

## George Bryson

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**From:** Rowan Taylor  
**Sent:** Thursday, 12 September 2024 9:30 am  
**To:** Nicola Green  
**Cc:** Olivia Cook; Fleur Matthews; Liz Devery (ES)  
**Subject:** RE: RESPONSE to Some s70 questions for Thursday

Thanks Nicki, and thanks to each of you for your responses.

This information will give us a good indication of the issue as it applies to your respective councils. However, if you can get the other councils to provide similar information it will be even more useful as it will give us a more complete national picture.

Rowan

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**From:** Nicola Green <Nicola.Green@boprc.govt.nz>  
**Sent:** Thursday, September 12, 2024 9:17 AM  
**To:** Rowan Taylor <TaylorRow@mfe.govt.nz>  
**Cc:** Olivia Cook <Olivia.Cook@ecan.govt.nz>; Fleur Matthews <Fleur.Matthews@orc.govt.nz>; Liz Devery (ES) <Liz.Devery@es.govt.nz>  
**Subject:** RE: RESPONSE to Some s70 questions for Thursday

### **MFE CYBER SECURITY WARNING**

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Hi Rowan

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#### **Nicki Green**

Principal Advisor, Policy & Planning  
**Bay of Plenty Regional Council Toi Moana**

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**A:** PO Box 364, Whakatāne 3158, New Zealand

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*Thriving together – mō te taiao, mō ngā tāngata*

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### How many additional discharge consents might result in your region? (From retaining s70)

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#### (a) for your council

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## George Bryson

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**From:** Rowan Taylor  
**Sent:** Tuesday, 27 August 2024 4:29 pm  
**To:** Fleur Matthews; Liz Devery; Nicola Green; Olivia Cook  
**Cc:** Shannon Wallace  
**Subject:** Some s70 questions for Thursday

Kia ora

Ahead of Thursday's meeting on s70, here are some of the questions we're wrestling with and would like your thoughts on.

1. Following the High Court decisions, is there a problem with s70 that requires legislative change?
2. If so, what is the problem?
3. Does the problem remain if s107 is amended to enable a consenting pathway for discharge improvements over time?
4. If so, can this residual problem be addressed without changing s70?
5. If not, what are the risks to the environment in changing s70?
6. Is the residual problem significant enough to justify these risks?
7. If an amendment to s70 could be crafted that addressed the residual problem while minimising the risks, what would it look like?

Many thanks. See you Thursday.

Rowan

**Rowan Taylor – Senior Policy Analyst, Delivery & Oversight Team**

Ministry for the Environment – Manatū Mō Te Taiao

Phone: 022 066 0471 Email: [rowan.taylor@mfe.govt.nz](mailto:rowan.taylor@mfe.govt.nz) Website: [www.mfe.govt.nz](http://www.mfe.govt.nz)

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*Aotearoa - he whenua mana kua mā te tangata*

6 June 2024

Honourable Chris Bishop  
Minister Responsible for RMA Reform  
By email: [c.bishop@ministers.govt.nz](mailto:c.bishop@ministers.govt.nz)

Honourable Penny Simmonds  
Minister for the Environment  
By email: [p.simmonds@ministers.govt.nz](mailto:p.simmonds@ministers.govt.nz)

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Christchurch 8140  
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Tēnā kōrua Minister Bishop rāua ko Minister Simmonds

### **Follow up letter regarding Resource Management Act Reform**

I am following up on a series of letters sent by Environment Canterbury to you in April in response to Minister Bishop's letter in late March seeking views on targeted changes to the Resource Management Act 1991 (RMA).

#### **Key RMA Changes Sought**

Our 5 April 2024 letter outlined key changes that we believe have the potential to realise significant benefits to the function of Council, as well as expediting outcomes, reducing cost and complexity, and improving certainty for our community.

The suggested changes included:

- enabling spatial planning (s61);
- clarifying priorities within Part 2 (s6 & 7);
- reducing duplication (s44, 217D & Part 9A);
- increasing stability in the planning system (s62 & 67);
- improving cost recovery (s36);
- restricting appeals on plan decisions (schedule 1 to the RMA);
- elevating climate change adaptation in the planning system (s7);
- enabling existing use rights to be extinguished (s10);
- clarifying the role of national policy statements in consent decisions (s104);
- enabling automatic updates to existing consents (s128); and
- amending the braided river definition (s2).

#### **Future Management of Freshwater**

Our 19 April 2024 letter highlighted the potential implications a recent High Court decision may have on how we manage freshwater, and the need for clarity given it appears to provide a different direction to that of the National Policy Statement for Freshwater Management 2020. Since sending that letter, our Council has had further discussions on this matter, and would like to reiterate that continued engagement on this matter is needed to ensure we collectively get it right. Our Council also wanted to expand on several key points that are critical to how we manage freshwater going forward.

## **Critical Role of Adaptive Management**

Firstly, the freshwater regulatory system needs to be driving towards improved freshwater quality across all water bodies, and particularly those where past and current activities are contributing to significant adverse effects. We will be failing future generations if many of our waterbodies remain degraded as they are today. Canterbury has invested significantly over the past 15 years in an RMA planning framework that seeks to improve water quality over time, with the most recent plan change, Plan Change 7 to the Canterbury Land and Water Regional Plan, made operative by this Council last year. We know this is not always easy. Driving environmental improvements while allowing people and communities to provide for their social, economic, and cultural wellbeing is an ongoing challenge.

