MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Regulatory Impact Statement: Providing consistent and more enabling pathways for consent for quarrying and mining affecting significant natural areas, highly productive land and wetlands

Decision sought	Final Cabinet decision to amend the pathways for consent for quarrying and mining in the National Policy Statements for Indigenous Biodiversity (NPSIB), Highly Productive Land (NPS-HPL), and Freshwater Management (NPS-FM), as well as the National Environmental Standards for Freshwater (NES-F) (collectively referred to as the instruments).
Agency responsible	Ministry of Business, Innovation and Employment (MBIE)
Proposing Ministers	Minister Responsible for RMA Reform Minister for Resources
Date finalised	18 November 2025

The proposal is intended to provide consistent, clear, and enabling pathways for consent for quarrying and mining that support the Government's growth agenda. The proposals align terminology across the instruments using the terms "quarrying activities" and "the extraction of minerals and ancillary activities" and the associated National Planning Standards definitions. The proposal provides clearer and more enabling pathways for consent by removing ambiguous gateway tests and amending the gateway tests across the instruments to align with the least restrictive tests.

This Regulatory Impact Statement (RIS) builds from the interim RIS *Providing a consistent consenting pathway for quarrying and mining affecting significant natural areas, highly productive land and wetlands* issued on 14 March 2025. Public consultation on the proposal was carried out between 29 May and 27 July. This version has been updated to reflect the submissions received and subsequent decisions by Ministers.

Summary: Problem definition and options

What is the policy problem?

Under section 6 of the Resource Management Act 1991 (RMA), natural inland wetlands (wetlands) and significant natural areas (SNAs) are matters of national importance which must be provided for. Under section 7 of the RMA, highly productive land (HPL) is a finite characteristic which must be given particular regard to by decision-makers. The instruments support councils to protect and maintain wetlands, SNAs, and HPL, as matters under the RMA. The RMA and instruments also recognise that some activities affecting these environments are important for social, economic and cultural well-being, and provides a framework for councils to consent proposals in certain circumstances.

The instruments currently recognise the importance of quarrying and mining and provide scope for pathways for mining and quarrying activities to gain consent. This is achieved through gateway tests, which are a filter to prevent activities from gaining consent if they could be located elsewhere, cannot mitigate their effects, or provide insufficient benefits to offset the losses. The terminology and gateway tests for quarrying and mining differ across national direction as the tests have been developed at different times and relate to different environmental values.

The Government considers that access to minerals is unnecessarily constrained. This is a barrier to the Government's objectives: to increase growth, housing supply, infrastructure investment and minerals exports. Local authorities also identified concerns around the ability to access resources, particularly aggregate, geographically close to market.

The lack of consistent terminology and enabling gateway tests in the instruments is limiting access to, and increasing costs for, quarried and mined resources in some cases. The industry has identified cases where inconsistent terminology has resulted in confusion, and restrictive gateway tests have led to rejected applications.

The Infrastructure Commission has recommended that *"the Ministry for the Environment work with support from the Aggregate and Quarry Association, local authorities and other stakeholders to develop a national direction for quarrying to remove any unjustified variations in how resource consents are assessed and conditioned. National direction should also provide for short-term exceptions to these conditions to meet peak demand."*[1]

A secondary issue is that frequently one application will encompass more than one protected environment, meaning different consenting regimes must be applied. This increases regulatory complexity. Feedback from industry organisations noted that the terminology and consent pathways in the instruments are inconsistent. The organisations report that companies are holding off applying for consents because of a lack of certainty.

There is a policy opportunity to align the gateway tests with the most enabling tests found in the instruments. This would address concerns of restrictiveness, as well as regulatory complexity.

What is the policy objective?

The objective is to better enable resource extraction and use through quarrying and mining, while ensuring adverse effects on nationally significant environments are considered and managed using the effects management hierarchy, or the avoid, remedy or mitigate tests in the RMA.

The objective is consistent with the Government's commitment to amend the RMA to be more enabling of growth and development of new infrastructure, including for quarrying and mining, renewable energy, housing, and the primary sector. The proposal supports the Minerals Strategy for New Zealand to 2040's objective to improve regulatory pathways to make obtaining permits and consents more efficient. This could support the goal of the strategy to double the value of mineral exports by 2035.

What policy options have been considered, including any alternatives to regulation?

This RIS assesses options that are based on aligning the gateway tests with the most enabling option across the instruments. This is intended to ensure an effective intervention drawing on solutions with established precedents. Simultaneously, this approach has allowed an assessment of amendments to the NPSIB, NPS-HPL, NPS-FM, and NES-F as a package with consistent gateway tests. This is intended to be part of good regulatory stewardship, to ensure clear and efficient consenting processes.

Issue 1: inconsistent terminology used across instruments is leading to a lack of clarity on whether ancillary activities are included in the gateway tests.

- Option 1.1 (**status quo**) – retain the existing terminology of "aggregate extraction" and "mineral extraction" in the NPSIB and NPS-HPL, which differs from "quarrying activities" and "the extraction of minerals and ancillary activities" in the NPS-FM and NES-F.

[1] New Zealand Infrastructure Commission | Te Waihanga, *Infrastructure Resources Study, November 2021*, recommendation 7, p 12.

- Option 1.2 (**preferred**) – use "quarrying activities" and "the extraction of minerals and ancillary activities" as consistent terminology across the instruments.

Issue 2: inconsistent and unclear gateway tests for quarrying and mining (that differ across the instruments) are insufficiently enabling.

- Option 2.1 (**status quo**) – retain the existing gateway tests for quarrying and mining in the NPS-FM and NES-F, NPSIB, NPS-HPL.
- Option 2.2 (**preferred, with option 2.3**) – amend the gateway test to "functional need or operational need" for quarrying and mining in the NPS-FM and NES-F to make it less restrictive.
- Option 2.3 (**preferred, with option 2.2**) – better align the gateway tests for quarrying and mining in the NPSIB and NPS-HPL with the NPS-FM and NES-F, which would make them less restrictive. The specific amendments to the NPSIB and NPS-HPL are to:
    - add consideration of "regional benefits" to the mining consent pathways, to allow benefits to be assessed at a more local scale,
    - remove the requirement that the benefits "could not otherwise be achieved using resources in New Zealand", and
    - remove the requirement for the benefits to be "public" (ie allowing private benefits to be considered).
- Option 2.4 (**alternative to option 2.3**) – make targeted amendments to the gateway tests for quarrying and mining in the NPSIB and NPS-HPL (as with option 2.3) but retain and define the significant national public benefit gateway test.

Several options were considered and not progressed to a full analysis in this RIS, as they are not expected to be effective, workable, or timely interventions for the policy problem. These included:

- a review of the instruments at a later date,
- retaining "nationally" significant benefit test for mining in the NPSIB and NPS-HPL, and defining "nationally significant benefit" using the Critical Minerals List, and
- aligning the gateway tests with those currently in the NPS-FM and NES-F which are seen as more restrictive.

What consultation has been undertaken?

There was limited stakeholder engagement in 2024 to develop our understanding of the problem definition prior to public consultation. Issues were raised by several key industry organisations directly with Ministers and MBIE. Ministers subsequently agreed to consult on the preferred options 1.2, 2.2, and 2.3 in a discussion document for public consultation, alongside other proposals in the national direction work programme in 2025.[2]

In response to public consultation, 142 submissions were received on the proposals on mining and quarrying changes to the instruments. This includes responses from 19 iwi and hapū, and another 4 kaupapa Māori organisations.

Approximately a third of submitters supported the proposals in full (primarily industry bodies, companies, and local government), just over a third opposed the proposals in full (predominantly environmental non-governmental organisations, iwi and hapū, academics and experts, and most individuals), and just under a third expressed mixed or no views (primarily local government).

[2] Ministry for the Environment, *Package 2: Primary Sector Discussion Document*, pp 41-45, and attachments 2.4, 2.5, and 2.6.

Most submitters supported amending the NPSIB and NPS-HPL to align mining and quarrying terminology with that of the NPS-FM and NES-F (option 1.2), although some considered these should be more clearly defined.

There was general support for a more consistent approach to the gateway tests across these instruments. However, most submitters overall were opposed to or had mixed views regarding options 2.2 and 2.3. The primary reason given was concerns that they would weaken environmental safeguards.

Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

The preferred option in the Cabinet paper is the same as MBIE's preferred option in this RIS. MBIE recommend that quarrying and mining terminology in the instruments are aligned and clarified in line with the original policy intent, and that the gateway tests be amended to support the Government's goal to promote economic well-being. Officials consider that environmental impacts of increased quarrying and mining on wetlands, SNAs, and HPL will continue to be managed in a manner that is consistent with the objectives of the instruments and the RMA. It is expected that impacts will be well-managed through the mechanisms in place under the RMA, these instruments, and the wider regulatory frameworks for quarrying and mining activities.

Summary: Minister's preferred option in the Cabinet paper

Costs (Core information)

It is not possible to quantify the costs of the preferred options, as it is not possible to quantify the impact, number or scope of any additional quarrying and mining consents.

Costs of increased quarrying and mining activities may include irreversible losses of nationally significant environments (such as SNAs, wetlands and HPL) which would create costs/losses for communities, and wider local and central government.

Project-specific costs to communities of increased quarrying and mining will be considered during the consent application stage. These impacts may include monitoring, remediation of sites, noise, vibration, light, dust, and heavy vehicle movements in nationally significant environments. We also note the opportunity costs of the loss of the ability to use land for other purposes for the duration of operations. Costs may impact local authorities and Māori, through increased demands for processing of, or engagement with, consent applications.

Benefits (Core information)

It is not possible to quantify the benefits of the preferred options, as it is not possible to quantify the impact, number or scope of any additional quarrying and mining consents.

Benefits of the options include consistent, clear and more enabling gateway tests for quarrying and mining across the instruments, which would improve certainty for applicants (including Māori as applicants) and local authorities. With all relevant effects being managed to at least no net loss for wetlands, net gain for SNAs and mitigated for HPL.

The aligned package will also provide for a more consistent consenting approach for applicants and consent authorities where proposed quarries or mines intersect with more than one of these protected environments.

The intended benefits of increased quarrying and mining activities include increased access to, and decreased costs of, resources needed to support the construction of renewable energy, housing and critical infrastructure projects. Other benefits being targeted are private pecuniary gain (including for Māori), employment, and tax/royalty payments.

Balance of benefits and costs (Core information)

It is not possible to quantify the number of projects affected by the proposed changes and consents that may be granted. It is likely that following the changes, more consent applications are submitted and pass the gateway tests where previously they would have been not applied for, declined, delayed, or subject to litigation, due to their effects on wetlands, HPL or SNAs. However, the outcome of those processes cannot be pre-determined, and it is possible that the number of applications and/or approvals does not significantly increase. Without a significant increase in projects, it is unlikely that the preferred options will achieve the objectives, however it is also unlikely that the changes would result in significant adverse impacts.

Increased numbers of consent applications for quarrying and mining activities will have costs for resource management system users, regulators, and Māori. The preferred option, which includes removing the requirement for significant public benefits, may externalise costs (including potential irreversible loss of SNAs, HPL, and wetlands) on the public.

The preferred option, may allow for benefits including highly paid jobs, increased exports, and lower costs for aggregates (which flows into construction costs) and greater private pecuniary benefits.

Implementation

Amendments to the instruments must be taken into account in consenting decisions and council policies under the RMA immediately after coming into force.

The amendments will be administered by MfE. MfE is responsible for supporting implementation and monitoring the effectiveness of the instruments and the amendments.

MBIE will monitor trends in mineral and aggregate production, as well as industry perceptions of the performance of the amended terminology and gateway tests.

Limitations and Constraints on Analysis

Limited evidence available to assess extent of the policy problem

The problem definition was initially informed by the Government's position and the Infrastructure Commission's recommendation. The Government is a key consumer of resources and has a national interest in infrastructure development. The Government is concerned by declining access to resources to meet its needs, as well as supporting growth in the private sector. Specific problems with the national direction instruments were raised by several industry bodies, which is consistent with their role of representing the applicants who are most familiar with the barriers to consenting. The problem definition was further refined through public consultation on the proposals.

Industry submitters raised three specific cases as evidence of the direct impact of unclear terminology and overly restrictive gateway tests. Overly restrictive gateway tests are demonstrated by two quarry projects which have not been able to be progressed (including one declined application). The impacts of unclear terminology are shown by a quarry project for which consent was declined for ancillary activities being located on HPL near the quarry (this has since been overturned by an interim decision on appeal). If these projects were to progress, they would make a material impact addressing deficits in aggregate supply.

