is amended by repealing subclause (2), and substituting the following subclause:
- “(2) If the Environment Court holds a hearing into any provision of a proposed policy statement or plan (other than a regional coastal plan), the Court may confirm the provision, or direct the local authority to modify, delete, or amend the proposed policy statement or plan.”
- (11) Clause 15(3) of the First Schedule of the principal Act is amended by omitting the words “a reference into a regional coastal plan, that reference”, and substituting the words “an

appeal against a provision of a regional coastal plan, that appeal”.

- (12) Clause 16(1) of the First Schedule of the principal Act is amended by inserting, after the word “effect”, the words “to any direction in a national environmental standard or a national policy statement or”.
- (13) Clause 22(1) of the First Schedule of the principal Act is amended by inserting, after the word “plan” in the last place where it appears, the words “and contain an evaluation under section 32 for any objectives, policies, rules, or other methods proposed”.
- (14) Clause 29 of the First Schedule of the principal Act is amended—
- (a) by omitting from subclause (6) the word “refer”, and substituting the word “appeal”;
 - (b) by omitting from subclause (7) the word “referred”, and substituting the word “appealed”;
 - (c) by omitting from subclause (8) the word “referred”, and substituting the word “appealed”.

93 Second Schedule repealed

The Second Schedule of the principal Act is repealed.

94 Fourth Schedule amended

The Fourth Schedule of the principal Act is amended—

- (a) by omitting from clause 1 the expression “88(6)(b)”, and substituting the expression “**88**”;
- (b) by inserting in clause 1(h), after the word “undertaken,”, the words “if any,”.

95 Consequential amendments to principal Act

The principal Act is consequentially amended in the manner indicated in **Schedule 1**.

Part 2
Amendments and repeals of other enactments,
transitional provisions, and savings

Subpart 1—Consequential repeals

96 Consequential repeals of other enactments

The enactments specified in **Schedule 2** are consequentially repealed.

Subpart 2—Amendments to other Acts

97 Amendment to Incorporated Societies Act 1908

Section 17 of the Incorporated Societies Act 1908 is amended by adding, as subsection (2), the following subsection:

- “(2) Subsection (1) is subject to **section 284A** of the Resource Management Act 1991.”

98 Amendments to Local Government Act 1974

Struck out

- (1) Section 223CA(2) of the Local Government Act 1974 is amended by omitting the expression “34(3)”, and substituting the expression “34A”.

- (2) Section 321 of the Local Government Act 1974 is repealed.
- (3) Section 348 of the Local Government Act 1974 is amended by adding the following subsection:
- “(6) Nothing in this section applies to a private road or right of way lawfully created as part of a subdivision under the Resource Management Act 1991.”

99 Amendment to Reserves Act 1977

Section 54(2A)(b) of the Reserves Act 1977 is amended by omitting the expression “section 93”, and substituting the expression “**section 93(2)**”.

100 Amendment to Local Government Official Information and Meetings Act 1987

Part 1 of the First Schedule of the Local Government Official Information and Meetings Act 1987 is amended by inserting, after the expression “34,”, the expression “**34A**,”.

101 Amendment to Crown Research Institutes Act 1992

Section 34 of the Crown Research Institutes Act 1992 is repealed.

102 Amendments to Historic Places Act 1993

(1) Section 14 of the Historic Places Act 1993 is amended by repealing subsection (10), and substituting the following section:

“(10) An authority granted under subsection (1) lapses on the date specified in the authority, or if no date is specified, 5 years after the date of the granting of the authority.”

(2) Section 20(1)(c) of the Historic Places Act 1993 is amended by omitting the words “Paragraph (a) or paragraph (b) of section 14 of this Act”, and substituting the words “section 14(1)(a), or (b), or **(10)**”.

103 Amendment to Hazardous Substances and New Organisms Act 1996

The Hazardous Substances and New Organisms Act 1996 is amended by omitting from the Fourth Schedule the item relating to section 62(1)(ha) of the Resource Management Act 1991.

104 Amendment to Resource Management Amendment Act 1997

Section 68 of the Resource Management Amendment Act 1997 is amended by omitting the expression “section 210(2)”, and substituting the expression “section 201(2)”.

105 Amendments to Ngāi Tahu Claims Settlement Act 1998

Struck out

- (1) Section 207(2) of the Ngāi Tahu Claims Settlement Act 1998 is amended by omitting the words “and 94”, and substituting the words “to **94C**”.

New

- (1) Section 207(2) of the Ngāi Tahu Claims Settlement Act 1998 is amended by—
- (a) omitting the words “and 94”, and substituting the words “to **94C**”; and
 - (b) omitting the words “an affected person”, and substituting the words “adversely affected”.

- (2) The Ngāi Tahu Claims Settlement Act 1998 is amended by repealing section 208, and substituting the following section:

“208 Local authorities must have regard to statutory acknowledgments

From the effective date, and without derogating from its obligations under Part II of the Resource Management Act 1991, a consent authority must have regard to the statutory acknowledgement relating to a statutory area in forming an opinion in accordance with **sections 93 to 94C** of that Act as to whether Te Rūnanga o Ngāi Tahu is a person who may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on, the statutory area.”