Secondly, and importantly, as the Government goes about reforming the RMA, regional councils need access to a range of tools to deal with this fundamental challenge. Achieving the integrated management of the natural and physical resources of the region must continue to be a key function of a regional council, and we will continue to take a risk-based approach to assessing and prioritising our efforts. Alongside this, settings must ensure no further environmental degradation, while tools that enable phased reductions and adaptive management are critical for environmental improvement. In addition, new innovative tools are needed to support communities to achieve freshwater outcomes, and we ask that consideration be given to these as changes are made to the resource management system. The most recent report from the Parliamentary Commissioner for the Environment, released last month, provides useful ideas to inform this work.

## **Significance of Section 107/70**

Finally, we acknowledge the critical need to let the Court process run its course, while focusing attention on getting any RMA changes right. On this point we acknowledge the critical role s107/70 plays in providing important protections for the environment – but also note the practical limitations of implementing these provisions as part of an adaptive management framework, which has the potential to impact hundreds of consents as noted in our last letter.

In our view, there is a need to look at how this can be resolved. We draw attention to previous work to develop the Spatial Planning Act and Natural and Built Environment Act, noting the value of a system with a dual focus on outcomes and effects, underpinned by environmental limits. We consider this approach worthy of further consideration as the Government works to develop its reformed resource management system.

Ultimately, the regulatory system must support improvement in all of our waterbodies, particularly where these are degraded. Our system also needs to include tools that support our communities to achieve this while providing for their wellbeing. I would welcome a further conversation on this matter with you.

Nāhaku noa, nā



**Craig Pauling**  
Acting Chair  
Canterbury Regional Council



19 April 2024

Honourable Chris Bishop  
Minister Responsible for RMA Reform  
By email: [c.bishop@ministers.govt.nz](mailto:c.bishop@ministers.govt.nz)

Honourable Penny Simmonds  
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Tēnā kōrua Minister Bishop and Minister Simmonds

## **Urgent RMA amendments to enable freshwater improvements over time**

I am writing to request that the Government urgently initiate a response to a recent High Court decision that will have significant implications for resource users and communities throughout New Zealand. Environment Canterbury considers that a national solution is needed through amendments to the Resource Management Act. While my Chief Executive is exploring actions that Environment Canterbury can take forward, including appealing the decision, these actions will not resolve the issue sufficiently. I would welcome a conversation with you to explore how targeted amendments to the RMA could resolve this challenge.

### Background

In March 2024, the High Court released its decision on the Environmental Law Initiative's application for a judicial review of our notification and granting of Ashburton Lyndhurst Irrigation Limited's application for resource consent.

This decision has serious repercussions for the way freshwater improvements are achieved across New Zealand, and particularly the costs to communities of achieving these, and calls into question the freshwater management framework that the country has been working to over the past decade. This has been predicated on the need to deliver improvements over time, thereby enabling continued economic progress while reducing environmental effects. This framework has been at the centre of engagement with communities, through the development of the various iterations of the National Policy Statement for Freshwater Management, and through the significant body of regional RMA plan making.

In Canterbury we know this framework well. Our work over the past 15 years has focused on setting ambitious freshwater outcomes while enabling sustainable resource use and economic growth. Our planning framework recognises that ambitious outcomes can't be delivered in the short-term without significant costs to communities, and that resource use remains a critical component of our economy. We balance these needs through providing resource users and our communities sufficient time in which to deliver improvements, by, for example, allowing staged nutrient reductions over time.

This approach is reflected through the Canterbury Water Management Strategy, the Land and Water Regional Plan and our resource consents. We use it to manage discharges from a

range of activities such as local council wastewater and stormwater facilities, irrigation schemes, meat works and vegetable washing facilities.

The Court found that this approach, including staged reductions, should not be used where the receiving environment is significantly degraded, or more specifically, where cumulative adverse effects of past and current activities are found to have contributed to significant adverse effects on aquatic life. Instead, the Court found, significant adverse effects must be immediately avoided at the time the consent is granted.

This is a very significant decision. Constraining the ability of regional councils to drive environmental outcomes over time has potentially serious repercussions for New Zealand's economy and both our urban and rural communities. It means a range of activities cannot be consented, or have their consents renewed, unless they can show immediate improvements that will ensure no ongoing significant adverse effects on aquatic life. This will be extremely challenging.

The decision potentially impacts hundreds of consents in Canterbury, and may include some of the more significant proposals in the region, including:

- Akaroa community wastewater treatment plant,
- Comprehensive stormwater applications for our territorial authorities e.g. Mackenzie District Council, Selwyn District Council, Waimakariri District Council, Hurunui District Council and Timaru District Council,
- Irrigation schemes' discharge permits,
- Marine aquaculture proposals.

The Court's decision is also at odds with the National Policy Statement for Freshwater Management, which recognises the need to drive improvements within a timeframe that is both ambitious and reasonable (for example, *within a generation*), rather than immediately. Improving freshwater is a long-term journey and needs to occur at a pace that communities can match.

#### The key actions Environment Canterbury is now taking

Environment Canterbury is committed to finding a pathway forward, but our options are limited. This pathway should be focused on delivery of a regulatory framework that supports the community to achieve environmental outcomes, including no further degradation, over appropriate timeframes.

It is important that the regulation of all forms of discharges into freshwater remain within the RMA. Other options for resolving this issue, such as using the proposed Fast Track Approvals regime, removes the ability to manage the effects from activities across a catchment in an integrated way, while the volume of consents that this issue applies to is likely to overwhelm the proposed Fast Track Approval regime. We also note that the Fast Track Approval Bill includes by reference RMA s107, which is likely to create challenges for decision makers needing to reconcile the purpose of the fast-track approvals with a lower-order directive that, in-effect, acts as a prohibition. Hence Environment Canterbury considers a targeted RMA change to be the best option.