It is not possible to further quantify the impacts of the proposal when it is unknown how many projects are affected by inconsistent terminology and restrictive gateway tests, or whether the reported issues are the result of inconsistent implementation. The limited timeframes to undertake the amendments has constrained the ability to better understand how the instruments are currently influencing consent decision making and how the instruments might affect decision making once implemented.

As they are relatively recent instruments they have not been widely implemented in regional and district plans. The instruments all have long implementation timeframes, owing to the need to identify and map SNAs, HPL, and wetlands. Many of these timeframes have been extended or paused. As a result, it is unclear if the instruments are already (or, when implemented, will be) sufficiently enabling or being implemented and will be interpreted consistently.

The Fast-track Approvals Act 2024 (FTAA) provides an alternate consenting pathway for eligible proposals but does not fully mitigate the policy problem. The FTAA process is complex, and in the year the FTAA has been in effect, no quarrying or mining operations have yet obtained consent. The costs associated with the FTAA could mean that it is only accessible to more significant and complex projects.

Government policy direction limits the range of viable options

The Government has agreed to make it easier to consent new infrastructure (including for renewable energy), housing and supporting the primary sector (including agriculture, forestry and mining) through amending National Direction under Phase Two of the RMA reforms. Therefore, the scope of options considered is constrained to options that would address government's policy direction to make consent pathways simpler and more enabling and provide consistency and clarity across the terminology and gateway tests in the instruments.

The limited time available to develop a broader range of options means that detailed consideration of other longer-term options was not possible. Some of the other options considered are detailed in para 117.

Limited evidence available to assess impact of these proposed changes

It is likely that following the change, more consent applications may proceed, but the outcome of those processes cannot be pre-determined. This is because a range of considerations, including other impacts, restrictions and consent matters (such as health impacts or transport), along with the effects management mechanisms in the instruments, need to be considered for each application on a case-by-case basis.

Due to simultaneous policy processes and the constraints noted above, the cumulative impact of the proposals and other potential changes to the instruments included in the national direction work programme have not been assessed.

I have read the RIS and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.

Responsible Manager(s) signature:

Lena MacCarthy
Manager Resource Policy
18 November 2025

Quality Assurance Statement

Reviewing Agency: Ministry for the Environment	**QA rating:** Partially meets

Panel Comment:

A quality assurance panel with members from the Ministry for the Environment has reviewed the 'Regulatory Impact Statement: Providing consistent and more enabling pathways for consent for quarrying and mining affecting significant natural areas, highly productive land and wetlands'. The panel considers that it **partially meets** the Quality Assurance criteria.

"The RIS acknowledges the limitations affecting the quality of the analysis, including the Government's scope and policy direction and the fact that the instruments have not yet been fully implemented. However, there remain gaps in evidence and depth of analysis, particularly regarding the strength of the problem definition and the extent to which the recommended approach will achieve Government objectives. While the document notes potential benefits, it also cautions that the recommended options could result in significant impacts, such as irreversible loss of protected environments and the externalisation of costs to the public.

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

Drivers for change

1. The Government is reforming the resource management system. Cabinet has agreed that the new resource management system will make it easier to get things done by:
   - unlocking development capacity for housing and business growth
   - enabling delivery of high-quality infrastructure for the future, including doubling renewable energy, and
   - enabling primary sector growth and development, including aquaculture, forestry, pastoral, horticulture, and mining. [CAB-24-MIN-0069-refers].
2. Cabinet has agreed that the new resource management system must achieve these objectives while also:
   - safeguarding the environment and human health
   - adapting to the effects of climate change and reducing the risks from natural hazards
   - improving regulatory quality in the system, and
   - upholding Treaty of Waitangi settlements and other related arrangements. [CAB-24-MIN-0069-refers]
3. The reform is taking place in three phases. Phase One repealed the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023. Phase Two includes amending existing national direction and creating new national direction, with the possibility of transitioning aspects of these over to the new system. The amendments would be in force during the transitional period of Phase Three. Phase Three is the replacement of the RMA with two new Acts (the Planning Act and the Natural Environment Act).[3]
4. The objective of Phase Two is to make it easier to consent new infrastructure (including for renewable energy), housing, and supporting the primary sector, including agriculture, forestry, and mining [CAB-25-MIN-0080.01 refers]. One of the objectives of the work programme is to make it easier to consent new quarrying and mining projects. Phase Two has included, or includes the:
   - Fast-track Approvals Act 2024
   - Resource Management (Freshwater and Other Matters) Amendment Act 2024
   - Resource Management (Consenting and Other System Changes) Amendment Act 2025
   - National direction programme, including these quarrying and mining changes.
5. In March 2024, Cabinet agreed that Phase Two would include developing or amending national direction instruments to unlock development and investment in infrastructure

[3] Hon Chris Bishop and Simon Court, *New planning laws to end the culture of 'no' | Beehive.govt.nz*; Ministry for the Environment, *Resource management update - April 2025*.

and primary industries while achieving good environmental outcomes. This phase includes a proposal to amend the instruments to make it easier to consent new quarrying and mining projects. [ECO-24-MIN-0022 refers]

6. In June 2024, Cabinet authorised the Minister Responsible for RMA Reform and the Minister for Resources to make policy decisions for matters related to quarrying and mining. [ECO-24-MIN-0112 refers]

7. In January 2025, the Government released a Minerals Strategy for New Zealand to 2040 which sets out the vision for a minerals sector that is productive, valued and resilient, underpinned by responsible practices and which honours our commitments under Te Tiriti o Waitangi.[4] One objective of the strategy is to improve regulatory pathways to make obtaining permits and consents more efficient. This will support the goal of the Strategy to double the value of mineral exports by 2035.

8. In February 2025, the Government launched the Going for Growth strategy, which targets a skilled workforce and a reduced infrastructure deficit.[5] Increased supply of minerals would support the Going for Growth strategy by supplying public infrastructure with raw materials, and the creation of highly skilled jobs.

The economic impacts of quarrying and mining

9. This RIS takes a holistic approach to measuring the economic well-being benefits of the proposals. Relevant economic impacts include:

   - public benefits, through royalties, concessions, fees, and corporate and income taxes
   - export earnings, which support the Government's target of doubling mineral exports to $3 billion annually by 2035 under the Minerals Strategy to 2040
   - socioeconomic benefits, such as secure regional employment and lower prices for consumers, especially for aggregates, which supports and benefits public infrastructure investment in roads, hospitals, schools, three waters infrastructure, climate change resilience and adaptation, as well as construction, housing, and renewable energy
   - qualitative economic benefits, including security of supply of critical minerals as defined by the Critical Minerals List, an all of Government strategy to secure minerals required for the energy transition, technology and defence, as well as supply for international partners, and
   - private pecuniary benefits such as profits and wages.

Mining is New Zealand's most productive sector

10. The benefits of mining are significant, and some individual large mines produce benefits measured in the hundreds of millions of dollars annually, including tens of millions in direct public benefits through royalties and other taxes.

11. The mining sector is New Zealand's most productive sector, in terms of contribution to gross domestic product (GDP) per employee. Infometrics report that each employee in

[4] Ministry of Business, Innovation and Employment, *A Minerals Strategy for New Zealand to 2040*, January 2025.

[5] Ministry of Business, Innovation and Employment, *Going for Growth*, February 2025.

the mining sector contributed $526,609 annually to New Zealand's GDP in the year to March 2024.[6] This rises to $624,630 of GDP in provincial areas over the same period.[7]

12. Quarrying and mining are productive uses of land compared to other forms of primary industry. While productivity is highly dependent on the mineral deposit type, grade, and quantity, the Aggregate and Quarry Association (AQA) estimated that in 2016/17, each hectare of quarry land produced a return of approximately $78,000.[8] Officials understand that recent mining projects are expected to have returns of many times this amount. For example, the open-cast Bendigo-Ophir gold mine proposal encompasses some areas of wetlands, and is expected to have an annualised return of approximately $880,000 per hectare per year of operation.[9] This aligns with a previous submission on the NPS-HPL which reported that the average production per hectare of a gold mine was $229,000 in FY 2016/17.[10] Gold prices have approximately quadrupled since FY 2016/17.

13. Some mining, such as underground mines, may have low impact on soils (in terms of ability to support biodiversity or highly productive agriculture), ecology, or competing land uses, and produce much higher returns by area than those listed above. However, this is highly dependent on a range of factors, including geology. Risks of adverse impacts of underground mining on protected environments include altered water quality and subsidence, which may have impacts for significant natural areas, highly productive land, and wetlands.

Declining access to resources is a growing concern

14. As a key user of resources itself, and with a national interest in infrastructure development and economic growth, the Government considers that declining access to resources is a significant concern.

The Infrastructure Commission has recommended amending national direction to improve supply of aggregates

15. In November 2021, the Infrastructure Commission's *Infrastructure Resource Study* found that New Zealand's approach to aggregate supply was failing to meet our nation's need:

> *"Aggregate is unique amongst the resources we considered as it is the only one that it is not viable to import due to its high weight and low value. There is a fixed resource endowment within New Zealand that we must work within. It is also a resource that has few practical substitutes and is critical to many infrastructure works as an input into roading, concrete, and ground stabilisation.*
>
> *At a national level there is sufficient aggregate resource for centuries to come, however, the relatively high cost of transport means there are some pockets of*

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[6] Infometrics, *Industry productivity*, 2025.

[7] Ibid.

[8] Aggregate and Quarry Association, *Submission on the NPS – Highly Productive Land Discussion Document*, October 2019, p 2.

[9] For a description of the wetlands included in the Bendigo-Ophir site, see *Matakanui Gold Limited's Fast-track Application*, p 7. Figures are derived from Santana Minerals, *Economic impacts of the Bendigo-Ophir Gold Project – October 2025 update*. The report states a forecast of $6.75 billion NZD of gold produced, over 14 years, on 550 hectares of land. This is an approximate estimate for the purposes of comparison in this RIS, as gold prices fluctuate, and the project scope may change.

[10] Straterra (now New Zealand Minerals Council), *Submission on the proposed NPS for Highly Productive Land*, October 2019, p 2.

scarcity. In some cases, the shortages may be caused by major projects, like Transmission Gully in Wellington. However, in other areas like Auckland and the Horizons region there are more chronic shortages that require more active management of the resource if costs are to be kept under control."[11]

16. In response to these findings, the Infrastructure Commission recommended that *"the Ministry for the Environment work with support from the AQA, local authorities and other stakeholders to develop a national direction for quarrying to remove any unjustified variations in how resource consents are assessed and conditioned. National direction should also provide for short-term exceptions to these conditions to meet peak demand."*[12]

17. This RIS assesses options to partially fulfil the recommendation from the Infrastructure Commission.

There are a number of factors which require a different approach to national direction

18. Officials also understand from their regular engagement with industry that declining access to resources which are geographically close to market is a significant concern especially for aggregates.[13]

19. The challenges of maintaining supply close to market, which are not in protected environments, could be driven by a range of factors, including:

- growing demand for resources relative to supply
- resource depletion of deposits near demand centres
- increasing aversion to adverse impacts (eg dust, noise, natural hazards, and subsidence) on communities, which prevents operations taking place in some areas
- urbanisation and sprawl overtaking sites such as quarries and mines which used to be suitably remote from the urban fringe
- coincidence of deposits with environments through chance, or through common factors. For example, alluvial aggregates and alluvial gold are the result of hydrology and are therefore likely to interact with freshwater ecosystems.

Mining has the potential for significant public and non-public benefits

20. While the above examples are framed around aggregate supply, officials note that the same supply constraints on mining activity apply, however distance to market is not a particular concern, due to the higher value of mined products.

21. The advantageous economics of mining activities compared to quarrying activities means there is significant potential for mining to deliver significant public and non-public benefits. There is a compelling and broad public interest in ensuring that these opportunities are considered, so that they may proceed if their benefits outweigh impacts.

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[11] New Zealand Infrastructure Commission | Te Waihanga, *Infrastructure Resources Study, November 2021*, p 7.

[12] Ibid, recommendation 7, p 12.

[13] "To keep transport costs low and manageable, aggregates need to be sourced close to where they are intended to be used on a project." From Infometrics, *Examining aggregates trends in New Zealand for Fulton Hogan,* January 2023.