New

105A Amendments to Pouakani Claims Settlement Act 2000

- (1) Section 37(2) of the Pouakani Claims Settlement Act 2000 is amended by—
- (a) omitting from paragraph (a) the words “and 94”, and substituting the words “to **94C**”; and

New

(b) omitting from paragraph (b) the words “an affected person”, and substituting the words “adversely affected”.

(2) The Pouakani Claims Settlement Act 2000 is amended by repealing section 38, and substituting the following section:

“38 Consent authorities must have regard to statutory acknowledgments

From the effective date, and without derogation from its obligations under Part II of the Resource Management Act 1991, a consent authority must have regard to the statutory acknowledgement relating to the Crown-owned area of Titiraupenga in forming an opinion in accordance with **sections 93 to 94C** of that Act as to whether the Pouakani governance entity is a person who may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on, the Crown-owned area of Titiraupenga.”

105B Amendments to Te Uri o Hau Claims Settlement Act 2002

(1) Te Uri o Hau Claims Settlement Act 2002 is amended by repealing section 60, and substituting the following section:

“60 Consent authorities must have regard to statutory acknowledgments

From the effective date, and without derogation from its obligations under Part II of the Resource Management Act 1991, a consent authority must have regard to the statutory acknowledgement relating to a statutory area in forming an opinion in accordance with **sections 93 to 94C** of that Act as to whether Te Uri o Hau governance entity is an entity that may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on, the statutory area.”

(2) Section 64(2) of Te Uri o Hau Claims Settlement Act 2002 is amended by—

(a) omitting from paragraph (a) the words “and 94”, and substituting the words “to **94C**”; and

New

- (b) omitting from paragraph (b) the words “an affected entity”, and substituting the words “adversely affected”.

105C Amendments to Ngati Ruanui Claims Settlement Act 2003

- (1) The Ngati Ruanui Claims Settlement Act 2003 is amended by repealing section 90, and substituting the following section:

“90 Consent authorities must have regard to statutory acknowledgments

From the effective date, and without limiting its obligations under Part II of the Resource Management Act 1991, a consent authority must have regard to the statutory acknowledgment relating to a statutory area in forming an opinion in accordance with **sections 93 to 94C** of that Act as to whether the governance entity is a person who may be adversely affected by the granting of a resource consent for activities within, adjacent to, or impacting directly on, the statutory area.”

- (2) Section 94(2) of the Ngati Ruanui Claims Settlement Act 2003 is amended by—
- (a) omitting from paragraph (a) the word “directly”, and substituting the word “adversely”.
- (b) omitting from paragraph (b) the words “section 93 or section 94”, and substituting the words “**sections 93 to 94C**”; and
- (3) Section 94(4) of the Ngati Ruanui Claims Settlement Act 2003 is amended by—
- (a) omitting from paragraph (a) the words “and 94”, and substituting the words “to **94C**”; and
- (b) omitting from paragraph (b) the word “directly”, and substituting the word “adversely”.
-

Subpart 3—Transitional and savings provisions**106 Transitional provisions relating to New Zealand coastal policy statements**

Despite sections **62(3)**, **67(2)**, and **75(2)** of the principal Act (as substituted by this Act), a regional policy statement or a plan

in force on the date of the commencement of this section does not need to give effect to a New Zealand coastal policy statement, but must not be inconsistent with it.

107 Transitional provisions for restricted discretionary activities

If on the date of commencement of this section a plan or proposed plan includes any rule specifying an activity as a discretionary activity and restricting any discretion under section 68(3B) or section 76(3B) of the principal Act, an application for that activity must be treated as an application for a restricted discretionary activity.

108 Transitional provisions for certain rules

Despite sections **68(5)(e)** and **76(4)(e)** of the principal Act (as repealed and substituted by this Act), a rule included in accordance with those provisions before the commencement of this section is to be treated as if those provisions had not been repealed and substituted.

109 Continuation and completion of matters under principal Act

(1) If, before the commencement of this section,—

- (a) an application has been made for a resource consent or for any matter in relation to a resource consent (including a change or review of conditions of an existing consent); or
- (b) a notice of requirement has been given for a designation or a heritage order; or
- (c) an application has been made to become a requiring authority or a heritage protection authority; or
- (d) a policy statement, plan, change, or variation has been publicly notified—

the continuation and completion of that matter (including any rights of appeal) must be in accordance with the principal Act as if this Act had not been enacted.

(2) If, before the commencement of this section, an appeal has been lodged or an objection made, the continuation and completion of that appeal or objection must be in accordance with the principal Act as if this Act had not been enacted.

- (3) If, before the commencement of this section, an application for a subdivision consent has been made, the continuation and completion of all proceedings in relation to that subdivision, including the approval and deposit of a survey plan, must be in accordance with the principal Act as if this Act had not been enacted.
- (4) If, before the commencement of this section, a declaration, enforcement, or abatement action under Part XII of the principal Act had commenced, the continuation and completion of that action (including any appeals) must be in accordance with the principal Act as if this section had not been enacted.
- (5) If, before the commencement of this section, a notice of appeal or notice of inquiry has been lodged with the Environment Court, sections 271A and **274** of the principal Act apply as if section 271A had not been repealed, and **section 274** had not been repealed and substituted, by this Act.
- (6) For the purposes of this section, an appeal includes a reference to, or an inquiry by, the Environment Court.