We are now pushing forward on two fronts:

- Asking that the Government urgently amend specific sections of the RMA (s107 requires amending, and there is also merit in considering changes to s70), to avoid significant issues for the economy, for both New Zealand and Canterbury. I understand there are immediate opportunities to do this through a Bill being introduced in May. This option would provide certainty to our community, enable ongoing consenting and economic activity for key proposals, whilst continuing to drive towards improved freshwater outcomes.
- Appealing the High Court decision – we will test the decision given the wider implications to the resource management system, the Canterbury approach to freshwater management, and the impacts of the decision on the community.

Ultimately, the issue requires urgent attention from the Government. A national solution is required as there is no way through for significant discharge consents until the RMA is amended. The appeal is expected to take approximately two years, and there is no certainty that the appeal would succeed. In addition, regional councils must recognise the High Court decision over this time, so we will need to apply the new direction to the progressing of discharge consents, including renewals.

Any national solution needs to be well-considered and targeted. It must ensure ongoing improvements to environmental outcomes and recognise that environmental improvements need to be ambitious and realistic – our communities need to be afforded time to deliver improvements in a sustainable manner.

We are also discussing the issue with both Ngāi Tahu, as mana whenua, and Te Uru Kahika, a collective of the regional and unitary governments. I am hoping that as a result we will be able to work collectively on this issue.

Environment Canterbury is now seeking legal advice on what changes to the RMA, and particularly s107, would help resolve this issue. I would welcome a further discussion with your officials to ensure possible amendments deal with the issue appropriately and comprehensively.

Yours sincerely



**Peter Scott**  
Chair  
Canterbury Regional Council

CC: Honourable Andrew Hoggard, Associate Minister for the Environment  
CC: James Palmer, Secretary for the Environment

**From:** [Rowan Taylor](#)  
**To:** [Gabby Storey](#); [Crystal McKnight](#)  
**Subject:** FW: RESPONSE to Some s70 questions  
**Date:** Wednesday, 25 September 2024 3:58:00 pm  
**Attachments:** [20240925 Advice to MFE on s70 implications.docx](#)  
[WRC comments on MFE questions re s70 RMA.docx](#)

Hi.

Here is some additional council data on consenting loads and s70. Nicki asks for a cut-off date for receipt of any further council data. Any thoughts?

Rowan

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**From:** Nicola Green <Nicola.Green@boprc.govt.nz>  
**Sent:** Wednesday, September 25, 2024 3:13 PM  
**To:** Rowan Taylor <TaylorRow@mfe.govt.nz>  
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Hello Rowan

Please find attached responses from Waikato Regional Council and Horizons Regional Council. Tasman, Nelson and Taranaki have noted they do not have capacity to respond.

Can you please let me know what your final date would be for any advice from other regions? I will check whether others are able to provide anything in that time.

Note that all of the estimates you have received (Canterbury, Bay of Plenty, Waikato and Horizons) are rough estimates. You will see that each council has used differing assumptions and information on which to base their estimates. This partly reflects the different issues in our regions, and also the speed at which we have responded, and the lack of clarity about just how and when s.70 tests apply to the myriad of permitted activities that *may* contribute some tiny through to larger diffuse contaminant losses in catchments showing cumulative adverse effects (on aquatic life or suitability for stock drinking water in particular). We have not spent time working on coming to a common interpretation across all regions as that would take quite some assessment and time, and that may be best left until after Environment Court decision in relation to Southland appeals.

Regards

[Nicki Green](#)

Principal Advisor, Policy & Planning

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**Bay of Plenty Regional Council Toi Moana**

**P:** 0800 884 880 **DD:** 0800 884 881

**E:** [Nicola.Green@boprc.govt.nz](mailto:Nicola.Green@boprc.govt.nz)

**M:** 021 649 802 **W:** [www.boprc.govt.nz](http://www.boprc.govt.nz)

**A:** PO Box 364, Whakatāne 3158, New Zealand

***Thriving together – mō te taiao, mō ngā tāngata***

---

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---

## George Bryson

---

**From:** Shannon Wallace  
**Sent:** Tuesday, 17 December 2024 3:19 pm  
**To:** Nicola Green; Fleur Matthews; Liz Devery; Olivia Cook  
**Cc:** Rowan Taylor; Crystal McKnight  
**Subject:** Potential s70 amendments

Kia ora all

Apologies for not touching base with you all sooner, and I know many (maybe all) of you have now seen the proposed changes to s70 drafting in RM Bill 2. But for anyone that hasn't here is a link to the Bill [Resource Management \(Consenting and Other System Changes\) Amendment Bill 105-1 \(2024\), Government Bill Contents – New Zealand Legislation](#) - see section 15.

Thanks again for your input in early development of these changes your help was really appreciated. We have noted some key messages from your feedback in the Regulatory Impact Statement for these changes [Resource Management \(Consenting and Other System Changes\) Amendment Bill | Ministry for the Environment](#) (see Consenting 2), which has just been made public.

Look forward to reading any submissions as these changes progress through the Parliamentary process. Still not 100% sure when submissions will open, but soon.