22. Mining encompasses a broader range of activities than quarrying but also includes activities with similar impacts. Examples may include open-cast mining and crushing in identical manners to common aggregate production, or underground mining, which can have a low impact on the local environment. This is highly dependent on factors including geology, the nature of the local environment, the method of extraction, and the application of protections and mitigations under the effects management hierarchy or avoid, remedy, and mitigate mechanisms.

23. As a result, some mining activities can be more beneficial than – and have similar impacts to – quarrying activities, and these can only be evaluated on a case-by-case basis.

24. This RIS is concerned with the question of whether mining should be treated distinctly from quarrying because of a different nature or scale of potential harms.

The function of the RMA

25. The purpose of the RMA is to promote the sustainable management of natural and physical resources. It does this by regulating the effects of the use and development of resources and identifying nationally important environments and resources that should be protected. Significant indigenous biodiversity (including SNAs) and wetlands are matters of national importance under section 6 of the RMA and require consenting authorities "to recognise and provide for their protection" in decision making. HPL is considered to be included under section 7 of the RMA which requires consenting authorities to have "particular regard" to any finite characteristics of natural and physical resources in decision making.

26. The RMA sets out councils' and decision-makers' duties, which are outlined at para 114. The RMA is implemented through regional and district plans and policy statements. These documents set out policies and rules for managing the effects of subdivision and use or development of land and natural or physical resources, especially those that may have wider effects on the environment, other landowners or the community. This is done through a consenting process (permission to undertake an activity or use of a natural or physical resource that may have wider effects).

The purpose of the instruments

27. National direction (policy statements and environmental standards) is secondary legislation under the RMA, can be developed by the Government to support councils in developing their plans and policy statements to fulfil their duties under the RMA. The NPSIB, NPS-HPL, NPS-FM and NES-F ('the instruments' subject to this RIS) provide direction to local authorities on identifying, protecting and managing nationally significant environments (or environmental values) and managing the adverse effects of use and development on nationally important natural environments.

28. These instruments each provide direction for protecting and maintaining a specific environment and have the following objectives:

    - the NPSIB aims to maintain indigenous biodiversity, including by requiring councils to identify and protect SNAs by ensuring that listed adverse effects are avoided
    - the NPS-HPL aims to protect HPL for use in land-based primary production. HPL is a finite resource that cannot be replaced once lost and is under pressure from subdivision and urban expansion

- the NPS-FM and NES-F aim to protect and manage adverse effects on wetlands, to prioritise the health and well-being of people and freshwater ecosystems.

29. These instruments all regulate subdivision, use and development within these protected environments with the intention of avoiding adverse effects on them.[14] If a use or development has more than minor adverse effects, then it should be avoided in that environment. However, there are instances where these environments overlap with mineral and aggregate resources that cannot be practicably obtained elsewhere for a range of reasons[15] and the exploitation of which provides wider social or economic benefits. The instruments recognise that and each of them provide exceptions to the avoid policies and frameworks for assessing and allowing them where the benefits are considered to justify the adverse effects in a specific context.

The current approach to consenting quarrying and mining in the instruments

30. To provide for instances where quarrying and mining activities in SNAs, HPL, and wetlands are necessary, the instruments direct councils to develop "consent pathways", by implementing certain "gateway tests". The gateway tests for quarrying and mining are outlined in para 31 and Table 1. These gateway tests allow decision-makers to balance the values of protected areas with government goals, public need, the economic value of resources, and locational restraints.

31. The main gateway tests for quarrying and mining found in the instruments are:

- **national or regional benefit:** can the application progress if benefits are "regional", or must the application demonstrate "national" benefits?
- **public benefit:** does the application demonstrate "public" benefits?
- **could not otherwise be achieved:** must the benefit be unachievable using resources otherwise available in New Zealand?
- **functional or operational need:** is there a functional need[16] or operational need[17] for the activity to take place in that environment?

32. However, the terminology and gateway tests differ across the instruments as they were produced at different times and are intended to address different environment values with different levels of significance under the RMA. This RIS tests:

- whether it is possible to align these tests while still giving effect to their original policy intent, or

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[14] For example:

- the wetland regulations (NPS-FM and NES-F) control the following activities: vegetation clearance, earthworks and water take, use, discharges, for quarrying and mining.
- the NPSIB outlines five specific effects that need to be avoided due to their significant impacts on ecosystem characteristics, being indigenous flora and fauna (cl 3.10(2)).

[15] Including technical viability (including functional or operational need), economic viability or because an alternative resource has not been proven to exist to a sufficiently high standard.

[16] 'Functional need' is defined in the National Planning Standards as the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.

[17] 'Operational need' is defined in the National Planning Standards the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

- whether a policy change to the tests in the instruments would better give effect to the objectives and purpose of the instruments and RMA in the context of current Government priorities.

33. Applications which meet the gateway tests may then be considered, and the applicant must show how they will manage adverse effects on the protected environment, or the proposal should be declined. For SNAs and wetlands adverse effects are intended to be managed using the 'effects management hierarchy' (under the NPSIB, NPS-FM and NES-F).[18] The steps in the hierarchy, in order of preference are to: avoid; minimise; remedy; offset; or compensate. If all adverse effects cannot be mitigated using this hierarchy, the activity is not appropriate and cannot be consented.

34. The effects management hierarchy does not apply to consents being considered under the NPS-HPL because adverse effects on HPL are permanent and cannot be offset or compensated. Instead, territorial authorities must take measures to ensure that any use or development on HPL avoids or mitigates effects on HPL, and applications should be declined if this is not met.[19]

Gateway tests for mining and quarrying are inconsistent across instruments

35. The gateway tests differ across the four instruments. Table 1 sets out which gateway tests described in para 31 are in which instruments. The most restrictive tests are bolded in red and shaded grey.

Table 1: terminology and gateway tests in the instruments

	NPSIB cl. 3.11(1)	NPS-HPL cl. 3.9(2)(j)	NPS-FM cl. 3.22 and NES-F regulations 45A(6)(b) & 45D(6)(b)
Quarrying			
Terminology	Aggregate extraction (undefined)	Aggregate extractions (undefined)	Quarrying activities (defined; includes ancillary activities)
National benefit	No	No	No
Public benefit	**Yes**	**Yes**	No
Could not otherwise be achieved	**Yes**	**Yes**	No
Operational need or functional need	Either	Either	**Functional**
Mining			
Terminology	Mineral extraction (undefined)	Mineral extraction (undefined)	Extraction of minerals and ancillary activities (undefined; includes ancillary activities)
National benefit	**Yes**	**Yes**	No
Public benefit	**Yes**	**Yes**	No
Could not otherwise be achieved	**Yes**	**Yes**	No

[18] For 'effects management hierarchy', as applied to quarrying and mining in the instruments, see NPSIB clauses 1.6 and 3.10; NPS-FM clauses 3.21 and 3.22; and NES-F regulations 3, 45A(6)(c) and 45D(6)(c).

19 See NPS-HPL subclauses 3.9(2) and (3); see also, RMA sections 5 and 17, which provide for the purpose of the RMA, and duty of all persons to avoid, remedy, or mitigate adverse effects of activities on the environment.

Operational need or functional need	Either	Either	**Functional**

36. There are other references to quarrying and mining in the New Zealand Coastal Policy Statement (NZCPS).[20] This reference is not included in scope of this RIS, as options to align the NZCPS with the instruments was not sufficiently progressed prior to Cabinet's initial decisions.

Environmental impacts of mining and quarrying

37. Mining and quarrying can cause a range of direct and indirect impacts on the environment:

    - Direct impacts include the clearance of vegetation, loss of wildlife, removal of soil, diversion, modification of waterways and water flows, dust, and dumping of soil and overburden.[21] These can result in impacts to, or displacement of, indigenous plants and animals in the area, changes to the natural hydrology of the area and loss or contamination of productive soils and the loss of soil's natural biome.
    - Indirect impacts include the deterioration of water quality by sediment, acid mine drainage, or leaching of chemicals used in extraction or contained in mine tailings, deterioration of air (including dust), loss of water and land quality, vibration, light, noise, visual effects, ecological edge impacts, impacts on navigation routes, increases in pest species and predators and impacts on cultural and historic heritage values.

Losses to SNAs and wetlands are temporary

38. Quarrying and mining projects also require remediation at the end of life and often involve wider environmental offsetting (eg pest control and tree planting across a wider area to compensate for the impacts in and around the mine/quarry site). When decision-makers are considering the overall impact of quarrying and mining activities, the net impacts once effects are mitigated for (ie avoided, minimised, remedied, offset and compensated for), are taken into account.

39. The degree and nature of the environmental impact of quarrying and mining will depend on the specific project and its design and operation, and remediation works. Factors include the scale of the operation, the method of extraction, the vulnerability, geology, geography, and biology of the area affected, and the timescale over which impacts occur. For any quarry and mine project to be approved the applicant would need to manage and mitigate their effects to obtain a resource consent, this could include environmental offsets and/or compensation where appropriate.

40. More projects being provided an exception to the avoid policies of the instruments and progressing to consent application would not change the requirements to manage the effects of projects. Only projects which can meet the relevant gateway tests and appropriately manage their effects through the 'effects management hierarchy' in the NPSIB and NPS-FM, or the avoid or mitigate requirements in the RMA and NPS-HPL may be granted a consent, subject to other requirements of the relevant plans and RMA.

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[20] The NZCPS recognises that the "extraction of minerals" is one of several activities in the coastal environment important to the social, economic and cultural well-being of people and communities.

[21] Overburden is overlying material, whether consolidated or not, which is removed before a mineral is extracted.

41. The result of the effects management hierarchy in the NPSIB, NPS-FM, and NES-F is that consents may only be granted for quarrying and mining activities impacting SNAs and wetlands if the proposal shows how it has worked through and applied the effects management hierarchy. All effects must first be avoided, then minimised, and then remedied where practicable, and any residual effects remaining must be offset then compensated for in such a manner that there is no net loss or preferably a net gain for wetlands, and net gain for SNAs. This is still an adverse environmental effect, as it requires human intervention in natural ecosystems and environments, and human intervention cannot replicate natural process. The resulting environmental values will be different. The impacts should not, however, include permanent net losses of SNAs or wetlands in the wider context.

42. Submitters noted that more projects may still lead to adverse environmental impacts, as the effects management mechanisms are imperfect, as a result of inconsistent monitoring and compliance. Officials consider that this is an issue which is out of scope of this RIS. The risk of non-compliance exists in any activity impacting protected environments. If taken to the logical conclusion, this reasoning would prevent any activities from being consented in these areas. More projects accessing the gateway tests would increase the risk of compliance issues in absolute, but not relative terms.

Losses of HPL are permanent and must be carefully considered

43. The NPS-HPL aims to protect HPL for use in land-based primary production. HPL is a finite resource that cannot be replaced once lost and is under pressure from lifestyle subdivision and urban expansion. In particular, the qualities of the soil and other attributes of HPL make it exceptionally productive for land-based primary production, including horticulture and intensive dairying. The overarching objectives of the NPS-HPL are to ensure sustainable management of this resource to ensure food production now and for future generations, to provide nutrition, and especially because of the significant contribution of HPL-derived products to New Zealand's economic well-being.

44. Quarrying and mining on HPL is restricted, because those activities can potentially contaminate soil and water through runoff, pollutants, and particulates. The removal of soil and rock, and the stockpiling thereof can lead to soil compaction and/or alterations of the nutrients and biology in the soil. The activities can also impact aquafers and water tables, which are necessary for the irrigation of HPL. Each of these impacts could materially impact the ability of HPL to be restored to a productive state after mining or quarrying activities have ceased.

45. The approach of the NPS-HPL is instead that applications must avoid the inappropriate use or development of highly productive land.[22] Where exceptions are provided for, the use or development must minimise or mitigate any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land in their district.[23]

46. As shown in para 12, quarrying and mining are extremely valuable uses of land, including in comparison to the current output of most HPL. For example, the gross farm revenue from dairying across all land types was $10,526 per hectare in the 2023-

[22] NPS-HPL clause 3.9(1).

[23] Exceptions are provided for in NPS-HPL clause 3.9(2), and the requirement that these developments minimise or mitigate is set out in clause 3.9(2).