110 Exercise of authority granted under Historic Places Act 1993

- (1) An authority given under section 9F, section 9H, or section 9L of the Historic Places Act 1954, or section 44, section 46, or section 48 of the Historic Places Act 1980 that has not been wholly or partially exercised on or before the date of commencement of this section lapses.
 - (2) An authority given under section 9F, section 9H, or section 9L of the Historic Places Act 1954, or section 44, section 46, or section 48 of the Historic Places Act 1980 that has been partially exercised at the date of commencement of this section may continue to be exercised for a period of 2 years from the date of commencement of this section.
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Schedule 1**Consequential amendments to principal Act****Section 9(3)(b)**

Omit the expression “20” and substitute the expression “20A”.

Section 10(5)

Omit the expression “20” and substitute the expression “20A”.

Section 12(3)

Omit the expression “20” and substitute the expression “20A”.

Section 13(2)(d)

Omit the expression “20” and substitute the expression “20A”.

Section 14(2)

Omit the expression “20” and substitute the expression “20A”.

Section 15(2)

Omit the expression “20” and substitute the expression “20A”.

Section 17(1)

Omit the expression “20” and substitute the expression “20A”.

Section 42(6)(b)

Insert, after the expression “section 34”, the words “or section 34A”.

Section 81(1)(b)

Omit the words “(changes to plans which will allow activities)”.

Section 85(7)

Omit the words “a reference” and substitute the words “an appeal”.

Section 100

Omit the words “(whether or not it is required to be notified in accordance with section 93)”.

Section 109(1)

Omit the expression “108(2)(b)” and substitute the expression “108A”.

Section 117(3)

Omit the words “in accordance with sections 93 and 95, and section 94 shall not apply” and substitute the words “in accordance with **sections 93(2) and 95**”.

Section 118(3)

Repeal paragraph (a) and substitute:

“(a) every prescribed person; and”.

Section 139(1)

Omit the words “a plan describes any activity as a permitted activity, or the” and substitute the word “an”.

Section 150C(4)

Omit the words “section 37 applies” and substitute the words “**sections 37 and 37A** apply”.

Section 150D(3)

Omit the expression “20A” and substitute the expression “20”.

Section 189A(1)

Omit the expression “93” and substitute the expression “**93(2)**”.

Section 222(3)

Omit the expression “108(6)” and substitute the expression “**108A**”.

Section 289(b)

Omit the expression “271A” and substitute the expression “274”.

Section 310(d)

Omit the expression “20” and substitute the expression “20A”.

Section 314(1)(a)(i)

Omit the expression “20” and substitute the expression “20A”.

Section 332(1)(a)

Omit the expression “20” and substitute the expression “20A”.

Section 390C(1)(a)

Insert, after the expression “section 93”, the words “or notice of the application served in accordance with **section 94**”.

Section 391A(2)(a)

Insert, after the expression “section 93”, the words “or notice of the application served in accordance with **section 94**”.

Section 393(1)(e)

Insert, after the expression “section 93”, the words “or notice of the application served in accordance with **section 94**”.

Section 396B

Insert, after the word “controlled,”, the words “restricted discretionary,”.

Section 397(3)(b)

Insert, after the expression “section 93”, the words “or notice of the application served in accordance with **section 94**”.

Section 397(3)(b)(ii)

Insert, after the expression “section 93”, the words “or notice of the application served in accordance with **section 94**”.

Section 418(6)(e)

Insert, after the words “controlled activity,”, the words “a restricted discretionary activity,”.

Section 418(7)

Insert, after the words “controlled activity,”, the words “a restricted discretionary activity,”.

Schedule 2

Enactments repealed

s 96

Crown Minerals Amendment Act (No 2) 1997 (1997 No 91)
Section 4(1).

Historic Places Act 1993 (1993 No 38)
The item in the Second Schedule relating to section 93 of the principal Act.

Ngāi Tahu Claims Settlement Act 1998 (1998 No 97)
Sections 223 and 224.

Resource Management Amendment 1993 (1993 No 65)
Sections 2(8) and (10), 16, 25, 31 to 34, 37(2) and (3), 40(2) and (3), 44, and 46 to 49.

Resource Management Amendment Act 1994 (1994 No 105)
Sections 12 and 13.

Resource Management Amendment Act (No 2) 1994
(1994 No 139)
Section 2(1).

Resource Management Amendment Act 1996 (1996 No 160)
Section 5.

Resource Management Amendment Act 1997 (1997 No 104)
Sections 2(5), 8, 16, 19, and 20.

Legislative history

17 March 2003	Introduction (Bill 39–1)
20 March 2003	First reading and referral to Local Government and Environment Committee
28 April 2003	Reported from Local Government and Environment Committee
6 May 2003	Second reading
8 May 2003	Committee of the whole House (Bill 39–3)