Thanks again  
Shannon Wallace

**Shannon Wallace (he/him)**  
Principal Analyst, Policy Implementation and Delivery

Ministry for the Environment – Manatū Mō Te Taiao  
Phone: 022 023 4929 | Email: [shannon.wallace@mfe.govt.nz](mailto:shannon.wallace@mfe.govt.nz) | [www.mfe.govt.nz](http://www.mfe.govt.nz)  
8 Willis St, PO Box 10362, Wellington 6143



## George Bryson

---

**From:** Olivia Cook <Olivia.Cook@ecan.govt.nz>  
**Sent:** Tuesday, 1 October 2024 7:29 pm  
**To:** Shannon Wallace  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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**Olivia Cook** reacted to your message:

---

**From:** Shannon Wallace <Shannon.Wallace@mfe.govt.nz>  
**Sent:** Monday, September 30, 2024 9:50:55 PM  
**To:** Olivia Cook <Olivia.Cook@ecan.govt.nz>  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

**Caution:** This is an email from an external party. Please take care when clicking links or opening attachments.

Hi Olivia

I suspect you have already clocked this, but just in case – Select Committee Report back now available:  
<https://bills.parliament.nz/v/6/25161950-a4fc-47b4-ada3-08dc7ab031fe?Tab=history>

Cheers

Shannon

---

**From:** Olivia Cook <Olivia.Cook@ecan.govt.nz>  
**Sent:** Thursday, September 26, 2024 10:14 AM  
**To:** Shannon Wallace <Shannon.Wallace@mfe.govt.nz>  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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All good 😊

---

**From:** Shannon Wallace <Shannon.Wallace@mfe.govt.nz>  
**Sent:** Thursday, September 26, 2024 10:01 AM

**To:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>

**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

**Caution:** This is an email from an external party. Please take care when clicking links or opening attachments.

Hi Olivia

Unfortunately, I don't have anything I am able to update at this stage.

There may be a press release, but this is still TBC.

I will let you know when things are more public, apologies it's a bit dark at the moment.

Thanks

Shannon

---

**From:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>

**Sent:** Wednesday, September 25, 2024 4:49 PM

**To:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>

**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

**MFE CYBER SECURITY WARNING**

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Kia ora Shannon

I understand the select committee's recommendations on RMA Bill #1 are due next Monday.

Ahead of those recommendations, I'm wondering if there is anything you can share in terms of the scope or nature of changes the Committee may be considering in relation to s107 of the RMA. In addition, if the Committee were of a mind to recommend changes to these sections, do you know if there will be any proactive / reactive media releases to cover this?

Ngā mihi

Olivia

---

**From:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>

**Sent:** Friday, August 9, 2024 11:25 AM

**To:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>

**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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Kia ora Olivia

FYI the Government has now made a public statement on 70/107: <https://www.beehive.govt.nz/release/government-clarify-discharge-consenting>

Doesn't specify timing but does suggest need for urgency.

Thanks

Shannon

---

**From:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>

**Sent:** Friday, July 26, 2024 11:47 AM

**To:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>

**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

### MFE CYBER SECURITY WARNING

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Great, thanks for the update 😊.

Olivia

---

**From:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>

**Sent:** Friday, July 26, 2024 11:46 AM

**To:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>

**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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Kia ora Olivia

All good for now, advice has been sent up and we are awaiting decisions. Thanks for sending through previous stuff, very useful.

Hopefully will be able to let you know direction of travel soon – although if things do progress in Bill 1 then decisions rest with the Select Committee so may be a bit of a delay.

Cheers

Shannon

---

**From:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>  
**Sent:** Friday, July 26, 2024 11:39 AM  
**To:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

**MFE CYBER SECURITY WARNING**

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Kia ora Shannon

Just checking you have all you need from us. Reach out if there's anything else you need

Ngā mihi

Olivia

---

**From:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>  
**Sent:** Tuesday, July 16, 2024 1:43 PM  
**To:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>  
**Cc:** Sara Clarke <[Sara.Clarke@mfe.govt.nz](mailto:Sara.Clarke@mfe.govt.nz)>; Hayden Johnston <[Hayden.Johnston@mfe.govt.nz](mailto:Hayden.Johnston@mfe.govt.nz)>; Fiona Myles <[Fiona.Myles@ecan.govt.nz](mailto:Fiona.Myles@ecan.govt.nz)>; Katherine Trought <[Katherine.Trought@ecan.govt.nz](mailto:Katherine.Trought@ecan.govt.nz)>; Joseph Edlin <[Joseph.Edlin@ecan.govt.nz](mailto:Joseph.Edlin@ecan.govt.nz)>; Philip Burge <[philip.burge@ecan.govt.nz](mailto:philip.burge@ecan.govt.nz)>; Cameron Smith <[Cameron.Smith@ecan.govt.nz](mailto:Cameron.Smith@ecan.govt.nz)>  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

**Caution:** This is an email from an external party. Please take care when clicking links or opening attachments.

Kia ora Olivia

Thank you for sending this through and really appreciate the speed!

Will provide an update on progress when we have one.

Thanks

Shannon

---

**From:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>  
**Sent:** Tuesday, July 16, 2024 1:35 PM  
**To:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>  
**Cc:** Sara Clarke <[Sara.Clarke@mfe.govt.nz](mailto:Sara.Clarke@mfe.govt.nz)>; Hayden Johnston <[Hayden.Johnston@mfe.govt.nz](mailto:Hayden.Johnston@mfe.govt.nz)>; Fiona Myles <[Fiona.Myles@ecan.govt.nz](mailto:Fiona.Myles@ecan.govt.nz)>; Katherine Trought [EXTERNAL] (ECAN) <[katherine.trought@ecan.govt.nz](mailto:katherine.trought@ecan.govt.nz)>; Joseph Edlin <[Joseph.Edlin@ecan.govt.nz](mailto:Joseph.Edlin@ecan.govt.nz)>; Philip Burge <[philip.burge@ecan.govt.nz](mailto:philip.burge@ecan.govt.nz)>; Cameron Smith

<[Cameron.Smith@ecan.govt.nz](mailto:Cameron.Smith@ecan.govt.nz)>

**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

### **MFE CYBER SECURITY WARNING**

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Kia ora Shannon

Please see attached for responses to your questions. If there is anything further you need, please reach out.