24 season.[24] Horticulture and viticulture have comparable outputs per hectare to quarrying, given high capital and labour intensity. However, horticulture and viticulture are only carried out on a relatively small portion of highly productive land.[25]

47. The total area of future mines is expected to be small and is unlikely to substantially impact production from horticulture in the long term. This is because the requirement to minimise and mitigate impacts on HPL will constrain mining activities to what decision-makers deem appropriate for the circumstances. Long-term uses of rehabilitated quarry and mine sites will continue, including for conservation, or for uses which would otherwise place pressure on HPL. This includes industry, landfill, and ancillary activities for primary production.

48. It is recommended that decision-makers carefully consider the value of long-term losses of HPL, and whether the significant short- and medium-term gains are an acceptable trade-off, when considering the present value of both options, and that agrarian uses of HPL are intergenerational sources of food and wealth. A mine may have a lifetime of as short as 10 years, whereas quarries may operate for many decades. The infrastructure and development which is supported by quarries will also last decades and/or centuries.

There are factors which limit the potential development of quarries and mines, beyond the gateway tests

49. While the impacts on local environments may be significant (eg an individual wetland could be temporarily lost), there are practical constraints on the rate of development of new projects, which may limit environmental impacts of any changes:

- significant lead in time for development of quarries and mines
- limited capital, particularly for projects with potentially significant adverse effects, which are perceived to carry greater risk due to more onerous compliance needs
- limited numbers of technically and economically viable deposits already identified and not developed
- public pressure on projects in sensitive environments.

50. As a result of the factors above, there is an upper bound on the potential adverse impacts of any policy changes to the gateway tests. Officials expect that the development of quarries and mines will continue to favour less-sensitive areas, which MBIE is supportive of. These factors also limit the degree to which any changes will address the policy problem.

What is the policy problem or opportunity?

51. Locational constraints on supply and declining access to resources close to market are a concern and could be driven by a range of factors, as outlined in para 14–19.

52. The occurrence of deposits with wetlands, SNAs and HPL and the need to locate activities away from urban areas also means that one proposal may incorporate more than one of these environments and often all three. This currently means that

[24] DairyNZ, *Economic Survey 2023-24*, p 40.

[25] Approximately 120,000 hectares were used for horticulture and viticulture as of 2021. See Horticulture NZ, *Submission on Exposure Draft Natural and Built Environments Bill*, 4 August 2021, p 6. While there is no breakdown of this area by Land Use Capability Classification (LUC Class), this is less than 9 per cent of LUC Class 1 and 2 area, and less than 4 per cent of LUC Class 1–3 area.

applicants and council must apply multiple consent regimes, increasing the complexity of the information requirements and consenting process. Officials are aware of such cases through exposure to recent applications under the Fast-track Approvals Act 2024 (FTAA).[26]

53. While the extent of these factors is not well understood, it is expected that there has been and will continue to be a reduction in viable deposits, which are sufficiently close to market and supporting infrastructure, and that do not interfere with other users or protected environments. To continue to promote economic well-being, increased mining in SNAs, HPL, and wetlands is now necessary.

54. There was widespread support via public consultation for making the terminology and definition consistent. Overall, submitters supported the proposed change. Submitters commented that the proposals would better align the mining and quarrying terminology and definitions in NPSIB, NPS-HPL, NPS-FM, and NES-F and would improve clarity for consent processes. The changes are consistent with the current intent of the terminology, which is to provide for quarrying and mining activities, including ancillary activities (generally, or as defined) to have consenting pathways.

55. The specific problems with the gateway tests were mostly identified by two industry organisations who represent resources firms, ie consent applicants. Together, the two main industry organisations represent large and small producers, exploration companies, equipment suppliers, research institutions, engineering firms, mining professionals, and firms providing legal, accounting and other ancillary services to the mining industry. The comments from these organisations were reflected in submissions from individual businesses.

56. Industry organisations stated that the consent pathways for quarrying and mining in the instruments are inconsistent and overly restrictive for quarrying and mining activities that adversely affect SNAs, HPL and wetlands. Industry feedback on the discussion document reports that companies are holding off applying for consents because of a lack of clarity and certainty.

57. Local authorities were generally supportive, or had mixed views, regarding the preferred options in this RIS. Some specifically commented on the problem definition, for example Otago Regional Council submitted noted the significant transportation costs of aggregate and considers consistency in definitions, provisions and consent pathways across all these instruments would be an improvement.

58. There was strong feedback from local authorities that consistency between the terminology, and to a lesser extent, gateway tests, could improve the administration of the resource management system. Council views were more mixed on how enabling the consent pathways should be, primarily in relation to public benefit requirements.

59. Industry consider that a lack of consistency, clarity and certainty is leading to fewer applications. This could possibly mean fewer approvals, which may limit access to, and therefore increase costs for, quarried resources, and may limit mining exports and value creation. Greater access to quarried or mined aggregates and minerals is required to achieve several of the Government's objectives (for example in infrastructure, housing and renewable energy).

[26] For example, the Drury Quarry Expansion – Sutton Block application covers significant natural areas and wetlands.

60. Where these protected environments overlap (as they commonly do in the rural area) mining and quarrying applications would have to address different gateway tests for the different environments potentially within one application area. This increases the complexity of evidence required make consideration of consent application more complex.

61. A package of options had been designed based off the most enabling gateway tests already used in the instruments. This is intended to provide for greater enablement, while also providing benefits in terms of consistency and efficiency of the regulatory system.

Issue 1: inconsistent terminology across instruments

62. There is ambiguity around the definition or meaning of "mineral extraction" and "aggregate extraction" in the NPS-HPL and NPSIB. These terms are undefined within the resource management system and do not clearly state whether ancillary activities necessary for the functioning of the mine or quarry are included. The terms are also inconsistent with those in the NPS-FM and NES-F, that use "quarrying activities" and "the extraction of minerals and ancillary activities", which include ancillary activities.[27]

63. The policy intent of the NPSIB and NPS-HPL was to provide for consent pathways for activities required for quarrying and mining. Industry reports that the differences in terminology and use of undefined terms in the NPSIB and NPS-HPL creates unnecessary inconsistencies, which may contribute to inconsistent implementation and decision-making.

64. Officials are aware of one resource consent decision that found "aggregate extraction" in the NPS-HPL excludes essential ancillary activities, which demonstrates the possible impact of inconsistent terminology. On 29 June 2023, the Tasman District Council declined CJ Industries' Peach Island quarry proposal as it included a deposition of clean fill and because this is a separate activity, it was found to be outside the scope of aggregate extraction under the NPS-HPL.[28] This decision has since been overturned on an interim judgement by the Environment Court.[29]

Issue 2: insufficiently enabling gateway tests for quarrying and mining that differ across the instruments

Gateway tests for quarrying and mining in the NPS-FM and NES-F do not provide for "operational need"

65. The NPS-FM and the NES-F provide a consent pathway for mining and quarrying activities where this would adversely affect wetlands, with effects managed through the effects management hierarchy. Access to the consent pathway is subject to gateway tests that require the applicant to show a "functional need" to locate/operate/develop in a manner that affects a wetland and significant benefits.

66. The NPS-FM and NES-F gateway tests for quarrying and mining are inconsistent with those in the NPSIB and NPS-HPL, which also include "operational need". The

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[27] "Quarrying activities" is defined in the National Planning Standards as including the following ancillary activities: "the extraction, processing (including crushing, screening, washing, and blending), transport, storage, sale and recycling of aggregates (clay, silt, rock, sand), the deposition of overburden material, rehabilitation, landscaping and cleanfilling of the quarry, and the use of land and accessory buildings for offices, workshops and car parking areas associated with the operation of the quarry."

[28] See the *Decision of Hearing Commissioner in application RM200488 200489 220578 - CJ Industries Ltd*.

[29] C J Industries v Tasman District Council [2025] NZEnvC 213 at [275]

operational need test provides for consideration of technical, logistical and operational limits on an activity, not just the functional need to locate in the particular environment. This aligns with making clear that ancillary activities are provided for, as they may have technical or logistical reason to locate near where the resource is being extracted. This is opposed to the functional needs test, which requires that it only be possible to locate the activity in that environment. In some contexts, "functional need" is not always more restrictive in practice, for example there will be contexts where all mining activities will meet the functional need test. However, generally it is considered more restrictive because it does not recognise operational, technical or other constraints. Some local authorities commented that the operational needs test better reflected the practicalities of quarrying and mining, or that both tests were appropriate.

67. Quarrying and mining are locationally constrained in terms of where the resources are located and may need to be located on wetlands in certain circumstances (eg where an access road needs to be extended through wetlands, or the mineral resource is located in or around wetlands). Feedback from the AQA and a number of operators and local authorities was that the gateway tests in the NPS-FM and NES-F are too restrictive.

The consent pathways for quarrying and mining in the NPSIB and NPS-HPL contain more gateway tests than the NPS-FM and NES-F, some of which are unclear, duplicative, or overly restrictive

68. The NPSIB and NPS-HPL make provision for use or development associated with mineral extraction and aggregate extraction that adversely affect SNAs and HPL. The consent pathways include gateway tests that require the applicant to show:

    - a significant national benefit for mining, or for quarrying a significant national or regional benefit
    - the benefit shown must be public
    - that it [the benefit referred to above] could not otherwise be achieved using resources within New Zealand.

69. As shown in Table 1, these tests are more restrictive than the NPS-FM and NES-F, and the national or regional benefit test is inconsistent between quarrying activities and mining activities.

The requirement for a national benefit is less enabling than a regional benefit

70. The NPSIB and NPS-HPL require a mining applicant to demonstrate a significant national benefit from their project. This is higher than the significant regional benefit test which is applied to quarrying in the NPSIB and NPS-HPL and to both quarrying and mining in the NPS-FM and NES-F.

71. The test is intended to recognise that quarrying activities have a greater need to locate near where the product will ultimately be used, as quarried products are low margin bulk commodities. The test also recognises that mining can have more significant environmental impacts than quarrying, including through the additional ancillary activities necessary in many mining processes, and through effects such as acid mine drainage.

72. As mentioned above at para 60, quarrying and mining activities have significant overlap in that many mining activities are equal or lower impact than for quarrying on

their local receiving environments. This conflicts with the intention that the RMA be an effects-based rather than activity-based resource management system.[30]

73. The significant national benefits test is not defined and biases towards projects which are larger and excludes projects which are smaller, likely to have fewer interactions with SNAs and HPL, and likely to pose less risk to those environments in absolute terms. The test does not appropriately draw the line in a way which allows these considerations to be taken into account. The test also does not provide for the national impact of small projects when combined, and that these combined projects may have fewer impacts than one individual nationally significant project. The regional benefit approach was the one taken by the NPS-FM and NES-F, as the national test was considered too restrictive in that context.

The public benefit test does not allow for the full range of benefits to be considered

74. The significant public benefit test in the NPSIB and NPS-HPL is intended to protect the public goods derived from SNAs and HPL, including their environmental values, importance for te ao Māori, and contribution to economic well-being (in the case of HPL).

75. The significant public benefits test is not defined and does not allow for decision-makers to consider the full range of benefits of an application. Conversely, decision-makers would still consider public benefits in the absence of a requirement to do so, due to the general approach towards holistic assessments of applications. This less prescriptive approach was the one taken by the NPS-FM and NES-F.

76. As mentioned in paras 9–12, there are a large range of benefits that may be significant but non-public. This was noted by some submitters, including industry, local authorities, and business groups.

The "could not otherwise be achieved" test is inconsistent and redundant

77. The purpose of the "could not otherwise be achieved" gateway test is to ensure that alternative locations for projects have been assessed, and that the significant [public] benefit, could not be achieved by those alternative options.

78. The test that the benefit "could not otherwise be achieved using resources within New Zealand" is impracticable to apply and difficult to meet due to its broad scope; the test also duplicates aspects of the other tests and the assessment of environmental effects requirements of the RMA (eg requirements to avoid, remedy, or mitigate impacts). Stakeholders, including industry and local authorities, report that the test is confusing and difficult to apply in practice. Officials are aware of applications meeting this gateway test and consider that the issue is not principally one of restrictiveness, but rather of complexity and redundancy leading to inefficiencies.

79. The test does not sufficiently account for evidentiary hurdles in proving whether a benefit "could not otherwise be achieved using resources within New Zealand". This is because it is in general not known what other resources exist within New Zealand or their grade; even when other deposits exist, they will usually be unable to be progressed to a final investment decision without significant further work and delay. This is due to factors such as:

[30] For a discussion of this distinction, see: View of The Demise of Effects-based Resource Management.