Ngā mihi

Olivia

---

**From:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>

**Sent:** Thursday, July 11, 2024 4:13 PM

**To:** Fiona Myles <[Fiona.Myles@ecan.govt.nz](mailto:Fiona.Myles@ecan.govt.nz)>; Katherine Trought <[katherine.trought@ecan.govt.nz](mailto:katherine.trought@ecan.govt.nz)>; Joseph Edlin <[Joseph.Edlin@ecan.govt.nz](mailto:Joseph.Edlin@ecan.govt.nz)>; Philip Burge <[philip.burge@ecan.govt.nz](mailto:philip.burge@ecan.govt.nz)>; Cameron Smith <[Cameron.Smith@ecan.govt.nz](mailto:Cameron.Smith@ecan.govt.nz)>; Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>

**Cc:** Sara Clarke <[Sara.Clarke@mfe.govt.nz](mailto:Sara.Clarke@mfe.govt.nz)>; Hayden Johnston <[Hayden.Johnston@mfe.govt.nz](mailto:Hayden.Johnston@mfe.govt.nz)>

**Subject:** MfE seeking information to support policy thinking on potential amendments to RMA s107

**Caution:** This is an email from an external party. Please take care when clicking links or opening attachments.

Kia ora

Thank you for making the time to meet earlier and help us better understand how s107 is being implemented in Canterbury.

As you are aware, the Ministry are undertaking early policy development of potential s107 amendments and we would greatly appreciate some information to support this.

Anything you can provide on:

- The number of resource consent applications you estimate need to be processed between now and the end of July 2025 where s107 of the RMA would be a consideration? If possible, also the number between now and the end of October 2024.
- Any examples of current consent applications where the recent High Court interpretation of section 107 may be a barrier to that consent being granted?
- If the government were to publicly confirm that s107 would be changed, what implications this may have on consent processing before a change came into law? (aka would this make consent processing difficulty and/or more costly? Do you have levers available to delay consent processing etc.?)

- Any thoughts you may have on how any potential change to s107 could be implemented for consents already lodged. For example, would there be any practical implications or difficulties if an amended s107 effected consents that have already been lodged so long as a decision to grant or decline has not been made?
- Submissions on RMA Bill One have said “Since the enactment of the RMA, it has been generally accepted that ss 70 and 107 apply to point source discharges only, i.e. discharges from a single fixed point, such as a pipe or drain from sewerage, factory and dairy shed outfalls”. Thinking specifically of section 107, does this align with ECAN experience?
- Anything further you think would be relevant to support decision making on potential 107 amendments.

For the first two bullets above, if you could send anything by the end of Tuesday (16 July) next week that would be greatly appreciated. For other points we are keen to get whatever information you have but not the same urgency. Completely understand not everything above may be easily available or shareable, only looking for anything you can easily put your finger on.

Much appreciated

Shannon

**Shannon Wallace (he/him)**

Principal Analyst, Policy Implementation and Delivery

Ministry for the Environment – Manatū Mō Te Taiao

Phone: 022 023 4929 | Email: [shannon.wallace@mfe.govt.nz](mailto:shannon.wallace@mfe.govt.nz) | [www.mfe.govt.nz](http://www.mfe.govt.nz)

8 Willis St, PO Box 10362, Wellington 6143



Ministry for the  
**Environment**  
Manatū Mō Te Taiao



## George Bryson

---

**From:** Olivia Cook <Olivia.Cook@ecan.govt.nz>  
**Sent:** Friday, 9 August 2024 11:26 am  
**To:** Shannon Wallace  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

### MFE CYBER SECURITY WARNING

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Kia ora Shannon

Thank you – I just spotted the announcement on the Beehive website 😊.

Thanks for keeping in touch with us on this, and keen to keep in contact as things progress

Ngā mihi

Olivia

---

**From:** Shannon Wallace <Shannon.Wallace@mfe.govt.nz>  
**Sent:** Friday, August 9, 2024 11:25 AM  
**To:** Olivia Cook <Olivia.Cook@ecan.govt.nz>  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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Kia ora Olivia

FYI the Government has now made a public statement on 70/107: <https://www.beehive.govt.nz/release/government-clarify-discharge-consenting>

Doesn't specify timing but does suggest need for urgency.

Thanks

Shannon

---

**From:** Olivia Cook <Olivia.Cook@ecan.govt.nz>  
**Sent:** Friday, July 26, 2024 11:47 AM  
**To:** Shannon Wallace <Shannon.Wallace@mfe.govt.nz>  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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Great, thanks for the update 😊.

Olivia

---

**From:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>  
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**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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Kia ora Olivia

All good for now, advice has been sent up and we are awaiting decisions. Thanks for sending through previous stuff, very useful.

Hopefully will be able to let you know direction of travel soon – although if things do progress in Bill 1 then decisions rest with the Select Committee so may be a bit of a delay.

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Shannon

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Kia ora Shannon

Just checking you have all you need from us. Reach out if there's anything else you need

Ngā mihi

Olivia

---

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**To:** Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>  
**Cc:** Sara Clarke <[Sara.Clarke@mfe.govt.nz](mailto:Sara.Clarke@mfe.govt.nz)>; Hayden Johnston <[Hayden.Johnston@mfe.govt.nz](mailto:Hayden.Johnston@mfe.govt.nz)>; Fiona Myles <[Fiona.Myles@ecan.govt.nz](mailto:Fiona.Myles@ecan.govt.nz)>; Katherine Trought <[Katherine.Trought@ecan.govt.nz](mailto:Katherine.Trought@ecan.govt.nz)>; Joseph Edlin <[Joseph.Edlin@ecan.govt.nz](mailto:Joseph.Edlin@ecan.govt.nz)>; Philip Burge <[philip.burge@ecan.govt.nz](mailto:philip.burge@ecan.govt.nz)>; Cameron Smith <[Cameron.Smith@ecan.govt.nz](mailto:Cameron.Smith@ecan.govt.nz)>  
**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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Kia ora Olivia

Thank you for sending this through and really appreciate the speed!

Will provide an update on progress when we have one.

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**Subject:** RE: MfE seeking information to support policy thinking on potential amendments to RMA s107

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Kia ora Shannon

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Ngā mihi

Olivia

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<[Joseph.Edlin@ecan.govt.nz](mailto:Joseph.Edlin@ecan.govt.nz)>; Philip Burge <[philip.burge@ecan.govt.nz](mailto:philip.burge@ecan.govt.nz)>; Cameron Smith <[Cameron.Smith@ecan.govt.nz](mailto:Cameron.Smith@ecan.govt.nz)>; Olivia Cook <[Olivia.Cook@ecan.govt.nz](mailto:Olivia.Cook@ecan.govt.nz)>  
**Cc:** Sara Clarke <[Sara.Clarke@mfe.govt.nz](mailto:Sara.Clarke@mfe.govt.nz)>; Hayden Johnston <[Hayden.Johnston@mfe.govt.nz](mailto:Hayden.Johnston@mfe.govt.nz)>  
**Subject:** MfE seeking information to support policy thinking on potential amendments to RMA s107

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Much appreciated

Shannon

**Shannon Wallace (he/him)**  
Principal Analyst, Policy Implementation and Delivery

Ministry for the Environment – Manatū Mō Te Taiao

Phone: 022 023 4929 | Email: [shannon.wallace@mfe.govt.nz](mailto:shannon.wallace@mfe.govt.nz) | [www.mfe.govt.nz](http://www.mfe.govt.nz)

8 Willis St, PO Box 10362, Wellington 6143



Ministry for the  
**Environment**  
Manatū Mō Te Taiao



## George Bryson

---

**From:** Shannon Wallace  
**Sent:** Thursday, 19 December 2024 8:46 am  
**To:** Nicola Green; Fleur Matthews; Liz Devery; Olivia Cook  
**Cc:** Rowan Taylor; Crystal McKnight  
**Subject:** RE: Potential s70 amendments

Thanks Nicki

I can also now add – Submission are now open until 10 February: [Resource Management \(Consenting and Other System Changes\) Amendment Bill - New Zealand Parliament](#)

Thanks  
Shannon

---

**From:** Nicola Green <Nicola.Green@boprc.govt.nz>  
**Sent:** Thursday, 19 December 2024 8:32 am  
**To:** Shannon Wallace <Shannon.Wallace@mfe.govt.nz>; Fleur Matthews <Fleur.Matthews@orc.govt.nz>; Liz Devery <Liz.Devery@es.govt.nz>; Olivia Cook <olivia.cook@ecan.govt.nz>  
**Cc:** Rowan Taylor <TaylorRow@mfe.govt.nz>; Crystal McKnight <Crystal.McKnight@mfe.govt.nz>  
**Subject:** RE: Potential s70 amendments

### MFE CYBER SECURITY WARNING

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Thank you for bringing this to our attention Shannon.

#### Nicki Green

Principal Advisor, Policy & Planning  
Bay of Plenty Regional Council Toi Moana

---

**P:** 0800 884 880 **DD:** 0800 884 881

**E:** [Nicola.Green@boprc.govt.nz](mailto:Nicola.Green@boprc.govt.nz)

**M:** 021 649 802 **W:** [www.boprc.govt.nz](http://www.boprc.govt.nz)

**A:** PO Box 364, Whakatāne 3158, New Zealand

---

*Thriving together – mō te taiao, mō ngā tāngata*

---

**From:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>  
**Sent:** Tuesday, December 17, 2024 3:19 PM  
**To:** Nicola Green <[Nicola.Green@boprc.govt.nz](mailto:Nicola.Green@boprc.govt.nz)>; Fleur Matthews <[Fleur.Matthews@orc.govt.nz](mailto:Fleur.Matthews@orc.govt.nz)>; Liz Devery <[Liz.Devery@es.govt.nz](mailto:Liz.Devery@es.govt.nz)>; Olivia Cook <[olivia.cook@ecan.govt.nz](mailto:olivia.cook@ecan.govt.nz)>  
**Cc:** Rowan Taylor <[TaylorRow@mfe.govt.nz](mailto:TaylorRow@mfe.govt.nz)>; Crystal McKnight <[Crystal.McKnight@mfe.govt.nz](mailto:Crystal.McKnight@mfe.govt.nz)>  
**Subject:** Potential s70 amendments

Kia ora all

Apologies for not touching base with you all sooner, and I know many (maybe all) of you have now seen the proposed changes to s70 drafting in RM Bill 2. But for anyone that hasn't here is a link to the Bill [Resource Management \(Consenting and Other System Changes\) Amendment Bill 105-1 \(2024\), Government Bill Contents – New Zealand Legislation](#) - see section 15.

Thanks again for your input in early development of these changes your help was really appreciated. We have noted some key messages from your feedback in the Regulatory Impact Statement for these changes [Resource Management \(Consenting and Other System Changes\) Amendment Bill | Ministry for the Environment](#) (see Consenting 2), which has just been made public.

Look forward to reading any submissions as these changes progress through the Parliamentary process. Still not 100% sure when submissions will open, but soon.