- in relation to Crown-owned minerals, the requirement to be granted a mining permit that the applicant has broadly identified a technically and economically viable resource
- in relation to ASX or NZX publicly listed companies, the requirement under listing rules that resources be compliant with the Australasian Joint Ore Reserves Committee Code (JORC Code) at different stages of the process.[31]

80. In general, there are very few projects which do not meet the above criteria and are not actively being further developed. As a result, it could be expensive and impractical, to prove that the benefit "could not otherwise be achieved using resources within New Zealand".

81. Removing the test is a workable option, as there are already tests in the instruments which are more appropriate to the standard of evidence available to applicants and consent authorities. These include the functional need and operational need test (see footnotes 16 and 17) in the NPSIB and NPS-HPL, and the "there are no practicable alternative locations for the new subdivision, use or development" test in the NPSIB.[32]

82. As a result of overlapping tests with different evidentiary standards, the removal of the "could not otherwise be achieved" test is less likely to materially impact the underlying problem of a lack of enabling pathways for consent restricting supply. At the same time, removing the test is also unlikely to have any significant adverse environmental or other impacts. Officials accept the submission of the New Zealand Planning Institute that there was a lack of evidence that this test posed a significant barrier to the consent application stage. Based on the available evidence, we consider that the test can be met, but that the test is poorly framed and redundant, leading to inefficiencies.

83. Therefore, the standard for this change that officials assess in this RIS, in arriving at their recommendation, is whether the removal of the test will lead to more consistent and efficient consenting process, which is easier to apply, while still delivering on the purpose of the instruments. This is part of ordinary regulatory stewardship functions.

84. Industry submitted in favour of removing the test that "there are no practicable alternative locations" in relation to quarrying and mining should be removed from the NPSIB. Officials have opted not to recommend this, as it was not publicly consulted on, and may be a more significant policy change if combined with removing the "cannot otherwise be achieved" test.

There is some case law evidence to support this problem definition

85. Industry submitters raised cases, both quarry projects, which demonstrate potential impacts of restrictive gateway tests.[33] A submitter (a major quarry operator) put that one project was declined due to the gateway tests in the NPS-FW, and one project could not progress to the consent application stage due to the NPS-HPL gateway tests.

86. We are not aware of further resource consent decisions to suggest that the current terminology for mining or the gateway tests for quarrying and mining in the instruments are being interpreted inconsistently, are not including ancillary activities, and are

[31] The Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves ('the JORC Code') is a professional code of practice that sets minimum standards for Public Reporting of minerals Exploration Results, Mineral Resources and Ore Reserves.

[32] NPSIB clause 3.11(1)(c).

[33] Separately from the case relating to inconsistent terminology.

limiting projects from progressing to the consent application stage. It may be that the test has a significant or outsized impact on project and site design so consents are not being applied for, but this cannot be determined.

How the problem is expected to develop

Inconsistent and restrictive gateway tests remain under the status quo

87. The exceptions that provide for quarrying and mining consent pathway in the NPSIB, NPS-HPL, NPS-FM and NES-F would continue to support consenting of these activities where they affect wetlands, SNAs and HPL subject to them meeting the gateway tests and mitigating their effects. This allows councils to balance effects on valued environments against need and wider benefits along with mitigation, through the consenting process.

88. The inconsistent and restrictive gateway tests will mean that the problems identified will continue to exist. This will mean that industry may continue to hold off applying for consents, meaning fewer approvals and continuing limited access to mined and quarried resources. Over time, a shortage of mined and quarried resources could significantly affect the activities of users of these resources, including infrastructure, housing, construction etc.

The Fast-track regime does not adequately mitigate the policy problem

89. The Fast-track Approvals Act 2024 (FTAA) provides an alternate consenting pathway without these gateway tests for significant proposals that meet its criteria. The FTAA process is complex, and in the year the FTAA has been in effect, no quarrying or mining operations have obtained consent.[34] The costs associated with the FTAA could mean that it is only accessible to more significant and complex projects.

There is limited data available to assess the policy problem

The instruments have not yet bedded in

90. The instruments have not been widely implemented in regional and district plans. This is because the instruments are relatively recent, and there is a significant lead-in time to implement them, particularly to identify and map these areas (and timeframes for implementation have been extended). As a result, it is unclear if the instruments are sufficiently enabling or being implemented and interpreted consistently. An exception is some wetlands sections of the NES-F which can be directly inserted into plans.

91. In addition, this Government has made or is in the process of making changes to the instruments that will further extend their implementation:

- the pause on the identification of SNAs under the NPSIB
- extension to the implementation timeframes in the NPSIB and NPS-HPL
- the pause on implementation of the NPS-FM, and review of the NPS-FM and NES-F
- the Government ‘Plan Stop’, which is described in paras 183–183.

92. The limited implementation limits the ability to gauge the effectiveness of the instruments at protecting SNAs, HPL, and wetlands, and whether the gateway tests are overly restrictive.

[34] Seven applications have been made, of which one has been declined. The remaining six are in progress.

93. Parliament has determined that other gateway tests for quarrying and mining are too restrictive, which suggests that the right balance is still being found. The Resource Management (Freshwater and Other Matters) Amendment Act 2024 removed the provisions of the NPSIB that imposed additional restrictions on new coal mines and removed the sunset clause for exceptions to consent pathways for existing thermal coal mines.[35] This amendment aligned the consenting pathway for coal mining with other mining activities.

Who is impacted by the problem

94. There is uncertainty about the extent of the costs and benefits of the status quo and where they might fall. In practice, it will depend on the facts of the individual consent application, including any mitigation and/or compensation agreed by parties. Overall, these factors are weighed up by the district council, regional council or the Environment Court in applying processes to achieve the purpose of the RMA.

95. As well as obligations under the Treaty of Waitangi/te Tiriti o Waitangi to engage with Māori on matters that affect them, the Crown has specific commitments through Treaty settlements to engage with post-settlement governance entities (PSGEs) on relevant policy matters under relationship agreements and accords, including when preparing national direction.

96. Māori will be impacted in their exercising of tikanga, mātauranga Māori and kaitiakitanga by changes to the status quo. The specific impacts will depend on the individual consent applications and decisions, including any mitigations and/or compensation agreed by parties.

97. Due to the limited time available, it was not possible to engage specifically with Māori groups prior to public consultation on the discussion document. However, there was an opportunity for some PSGEs to engage through the Ministry for the Environment (MfE) engagement process through Te Putunga Kōrero, however, no PSGEs reached out to engage. This was possibly due to limited time and capacity, the number of proposals or a greater interest in some proposals over others.

98. The options are not expected to disproportionately impact distinct population groups. However, any projects enabled by these changes to access consent pathways may disproportionately impact regions and communities where quarrying or mining occurs.

What objectives are sought in relation to the policy problem?

99. The primary policy objective is to better enable resource extraction and use through quarrying and mining, while providing for adverse effects on nationally significant environments to be considered and managed using the effects management hierarchy, or the avoid, remedy or mitigate tests in the RMA.

100. The objective must be achieved in a way that is consistent with the purposes of the RMA and the national direction instruments being amended. In the context of mining and quarrying, this means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enable people and communities to provide for their social, economic, and cultural well-being and for their health and safety while –

- safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

[35] See Resource Management (Freshwater and Other Matters) Amendment Act 2024 section 30 and Schedule 2 Amendments to secondary legislation made under Resource Management Act 1991.

- avoiding, remedying, or mitigating any adverse effects of activities on the environment.[36]

101. The purpose of the RMA is applied in the relevant national direction instruments by requiring that projects that pass the initial gateway tests to manage adverse effects through the effects management hierarchy, or the avoid, mitigate, remedy test in the RMA.

102. More enabled quarrying and mining projects would support the delivery of the Going for Growth strategy. The Government has committed to amend the RMA to make it easier to consent new infrastructure, including for renewable energy, housing, and enhancing the primary sector. Improving regulatory pathways to make obtaining permits and consents more efficient would deliver on the objective in the Government's Minerals Strategy for New Zealand to 2040.

103. The instruments all already provide exceptions for quarrying and mining activities to their strict avoid policies, which sets a precedent acknowledging the importance of these resources for social and economic well-being and their locational constraints. The alignment of terminology and definitions and gateway tests will improve consistency and simplify consenting processed within the scope of the objectives of the instruments. The effects management hierarchies in the NPSIB and NPS-FM ensure that in net terms there is no further loss of wetlands and significant biodiversity. The amendments to the NPS-HPL will provide for more appropriate consideration of near-term benefits, against the potential, but minimised, irreversible losses of HPL.

[36] Section 5, RMA. Note that minerals are expressly excluded from the first limb of the definition of "sustainable management" in section 5(2) because minerals are not renewable and therefore cannot be sustained.

Section 2: Assessing options to address the policy problem

What criteria will be used to compare options to the status quo?

104. The following criteria, equally weighted, will be used to compare options to the status quo:

- **Effectiveness** – does the option achieve the objectives and does it provide a solution to the identified problem?
- **Efficiency** – does the option provide enough flexibility to allow local circumstances to be addressed at the local level and is it cost effective?
- **Alignment** – does the option integrate well with other proposals and the wider statutory framework?
- **Implementation** – is the option clear about what is required for implementation by local government/others and easily implemented?
- **Treaty of Waitangi** – reference to the Treaty Impact Analysis.

What scope will options be considered within?

105. The options will be considered in line with the drivers for change outlined in paras 1–24, including: the Government's intention to amend the RMA to make it easier to consent new infrastructure; to support the Going for Growth strategy; and to support a doubling of mineral exports to $3 billion annually by 2035 under the Minerals Strategy for New Zealand to 2040.

106. To give effect to the Government's objectives, more quarrying and mining projects need to be able to access consent pathways in district and regional plans, or to be able to access those consent pathways in more economically and technically viable locations. Providing for more consistent and enabling gateway tests across the instruments would make the process more transparent for applicants and clarify the approach/consent pathways for consenting authorities.

107. Therefore, the scope of options considered is constrained to options that provide consistency and clarity across the terminology and gateway tests in the instruments.

The Treaty of Waitangi

108. Under the RMA significance is given to:

- section 6(e) – relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
- section 7(a) – kaitiakitanga; and
- section 8 – requires decision-makers take into account the principles of the Treaty of Waitangi.

109. Despite the above considerations, Māori have limited ability to influence decisions on resource consents when they are not notified. Where Māori groups are included in resource consenting process and express an interest, a cultural impact assessment is sometimes commissioned. However, this process can stretch resources for Māori and applicants.

The changes will focus on the gateway tests and will not make changes to the 'effects management hierarchy' or the avoid, remedy or mitigate tests in the RMA

110. The focus of this RIS is to consider options which would address the issues of inconsistent terminology and gateway tests and would enable more quarrying and mining projects to progress their consent applications. The options would not change the requirements to consider and manage the effects of projects on environmental values. Only proposals that meet the relevant gateway tests, appropriately manage their effects, and comply with any other plan requirements will be granted resource consent.

111. As the requirements to manage effects will not be amended, this RIS includes limited analysis of the impacts of options on environmental values.

Alignment with other proposals and the wider statutory framework

112. The options will be considered in the context of the wider statutory framework, including the objectives of the instruments, as described in paras 25–29, and the RMA's purpose of balancing protection with enabling development.

113. The options have been considered alongside other changes to the instruments, notably:

- the proposed changes to be more enabling of urban development on Land Use Capability Classification System class 3 in the NPS-HPL
- proposed changes to the National Policy Statement for Infrastructure (NPS-I). To clarify that quarrying activities (including a range of ancillary activities) are necessary infrastructure supporting activities
- the wider ongoing review of the NPS-FM and NES-F.

114. The options are also considered in the context of the duties of local authorities under the RMA, which include the following:

- section 5(2) managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being, including safeguarding the life supporting capacity of the environment and avoiding, remedying and mitigating adverse effects of activities
- section 6(a) and (c) to preserve wetlands and protect of areas of significant indigenous vegetation and significant habitats of indigenous fauna
- section 7(g) consider the finite characteristics of productive soils
- section 30 functions for soil conservation, maintain the quality of waterbodies, maintain indigenous biological diversity
- section 31 protection of land and physical resources including the maintenance of indigenous biological diversity.

115. **[Legally privileged]** The ultra vires advice prepared by the Ministry for the Environment, confirms that the proposals are consistent with the RMA and National Direction. This advice has informed officials' analysis throughout this RIS.