Thanks again  
Shannon Wallace

**Shannon Wallace (he/him)**

Principal Analyst, Policy Implementation and Delivery

Ministry for the Environment – Manatū Mō Te Taiao

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**From:** [Olivia Cook](#)  
**To:** [Rowan Taylor](#)  
**Cc:** [Fleur Matthews](#); [Liz Devery \(ES\)](#); [Nicola Green](#)  
**Subject:** RE: RESPONSE to Some s70 questions for Thursday  
**Date:** Thursday, 12 September 2024 8:28:22 am

### MFE CYBER SECURITY WARNING

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Kia ora Rowan

See below for the Canterbury Regional Council's facts and figures below. I've added my response to the Nicki's reply below so that you have both the EBOP and CRC response in one email string.

Kia ora

Following up on our chat last Thursday, I'm wondering if it's possible to get some rough numbers from each of you on the likely impacts of retaining vs changing s70.

In particular:

- How many additional discharge consents might result in your region? (From retaining s70)

We're not able to provide definitive numbers but have included high-level estimates below. In producing these figures, we've had to make some assumptions regarding:

1. when the threshold in s70 (particularly the 'significant adverse effects') would not be met
2. the type and number of activities in the region

We haven't carried out work to identify when the 'significant adverse effects' threshold would be triggered. However, as a proxy we've relied on water quality information available at the time the Canterbury Land and Water Regional Plan was developed.

As part of developing the plan, catchments in Canterbury were classified Red, Orange, Green, Light Blue or Pink, according to whether the water quality outcomes in Table 1a and 1b in the [Canterbury Land and Water Regional Plan](#) were being met (refer pg62.)

Red zones are locations where WQ outcomes are not being met - this includes, Waipara, Waimakariri, Selwyn Te Waihora, Ashburton, Hinds, Orari-Temuka-Opihi-Pareora, Waitaki, Wainono catchments (refer pg 75 of the plan). If we use Red Zones as a proxy for areas where the 'significant adverse effects' test *may* not be met, there are **10s of 1000s** of activities that are authorised by permitted activity rules in our plans, that *may not* meet the 'significant adverse effects' test.

To put those numbers into context, I've focused on two activities:

- **agriculture and horticulture**
  - this land use makes up 50% of all land use in Canterbury
  - at the time the plan was developed, we estimated there were 17,000 farms in the region.
  - ~**10,000 farms** are managed under permitted activity farming land use rules. These are the ones that are considered lower risk (ie. they had lower nitrogen leaching rates, or are located on small properties).
  - under the LWRP, provided the farming land use is regulated by a plan rule or a resource consent, the associated diffuse discharge of nutrients is also authorised.
  - Note, we've adjusted the rule framework in the LWRP since this time (principally to respond to OVERSEER issues), so the figures may have changed but the numbers are still reasonably indicative.
- **onsite wastewater discharges**
  - last year we commissioned ESR to prepare a report identifying the location and number of onsite wastewater systems in Canterbury.
  - estimates are there are ~**34,000** properties serviced by an onsite system.
  - Around **8,000** are consented and **around 25,000** are operating under a permitted activity status.
  - The majority of these wastewater systems are in Red Zones (so a reasonable estimate might be to assume 80% of the figures above)

On the basis of the above:

- for these two activities alone, we are looking at around ~**30,000** activities operating under permitted activity rules.
- in addition to these, will be a range of other activities that have point-source and diffuse discharges. These include stormwater discharges, land drainage, passive discharges from contaminated land, municipal waste sites, rubbish pits, greywater etc).

- How many current discharge consents are in effect?

We have roughly 12,000 resource consents in effect in the Canterbury region.

- Cost implications:
  - (a) for your council,
  - (b) for dischargers
- Average costs for processing an application for a non-notified discharge permit is \$5,000.
- For a notified application the average cost is around \$25,000
- These figures are averages and actual cost will vary depending on complexity, effects, etc.
- For both figures we've only looked at costs relating to standalone discharge permits. There will be applications for discharge permits that have been 'bundled' (i.e proposals for a range of activities) and the cost figures above don't account for those.

If all permitted activities had to be processed as a resource consent there would be cost and resource implications for the Council.

- We do not have the staff or resource available to meet this demand.
- We expect cost impacts for the Council would be **significant**. Where consent processing timeframes are not met, the Council is

required to refund the costs of processing applications (up to 50% of the cost).

We do not have any information on the average costs to consent applicants in preparing applications.

Also:

Does your council currently have permitted activity rules for discharges?

Yes, we have rules in our Canterbury Land and Water Regional Plan to regulate point-source and non-point source discharges (refer to link above to plan). Permitted activity rules for discharges typically include performance standards and / or limits on the size / scale of the activity.

Where permitted rules cannot be met a resource consent is required, or in some cases the activity is classified as prohibited (e.g. where effects are unacceptable – e.g certain discharges within community drinking water supply zones).

If so, are these tied to any other rule controlling discharges or their effects?

In most instances, the rules in our plan regulate all aspects of the activity (i.e. land use, discharge, disturbance of the bed).

An exception is the rule framework to manage farming activities.

- The land use, and discharge aspect, are regulated under separate but connected, rules.
- Where the land use is authorised by a rule in the plan or a resource consent, the discharge is also authorised (see Rule 5.44 in the Plan which regulates the use of land for farming in a Red Zone (permitted activity rule), and Rule 5.63 which regulates the discharge of nutrients as an example.
- Farms that require a resource consent under our plan are also required to prepare and implement an audited Farm Environment Plan.

Regards  
Olivia

Many thanks  
Rowan

---

**From:** Nicola Green <Nicola.Green@boprc.govt.nz>

**Sent:** Thursday, September 12, 2024 8:21 AM

**To:** Rowan Taylor <TaylorRow@mfe.govt.nz>

**Cc:** Olivia Cook <Olivia.Cook@ecan.govt.nz>; Fleur Matthews <Fleur.Matthews@orc.govt.nz>; Liz Devery (ES) <Liz.Devery@es.govt.nz>

**Subject:** RESPONSE to Some s70 questions for Thursday

**Caution:** This is an email from an external party. Please take care when clicking links or opening attachments.

Hi Rowan

Here are some rough estimates for the Bay of Plenty region.