This RIS informs Cabinet decisions on amendments to the instruments

116. All proposals within the national direction programme have been agreed to by the Minister Responsible for RMA Reform. The analysis in this RIS will inform final Cabinet

decisions on amendments to the quarrying and mining gateway tests in the NPSIB, NPS-HPL, NPS-FM and NES-F.

Other options considered but not developed as they were either out of scope of the Ministers decisions or unworkable within the timeframes set my ministers

117. Other options were considered by officials but not developed further for scope, effectiveness, immediacy, and workability reasons. Options they included:

- A review at a later date of the mining and quarrying consent pathways, once the provisions of the instruments had been given effect to by councils. The plan stop, pauses and extensions of implementation timeframes across the instruments meant they may not be given effect to in plans until after 2030. Potentially delaying the review for 5-10 years, putting it out of scope. Ministers directed officials to proceed with consultation on changes to enable quarrying and mining in the short term.[37]
- Retaining nationally significant benefit for mining in the NPSIB and NPS-HPL and defining nationally significant benefit using the Critical Minerals List. It was determined that this option would add additional complexity and another test that needed to be met, rather than simplifying, and would be unworkable.
- Aligning the gateway tests in the NPSIB and NPS-HPL with those currently in the NPS-FM and NES-F (functional need and significant national and regional public benefit) which are seen as more restrictive. This option was also put forward by some submitters (predominantly environmental NGOs). This was considered out of scope as it would restrict further the consent pathways and not be effective at addressing the policy problem of restrictive gateway tests (but would address issues of consistency).

[37] Ministry of Business, Innovation and Employment BRIEFING-REQ-0005158; Ministry for the Environment BRF-5486.

Issue 1: inconsistent terminology across instruments.

Option 1.1 (status quo) – retain the existing terminology of "aggregate extraction" and "mineral extraction" in the NPSIB and NPS-HPL

118. The first option (of two) considered to address the issue is the status quo.

119. Option 1.1 retains the existing terminology of "aggregate extraction" for quarrying and "mineral extraction" for mining in the NPSIB and NPS-HPL. This would remain inconsistent with the NPS-FM and NES-F (refer to Table 1), and it will remain unclear clear whether ancillary activities necessary for mining and quarrying are included.

Option 1.2 (preferred) – use "quarrying activities" and "the extraction of minerals and ancillary activities" as consistent terminology across the instruments and include definitions from the national Planning Standards

120. Option 1.2 amends the terminology used in the NPSIB and NPS-HPL to "quarrying activities" for quarrying and "the extraction of minerals and ancillary activities" for mining.

121. Definitions for quarrying activities and ancillary activities from the National Planning Standards will be included/referenced in the instruments to improve clarity.[38] These terms capture the essential ancillary activities necessary to enable quarrying or mining activities (eg removal of overburden).

122. Option 1.2 improves consistency by aligning the terminology in NPSIB and NPS-HPL with that in the NPS-FM and NES-F and clarifies that activities necessary to enable quarries and mines must be included in the consent pathway.

123. Through the consultation process, a few submitters raised concerns that these terms were not well defined. We consider this concern to be related to drafting, rather than policy. This analysis assumes that to improve the workability of the proposed changes, definitions for ancillary activities and quarrying activities in National Planning Standards would be included in the instruments.

124. "[T]he extraction of minerals" is not defined in the National Planning Standards or elsewhere in the RMA system. Whether "the extraction of minerals" should be defined or addressed through guidance could be considered during Phase Three. We consider the term to be sufficiently well understood within the ordinary meaning of extraction and minerals, with quarrying being a more narrowly defined subset of that term (ie extraction of aggregates).

[38] National Planning Standards 2019:

- **Quarrying activities** means the extraction, processing (including crushing, screening, washing, and blending), transport, storage, sale and recycling of aggregates (clay, silt, rock, sand), the deposition of overburden material, rehabilitation, landscaping and clean filling of the quarry, and the use of land and accessory buildings for offices, workshops and car parking areas associated with the operation of the quarry.
- **Ancillary Activities** means an activity that supports and is subsidiary to a primary activity.

Table 2 options for addressing inconsistent terminology across instruments.

How do the options compare to the status quo/counterfactual?

	Option 1.1 – retain the existing terminology of "aggregate extraction" and "mineral extraction" in the NPSIB and NPS-HPL (status quo)	***Option 1.2 – use "quarrying activities" and "the extraction of minerals and ancillary activities" as consistent terminology across the instruments and include/ reference the definitions in the National Planning Standards***
Effectiveness	Remains inconsistent and is uncertain whether terms would capture essential ancillary activities for quarrying and mining (eg removal of overburden). This option does not achieve the primary objective or provide a solution to the identified issue. **0**	Makes clear that essential activities for quarrying and mining (eg removal of overburden) are included, consistent with the original policy intent. This option would achieve the objectives, reiterate the policy intent and provide a solution to the identified issue. **++**
Efficiency	May limit activities ancillary to quarrying and mining projects passing the relevant gateway tests. **0**	Using consistent terms will improve clarity and workability of the clauses for councils and applicants. **+**
Alignment	The term for quarrying and mining in NPSIB and NPS-HPL are inconsistent with terms in the NPS-FM, NES-F and the National Planning Standards. **0**	Creates consistency of quarrying and mining terminology in the instruments and the National Planning Standards. Aligns with proposed amendments to the NPS-I, which clarify that quarrying activities (including its ancillary activities) are infrastructure supporting activities. **++**
Implementation	Integration of the terminology in the NPSIB and NPS-HPL is not widespread. Some local authorities still need to implement recent changes to the NPSIB and NPS-HPL to their plans. **0**	Local authorities who have the current terminology for quarrying and mining in the NPSIB and NPS-HPL in their plans will need to update them. Local authorities who have not yet updated their plans will instead update them with the new terminology, once the plan stop is finished. **-**
Treaty of Waitangi	As described in paras 108–109. **0**	Amending the terminology may increase the scope of proposals which can progress. **0**
Overall assessment	**0**	**+4**

Key for qualitative judgements:		**0**	About the same as the status quo
++	Much better than the status quo	**-**	Worse than the status quo
+	Better than doing the status quo	**- -**	Much worse the status quo

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

125. MBIE consider option 1.2 best addresses the problem, meets the policy objectives, and delivers the highest net benefits. Option 1.2 provides consistent terminology across the instruments and confirms that essential ancillary activities for quarrying or mining are subject to the gateway tests. It is therefore the most consistent and enabling option, giving effect to the Government's objectives.

126. We consider that this change is minor, and clarifies the original intention of the instruments to include ancillary activities for quarrying and mining, as shown by:

- NPSIB 3.11(1)(a) states "new use or development **required** for the purpose of …" (ii) mineral extraction or (iii) aggregate extraction
- NPS-HPL 3.9(2)(j) states "it is **associated with** …" (iii) mineral extraction or (iv) aggregate extraction.

127. Overall, submitters supported this option during public consultation. They commented that the proposals would better align the mining and quarrying terminology and definitions in the instruments and would improve clarity for consent processes. We have addressed requests for additional guidance or definitions for 'quarrying activities' and 'ancillary activities', by including the National Planning Standards definitions. Many submitters, including councils, were concerned that the inclusion of undefined ancillary activities could allow activities to occur on SNA and HPL, which could in theory take place elsewhere. However, the original policy intent of the clauses in the NPSIB and NPS-HPL is to provide for activities use or development associated with mineral and aggregate extraction, not just the extraction component.

128. Some ambiguity may remain, as "the extraction of minerals" is undefined, but we consider that this terminology is well established in its use and has not yet needed extensive judicial interpretation.

129. Implementation for option 1.1 or option 1.2 has neutral benefits, as some local authorities still need to implement recent changes to the NPS-FM, NPSIB and NPS-HPL to their plans. Both options require local authorities to amend their plans to either implement the current or new terminology, which would need to take place after the 'plan stop' ends.

Issue 2: insufficiently enabling gateway tests for quarrying and mining that differ across the instruments

Option 2.1 (status quo) – retain the existing gateway tests for quarrying and mining in the NPS-FM and NES-F, NPSIB, NPS-HPL

130. Option 2.1 retains inconsistent gateway tests for quarrying and mining in the NPSIB and NPS-HPL compared to the NPS-FM and NES-F. Specifically, the gateway tests:

- in the NPS-FM and NES-F, only consider "functional need", not "functional need or operational need" as in the NPSIB and NPS-HPL. Both terms are defined in the national planning standards
- in the NPSIB and NPS-HPL, do not provide for consideration of "regional benefits" for mining activities, instead requiring the higher standard of "national benefits"
- in the NPSIB and NPS-HPL, require that the benefits "could not otherwise be achieved using resources in New Zealand"
- in the NPSIB and NPS-HPL, require the benefits to be "public".

Option 2.2 (preferred, with option 2.3) – amend the gateway test to "functional need or operational need" for quarrying and mining in the NPS-FM and NES-F

131. Option 2.2 inserts "or operational need" into the gateway tests for quarrying and mining in the NPS-FM and NES-F wetland provisions. The operational need test is less restrictive than the functional need test, as it provides for activities to take place in the protected environment, where there is a need for them because of technical or other constraints. This is opposed to the functional needs test, which requires that it only be possible to locate the activity in that environment.

Option 2.3 (preferred, with option 2.2) – improve the alignment of the gateway tests for quarrying and mining in the NPSIB and NPS-HPL with amended NPS-FM and NES-F

132. The specific amendments to the NPSIB and NPS-HPL in option 2.3 are to:

- add consideration of "regional benefits" to the mining consent pathways, to allow benefits to be assessed at a more local scale
- remove the requirement that the benefits "could not otherwise be achieved using resources in New Zealand"
- remove the requirement for the benefits to be "public" (ie allowing any benefits to be considered).

Option 2.4 (alternative to option 2.3) – make targeted amendments to the gateway tests for quarrying and mining in the NPSIB and NPS-HPL (as with option 2.3) but retain and define the significant national public benefit gateway test

133. Option 2.4 makes targeted amendments to the gateway tests in the NPSIB and NPS-HPL by:

- adding consideration of "regional benefits" to the mining consent pathways, to allow benefits to be assessed at a more local scale
- removing the requirement that the benefits "could not otherwise be achieved using resources in New Zealand"
- retaining the requirement for the benefits to be "public" and defining "significant national public benefit".

Table 3 options for increasing consistency and clarity of the gateway tests across the instruments

	Option 2.1 (status quo) – retain the existing gateway tests	*Option 2.2 – amend the gateway test to "functional need or operational need" for quarrying and mining in the NPS-FM and NES-F*	*Option 2.3 – provide more consistent gateway tests for quarrying and mining in the NPSIB and NPS-HPL (with the NPS-FM and NES-F)*	*Option 2.4 – make targeted amendments to the gateway tests for quarrying and mining in the NPSIB and NPS-HPL*
Effectiveness	Does not achieve the objectives or provide consistent gateway tests. **0**	Provides consistent gateway tests. Will enable locally constrained quarrying and mining projects to operate on wetlands, provided they can meet the other gateway tests. **++**	Will enable more projects to pass the relevant gateway tests and is the most enabling option. Allows for a broader range of benefits to be considered and for smaller projects to be considered in line with local circumstance. Provides consistent gateway tests to reduce complexity, and uses tests already found in the regulatory system, which are not known to pose issues. **++**	Provides more consistent gateway tests, but less so than option 2.3. This option would not fully achieve the Government's objective but would improve the clarity of the instruments. Targeted amendments may better direct decision-makers to consider he public interest in avoiding irreversible losses of HPL. **+**
Efficiency	May lead to costs in considering inconsistencies between instruments or sunk into declined applications. Option does not provide flexibility for local decision making where it prevents applications being considered, however it may prevent costs for applicants of considering applications with potentially adverse effects. **0**	Improved consistency of gateway tests may lower costs for applicants and local authorities. Provides flexibility for local decision making where projects progress to consent application stage. May lead to costs for applicants of considering applications with potentially adverse effects. **+**	Improved consistency of gateway tests may lower costs for applicants and local authorities. Provides flexibility for local decision making where projects progress to consent application stage. May lead to costs for applicants of considering applications with potentially adverse effects. **+**	Improved consistency of gateway tests may lower costs for applicants and local authorities. Provides flexibility for local decision making where projects progress to consent application stage. Balances costs of considering applications and loss of environmental values with public benefits. **+**
Alignment	Quarrying and mining gateway tests remain inconsistent across national direction.	Aligns with wider government objectives and NPS-I proposal that planning documents	Aligns with wider government objectives and NPS-I proposals for infrastructure supporting	Aligns with wider government objectives and reforms. Partially aligned with the NPS-I proposal for

	0	recognise the operational and functional need of infrastructure supporting activities, including quarrying activities, to be located in particular environments. May conflict with the protective objectives of these instruments. **+**	activity, which provide for regional and non-public benefits of infrastructure supporting activities to be considered. May conflict with the protective objectives of these instruments, especially the avoid objective in the NPS-HPL. **+**	infrastructure supporting activities, which provides for non-public benefits to be considered, however the NPS-I relates to infrastructure which should have a public benefit. Retention of the public benefit gateway tests aligns better with the protective objectives of the instruments. **+**
Implementation	Local authorities who have the current gateway tests for quarrying and mining in the NPSIB and NPS-HPL in their plans will need to update them when the 'plan stop' ends. **0**	The NPS-FM is not widely implemented in regional or district plans. Local authorities would update plans with the new gateway tests, once the 'plan stop' is finished. The NES-F will have immediate effect. May make it more difficult for councils to meet their RMA duties as outlined in para 114. **0**	Local authorities who have the current gateway tests for quarrying and mining in the NPSIB and NPS-HPL in their plans will be inconsistent with the new gateway tests. Local authorities who have not yet updated their plans with the current gateway tests will instead update them with the new gateway tests, once the plan stop is finished. May make it more difficult for councils to meet their RMA duties as outlined in para 114. **-**	Local authorities who have the current gateway tests for quarrying and mining in the NPSIB and NPS-HPL in their plans will be inconsistent with the new gateway tests. Local authorities who have not yet updated their plans with the current gateway tests will instead update them with the new gateway tests, once the plan stop is finished. May also make it more difficult for councils to meet their RMA duties as outlined in para 114. **-**
Treaty of Waitangi	As described in paras 108–109.	Amending the terminology may increase the number of proposals which can pass the relevant gateway tests to progress to the consent application stage, and therefore the number of proposals that Māori groups may want to	Amending the terminology may increase the number of proposals applying for consent, and therefore the number of proposals that Māori groups may want to participate in. This may further stretch Māori groups resources.	Amending the terminology may increase the number of proposals applying for consent, and therefore the number of proposals that Māori groups may want to participate in. This may further stretch Māori groups resources.

	0	participate in. This may further stretch Māori groups resources. -	-	-
Overall assessment	**0**	**+4**	**+2**	**+1**

Key for qualitative judgements:		**0**	About the same as the status quo
++	Much better than the status quo	-	Worse than the status quo
+	Better than doing the status quo	- -	Much worse the status quo

What options are most likely to address the issue, meet the policy objectives, and deliver the highest net benefits?

134. MBIE considers that options 2.2 and 2.3 together best address the issue, meet the policy objectives and deliver the highest net benefits.

*Option 2.2 (**preferred, with option 2.3**) – amend the gateway test to "functional need or operational need" for quarrying and mining in the NPS-FM and NES-F*

135. Option 2.2 addresses the issue, meets the policy objectives, and delivers the highest net benefits for mining and quarrying for the NPS-FM and NES-F. It amends the gateway tests in the NPS-FM and NES-F to include both functional or operational need for quarrying and mining adversely affecting wetlands. This makes it more consistent with the gateway tests for quarrying and mining in the NPSIB and NPS-HPL. It may also enable more quarrying and mining projects to progress their consents. This would allow for consideration of how the effects of quarrying and mining activities on protected environments of national importance to be assessed and managed at the local level.

136. Many submitters were opposed to the proposed changes as they were concerned about environmental harm to wetlands. Officials consider that the effects management processes outlined in the NES-F and NPS-FM already address these concerns to a degree. The consent authority must be satisfied that the effects management hierarchy has been applied and that the effects are fully mitigated before granting a consent. Councils can also apply conditions for compliance and monitoring.

137. The option may make it more difficult for councils to meet their RMA duties as outlined in para 114, however one council submitted that the impacts are unlikely to be material and reflect the reality of the geological and logistical constraints on the location of quarrying and mining. Many councils considered that operational need could be extended to low-value or less significant wetlands. We consider that in most circumstances, conditions will be able to manage the impacts on wetlands and limit the burden on local authorities.

138. Option 2.2 would provide more consistent and enabling gateway tests in the NPS-FM and NES-F and may provide for a wider range of quarrying and mining activities to locate on wetlands.

*Option 2.3 (**preferred, with option 2.2**) – improve the alignment of the gateway tests for quarrying and mining in the NPSIB and NPS-HPL with amended NPS-FM and NES-F*

139. Option 2.3 is considered by MBIE to best address inconsistency of the NPS-HPL and NPSIB gateway tests for quarrying and mining. Option 2.3 meets the policy objectives and delivers the highest net benefits in terms of economic well-being. The option would enable more projects to pass the relevant gateway tests and to progress their consent applications. This allows for consideration of how the effects of a quarrying and mining activities on an SNA or HPL, to be assessed and managed at the local level.

140. Removing the inconsistency between requirements for benefits to be national for mining, whereas they can be regional for quarrying, will ensure projects of similar benefits may be considered. Both quarrying and mining can provide regional benefit by supplying resources to regional economies, boost regional GDP and provide direct and indirect jobs to regions.

141. Some councils opposed adding consideration of ‘regional benefits’ to the mining consent pathways in NPSIB and NPS-HPL, as widening the gateway tests could impact protected environments and conflict with their duties under the RMA. Environmental NGOs submitted that the protection of SNA is a matter of national importance, and that the public benefit to be gained from enabling harm to SNA (by providing less restrictive consenting pathways for quarrying and mining projects) must therefore be of national importance. Industry submitted there was no justification for differential treatment of mining, in requiring “national’ benefits, compared to “regional” for quarrying. Industry submitted that this is because the effects extraction might have on SNAs or HPL are similar, regardless of whether the activity is mining or quarrying.

142. Industry organisations supported the proposal to replace “public benefit” with “benefit”, as they considered that public benefit is vague and undefined. They noted that quarrying and mining provide a range of benefits to a variety of stakeholders and extraction activities often have local economic benefits.

143. MBIE considers the removal of the public benefit test does not preclude public benefits from being considered. Instead, the amendment would provide for the holistic balancing of private (mostly pecuniary) benefits against public costs, which would give effect to the Government’s commitment of allowing the enjoyment of property rights. It would continue to be necessary to manage effects as required by the instruments, but MBIE acknowledge that there may be adverse impacts on and losses of nationally significant environments. There may be some ‘bedding in’ of the amendments, as councils and courts determine how to balance private benefits with public and environmental impacts.

144. The removal of the test that the quarrying or mining activities provide a significant [public] benefit that “could not otherwise be achieved using resources within New Zealand” would address the workability problems described in para 77–84. Some submitters and case law described the test as difficult to apply in practice, and having the potential of preventing any development on protected SNAs or HPL, when taken literally. Some councils and NGOs submitted that removing the ‘could not otherwise be achieved using resources within New Zealand’ gateway test would lead to additional adverse impacts on SNA and HPL, and that there was a lack of evidence of a problem.

145. Officials consider that the original policy intention was not to outright prohibit mining and quarrying development of SNAs or HPL, as provision for a consent pathway would not have been included if that were the case. Likewise, consent authorities and the Environment Court have found that some projects have met the test. Therefore, this issue mostly relates to efficiency, redundancy, and whether the regulatory system can be simplified without leading to adverse effects. The change will remove redundant gateway tests, to ensure a more efficient resource management regime.

146. Option 2.3 may make it more difficult for councils to meet their RMA duties as outlined in para 114. Many councils considered that operational need could be extended to low-value or less significant wetlands. We consider that in most circumstances, conditions will be able to manage the impacts on wetlands and limit the burden on local authorities. Conditions available to consent authorities include bonds to fund remediation of mine sites, and other mechanisms to protect strongly against externalities.

Not preferred: option 2.1 (status quo) – retain the existing gateway tests for quarrying and mining in the NPS-FM and NES-F, NPSIB, NPS-HPL

147. Quarrying and mining projects under the NPS-FM and NES-F must display a "functional need" to be located in a protected wetland to meet the gateway test. This may prevent some quarrying or mining proposals that cannot show a functional need from gaining consent.

148. Retaining the status quo will not address the issue of inconsistent gateway tests in the NPSIB and NPS-HPL or meet the government policy objectives of more enabling consent pathways or deliver the highest net benefits. Gateway test for quarrying and mining projects would remain restrictive, inconsistent, and in some cases unworkable. This may prevent a quarrying or mining application from progressing to resource consent.

Not preferred: option 2.4 (alternative to option 2.3) – make targeted amendments to the gateway tests for quarrying and mining in the NPSIB and NPS-HPL (as with option 2.3) but retain and define the significant national public benefit gateway test

149. Option 2.4 does not fully address the matter of consistency or restrictiveness, or achieve the policy objectives, or deliver the highest net benefits for quarrying and mining, as it is not as effective at addressing the policy problem as option 2.3.

150. A significant number of submitters supported retaining public benefits considerations. Some submitters, including councils, considered the removal of public benefit would set a lower threshold and reduce protection of SNAs and HPL. There was concern that SNAs are predominantly a public good and removing the public benefit test would mean only the private gain would be considered while the public good and public costs are ignored. Many councils were concerned that the proposal would create or shift costs of biodiversity loss onto councils and communities.

151. MBIE notes that while the concerns have some merit the threshold would continue to be "significant" benefit, rather than any benefit, and this includes consideration of public benefits and costs. Decision-makers tend to consider benefits holistically. The NPS-FM and NES-F do not require demonstration of public benefits, to provide appropriate flexibility. Costs and impacts on communities can and should be considered through the consent process and be managed by consent conditions.

152. The Government through its reform process is also revisiting the current balance between private enjoyment of property rights and public benefit when it comes to environmental values and has indicated that this will move toward protection of private property rights. Ministerial decisions put further consideration of this out of scope.

Not preferred: Alternative option raised by submitters

153. Some submitters, including most environmental NGOs and councils, recommended aligning the gateways tests with either the most restrictive standard in each instrument, or a compromise standard. MBIE consider that this would not address the issue of insufficiently enabling consenting pathways for quarrying and mining. A more fulsome analysis was not possible, owing to a lack of consultation on this option.

Implementation

154. Implementation costs for all options are neutral as some local authorities still need to implement recent changes to the NPS-FM to their plans, and mapping of the environments is ongoing. All the options will require local authorities to amend their

plans to either implement the current or new gateway test once the plan stop has ceased. In the interim the instruments will be a consideration for decision-makers.

Treaty of Waitangi

155. Options 2.2, 2.3 and 2.4 may increase the number of projects which meet the relevant gateway tests allowing them to progress their consent applications. Therefore, the number of proposals that Māori groups may want to participate in may increase. This may further stretch Māori groups' resources to participate in the resource management system. It is difficult to assess the relevant Treaty impacts or potential impacts of quarrying or mining activities on Māori. Impacts are likely to be highly project specific.

156. The options may have some benefits for Māori groups as applicants or other stakeholders in developments. However, it is not possible to assess the outcomes of any applications, or the proportion which would benefit Māori as stakeholders.

Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?

157. The proposed amendments going to Cabinet for inclusion in the NPSIB, NPS-HPL, NPS-FM and NES-F are the same as MBIE's preferred options. The package includes options 1.2, 2.2, and 2.3.

158. MBIE consider that while most submitters did not support the preferred options, options 1.2, 2.2, and 2.3 best give effect to the Government's objectives of consistent and enabling consent pathways for quarrying and mining. With more time for policy development, it may have been possible to identify options which better reflect the protective purposes of the instruments and the RMA.

159. On balance, the options are not overly permissive of mining in protected environments with regard to: the significant supply constraints for aggregates; the need to ensure economic well-being of communities through increased mining; and the continued application of mechanisms to manage adverse effects

What are the marginal costs and benefits of the preferred options?

160. The marginal costs and benefits of the preferred options 1.2, 2.2, and 2.3, are outlined in Table 4 below.

161. Costs and benefits are not easily quantifiable as it is not known how many projects are affected by the proposed changes and how many consents may subsequently be granted. It is likely that following the change, consent applications may be made, but the outcome of those processes cannot be pre-determined.

162. Assumptions are outlined in the section below.

Table 4: Marginal costs and benefits of options 1.2, 2.2, and 2.3

What is being impacted	Comments	Impact	Evidence certainty
Additional costs of the preferred options compared to taking no action			
Financial	Impacts on costs for quarrying and mining projects applicants and regulators are not quantified. There are user-pays costs associated with resource consent	Low	Low

	applications, and increased certainty or clarity may lower costs (by reducing disputes, etc.). There are also implications for councils in fulfilling their duties under the RMA, including monitoring and remediation of projects, managing externalities, and risk of appeals and formal reviews of decisions.		
Regulatory	Local authorities would need to update their plans to reflect these changes, when the 'plan stop' ends.	Medium	High
Māori	May import the exercise of tikanga, mātauranga Māori and kaitiakitanga.	Low	Low
Environment (SNAs and wetlands)	Removing the restrictions and gateway tests may enable more mines and quarries to be developed within nationally significant environments (SNAs and wetlands) it will lead to additional impacts on those protected environments. Effects will still need to be completely addressed, but some externalities may not be offset or compensated for due to poor monitoring or compliance.	Medium	Medium
Highly productive land	More mining and quarrying activities on HPL will result in irreversible losses of their productive capacity. The affected areas are expected to be relatively small, but the impacts are long-term, and only partly offset by the possible uses of sites after remediation.	Medium	Low
Total monetised costs	Without accurate quantifiable evidence, it is not possible to provide an estimate.	Unknown	Unknown
Non-monetised costs	More projects may pass the relevant gateway tests and may increase costs for the regulator and other groups. This includes monitoring and environmental costs.	Medium	Low
Additional benefits of the preferred options compared to taking no action			
Financial	Applicants and local authorities will benefit from clearer consistent and more enabling gateway tests for quarrying and mining across national direction and greater certainty. Communities, businesses and public infrastructure provides may benefit from increased access to and lower cost of materials. Project developers may enjoy greater pecuniary benefits from more, and more viable locations for, quarrying and mining activities.	High	Low
Regulatory	Clear consistent terminology will improve workability of the quarrying and mining provision in the instruments for system users, including applicants and local authorities.	Medium	Low
Māori	More Māori groups, as quarrying and mining applicants, may be able to access the consenting pathway. More projects may pass the relevant gateway tests to progress to the consent application stage. Communities and wider government may have increased access and decreased costs for quarried and mined resources needed for housing and critical infrastructure projects.	Medium	Low

Total monetised benefits	Without accurate quantifiable evidence, it is not possible to provide an estimate.	Unknown	Unknown
Non-monetised benefits	More consistent gateway tests across national direction could reduce complexity for applicants and regulators. More projects may pass the relevant gateway tests and may benefit applicants and other groups.	Medium	Low

The costs and benefits assume that there will be an increase in quarrying and mining activities.

163. This RIS assumes that the package of proposals will:
    - Result in more consent applications for quarrying and mining passing gateway tests
    - A higher proportion of those tests will ultimately be approved, and
    - These additional approvals will lead to:
        i. temporary, but adverse, environmental effects which will be offset and compensated for, in the case of SNAs and wetlands
        ii. permanent losses of HPL, which is avoided where possible, and mitigated by consent conditions, and justified by economic benefits

164. These assumptions are discussed and tested in more detail below. If the first two assumptions do not hold true, the benefits of the proposal will not materialise. Conversely, there will also be no adverse environmental effects. We have not addressed the first two assumption in further detail.

The conclusion of this RIS assumes of the effectiveness of the effects management hierarchy in the NPS-HPL, NPS-FM, and NES-F

165. This RIS assumes that current requirements set out in the effects management hierarchy in the NPS-HPL, NPS-FM, and NES-F are sufficient to protect the extent and value of SNAs and wetlands. While providing additional consent pathways is likely to result in new or extended operations being proposed in and around SNAs and wetlands, we assume that the proposed activities pass the gateways tests and are therefore: necessary in the specific area (have an operational need or functional need); will provide significant regional benefits; and will be undertaken in a way that minimises loss of SNAs' and wetlands' extent and values.

166. We acknowledge that these are strong assumptions about the effectiveness of the gateway tests and effects management hierarchies. These are still relatively new tools which have only been used in their current form since the introduction of the NPS-FM and NES-F in 2020, and the introduction of the NPSIB in 2023. This is a relatively short time compared to the intergenerational timescales of some quarrying and mining activities; hence there is limited experience with which to assess their effectiveness.

We recommend the gateway tests in the NPS-HPL be amended, but caution that this may lead to irreversible losses of highly productive land

167. The recommended changes to the NPS-HPL shifts the degree to which applications must avoid the inappropriate use or development of highly productive land. The RIS

assumes that where exceptions are provided for, the use or development will minimise or mitigate any actual loss or potential cumulative loss of the availability and productive capacity of highly productive land.

168. As discussed in this RIS, quarrying and mining has significant, but temporary, short- and medium-term benefits. The long-term impacts of more quarrying and mining activities on HPL would be irreversible losses of HPL, and flow on impacts for primary production.

169. It is recommended that decision-makers carefully consider the value of long-term losses of HPL, and whether the significant short- and medium-term benefits are an acceptable trade-off, when considering the present value of both options.

The proposed changes will affect receiving environments and may make it more difficult for councils to meet other duties under the RMA

170. The proposed changes may enable a wider range and more quarry and mine projects that affect SNAs, HPL and/or wetlands to gain consent. This may lead to additional impacts on those protected environments and have implications for the objectives of the instruments, which include protection of nationally significant environments.

171. Councils and other decision-makers have duties under the RMA with respect to protected environments, as outlined in para 114. The instruments address the protection and maintenance of these environmental values and provide direction to local government. Enabling further mining and quarrying in protected environments may impact on councils' ability to meet those duties. Increased quarrying or mining activity may result in increased demand for monitoring, remediation, or other interventions, which could be a strain on local government resources.

172. The effects on the receiving environments of mining and quarrying activities will depend on the facts of the individual consent application and will be managed through the consenting process. These effects and the objectives of the instruments will be weighed up by district councils, regional councils, or other decision-makers (eg courts) in applying the RMA process to achieve the purpose of that Act.

173. These impacts should be addressed by the effects management mechanisms in the RMA and the instruments. We acknowledge the concerns of submitters (see para 42) that these mechanisms are not always sufficient or complied with. However, the same argument could be made for any application of the management mechanisms to SNAs, HPL, or wetlands, and is therefore not consistent with the recognised need to provide for activities with adverse impacts to occur in these environments. A review of the effects management hierarchy or the avoid, remedy, or mitigate mechanisms is out of scope of this RIS.

Climate Implications

174. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this policy proposal, as the threshold for significance is not met. Amending the existing terminology and gateway tests in national direction does not result in any direct emissions.

The changes proposed to these instruments have been developed to align and support other national direction documents including the changes proposed in the wider package of changes

175. The proposal to amend the quarrying and mining provisions in the NPSIB, NPS-HPL, NES-F and NPS-FM could add pressure on nationally significant environments. Wider changes proposed to some of the instruments (eg NPS-HPL and NPS-I) as part of the national direction package, could compound adverse effects.

176. The proposed changes to be more enabling of urban development on Land Use Capability Classification System Class 3 land in the NPS-HPL, in combination with the preferred options in this RIS, may lead to greater cumulative losses of HPL.

177. The proposal aligns with proposed changes to the NPS-I. The NPS-I proposals would clarify that quarrying activities (including a range of ancillary activities) are necessary infrastructure supporting activities, which may have an operational need or a functional need to locate in a particular environment.

[Legally privileged] The ultra vires advice confirms that the proposals are consistent with the RMA and National Direction

178. **[Legally privileged]** The ultra vires advice prepared by the Ministry for the Environment, confirms that the proposals are consistent with the RMA and National Direction. This advice has informed officials' analysis throughout this RIS.

This RIS partially meets the Quality Assurance Criteria

179. A quality assurance panel with members from the Ministry for the Environment has reviewed the 'Regulatory Impact Statement: Providing consistent and more enabling pathways for consent for quarrying and mining affecting significant natural areas, highly productive land and wetlands'. The panel considers that it **partially meets** the Quality Assurance criteria.

180. The RIS acknowledges the limitations affecting the quality of the analysis, including the Government's scope and policy direction and the fact that the instruments have not yet been fully implemented. However, there remain gaps in evidence and depth of analysis, particularly regarding the strength of the problem definition and the extent to which the recommended approach will achieve Government objectives. While the document notes potential benefits, it also cautions that the recommended options could result in significant impacts, such as irreversible loss of protected environments and the externalisation of costs to the public.

Section 3: Delivering an option

How will the proposal be implemented?

Cabinet decisions are required

181. This Regulatory Impact Statement builds from the Interim RIS *Providing a consistent consenting pathway for quarrying and mining affecting significant natural areas, highly productive land and wetlands* issued on 14 March 2025. Public consultation on the proposal was carried out between 29 May and 27 July. This version has been updated in light of the submissions received and subsequent decisions by Ministers.

182. The analysis in this RIS will inform Cabinet decisions on the proposed change. If the amendments are agreed to by Cabinet, they will be included in the relevant national direction documents and gazetted.

The 'plan stop' will impact the usual implementation process

183. Usually, when a National Policy Statement changes, local authorities must give effect to the change as soon as reasonably practicable or in accordance with the timeframes listed in the national direction document.

184. However, the Resource Management (Consenting and Other System Changes) Amendment Act 2025 brought in changes to pause councils' work on reviews and changes to their RMA plans (the 'plan stop').[39]

185. The 'plan stop', in general, suspends the ability of councils to make plan changes including those needed to implement changes to national direction or legislation.[40] As such we expect that there will be some inconsistency between the instruments and regional and district plans as a result.

186. The amendments will inform decision making for plans and consents at the local level. Ultimately the changes will be fully implemented through plan changes made to regional and district plans to enable implementation once the 'plan stop' has finished.

187. The changes to wetlands provisions in the NES-F will become effective immediately 28 days after gazettal (or on the date agreed by Cabinet) and can be directly inserted into regional plans.

Amendments to the instruments must still be taken into consideration

188. Despite any inconsistencies between the instruments and regional or district plans, amendments to the instruments must be taken into consideration for consent decision making made after the amendments come into force.

189. Inconsistency between the instruments and regional or district plans may lead to an increase in appeals to the Environment Court, or an increase in requests to local authorities for private plan changes (under Part 2 of Schedule 1 of the RMA). Private plan changes can still proceed under the terms of the plan stop.

[39] See Resource Management (Consenting and Other System Changes) Amendment Act 2025 Subpart 5B—Planning processes stopped until 31 December 2027.

[40] Sections 80U and 80V of the Resource Management (Consenting and Other System Changes) Amendment Act 2025 provide for automatic exemptions and applications for exemptions.

How will the new arrangements be monitored, evaluated, and reviewed?

190. MfE is responsible for monitoring and supporting the implementation and reviewing the effectiveness of the instruments including the amendments.

191. Data on implementation and operational issues, including enforcement, is already collected at a local level by council compliance teams and to some degree at a national level by the Department of Conservation and MfE.

192. The RMA requires monitoring by local authorities of consents issued because of these changes. For example, under the NPS-FM there is a mandatory condition for consents for activities in or around wetlands that requires monitoring (cl 3.22(3)(b)(ii)).

193. While MBIE monitors permit applications and approvals, MBIE does not directly monitor progression of those projects through the resource consent process.

194. MBIE is responsible for monitoring production volumes for Crown minerals through mandatory annual summary reports. Production of many non-Crown minerals, including the minerals most significant for infrastructure, is monitored through the voluntary annual quarries survey.

195. MBIE will monitor the effectiveness of the amendments through analysis of trends in production data, and through the agency's regular engagement with the sector.

The new resource management system

196. The Government has committed to repealing and replacing the RMA, however, these amendments would come into effect under the RMA and will be implemented by RMA plans. It is likely that the current national direction, including the proposed amendments, will provide transitional policy direction for the new system until the new national planning direction, limits and standards are in force.

197. Improved consistency of the terminology and gateway tests in the instruments could be beneficial under the new regime, where the more consistent terminology and gateway tests are carried over.

198. As part of the replacement of the RMA and national direction, consideration may be given to defining the "extraction of minerals and ancillary activities", which would require consultation with industry and the public.