#### How many additional discharge consents might result in your region? (From retaining s70)

An initial ballpark estimate is 3,300.

We have assumed that:

- in any catchment where there are observed/measured significant effects on aquatic life, regional plan changes would have to include rules requiring consent for all contributing discharges.
- consent would be required for all arable, pastoral, horticultural farms in land drainage canal catchments plus Maketū, Waihi, Ōhiwa, Tauranga, Ōkaro, Rerewhakaaitu, Rotoehu, Rotoiti catchments. For the purposes of this exercise, we have not included (but may need to under s.70) an estimate of number of Onsite Effluent Treatment facilities or other activities that present some risk of contaminant losses to water (if current permitted activity conditions are not met) which may need consent.

We have used the AgriBase dataset, which doesn't cover every single property but does cover the majority of them. Properties have been assigned to catchments/drainage scheme/FMUs based on whether they are predominantly in that catchment/scheme/FMU – lots of properties straddle boundaries. We have excluded lifestyle blocks and a range of uncommon land uses included in AgriBase (e.g., alpacas, horses, etc.).

	Property count				Total
	Arable	Pastoral	Fruit growing	Forestry	
Tauranga Moana	7	677	1,044	NA	1,728
Kaituna	7	239	455	17	718
Waihi-Pongakawa	2	158	107	11	278
Selected Rotorua Lakes (Okaro, Rerewhakaaitu, Rotoehu, Rotoiti)	-	31	-	NA	31
Ohiwa Harbour	-	88	9	5	102
Drainage Schemes - not already covered above	28	308	115	NA	451
<b>Total</b>	<b>44</b>	<b>1,501</b>	<b>1,730</b>	<b>33</b>	<b>3,308</b>

#### How many current discharge consents are in effect?

2100 discharge to land or water consents  
~ 550 Farm Dairy effluent consents

69 consents within the Rotorua catchments nutrient management consents (not included in the discharge numbers above). These are the only consents in Bay of Plenty for diffuse nutrient discharges from farming.

**Cost implications:**

**a. for your council**

As shown above, our estimate is that the number of discharge consents required would more than double. Assuming that most new consents are sought in the same year, this would be five-fold increase in the number of consents usually processed annually. A larger number, approximately 100, additional consents staff would be needed. Other cost implications depend on charging policy. Usually consent processes are 100% cost recoverable, but it is possible for Council to waive part of that cost, essentially meaning Council (i.e., the wider regional rate payer base) would cover part of the cost.

**b. for dischargers**

Cost implications will depend in part on the nature of the rules that would need to be drafted in to the regional plan and also on Council's charging policy. For example, the simplest possible would be a controlled activity rule with a condition requiring a certified freshwater farm plan. At the other end of the spectrum, a restricted discretionary rule with policy directing a full assessment/estimate of losses from the farm plus losses options and methods to address them would be more complex. As noted above, it is possible for Council to charge full cost of processing the consent or to waive part of that cost. If the applicant can prepare the application themselves then they will save on consultants' fees which may start from approximately \$2,500 excluding GST. As a ball-park estimate, council processing fees could be around \$2,500 for a simple application.

**Does your council currently have permitted activity rules for discharges?**

Yes, there are several permitted activity discharge to land or water rules in our operative Regional Natural Resources Plan (currently under review – draft pending), which you can view [here](#).

Also, some rules for other activity types (e.g., land use rules controlling earthworks), have conditions to control/avoid discharge of contaminants.

**If so, are these tied to any other rule controlling discharges or their effects?**

Yes. If Permitted Activity rule conditions cannot be met, then a different rule would apply – either a default discretionary rule or other.

**Nicki Green**

Principal Advisor, Policy & Planning

**Bay of Plenty Regional Council Toi Moana**

**P:** 0800 884 880 **DD:** 0800 884 881

**E:** [Nicola.Green@boprc.govt.nz](mailto:Nicola.Green@boprc.govt.nz)

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**A:** PO Box 364, Whakatāne 3158, New Zealand

*Thriving together – mō te taiao, mō ngā tāngata*

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**From:** [Olivia Cook](#)  
**To:** [Shannon Wallace](#); [Al Cross](#); [Clare Wooding](#)  
**Cc:** [Nicola Green](#); [Crystal McKnight](#); [Rowan Taylor](#)  
**Subject:** RE: S 70 potential amendments and connecting with the regional sector  
**Date:** Wednesday, 21 August 2024 12:42:06 pm  
**Attachments:** [image001.jpg](#)  
[image003.png](#)  
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[image009.png](#)

### MFE CYBER SECURITY WARNING

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Thanks Shannon – Nicki and I will chat and come back to you with a list of names shortly.

**From:** Shannon Wallace <Shannon.Wallace@mfe.govt.nz>  
**Sent:** Wednesday, August 21, 2024 9:13 AM  
**To:** Al Cross <Al.Cross@teurukahika.govt.nz>; Clare Wooding <Clare.Wooding@mfe.govt.nz>  
**Cc:** Nicola Green <Nicola.Green@boprc.govt.nz>; Olivia Cook <olivia.cook@ecan.govt.nz>; Crystal McKnight <Crystal.McKnight@mfe.govt.nz>; Rowan Taylor <TaylorRow@mfe.govt.nz>  
**Subject:** RE: S 70 potential amendments and connecting with the regional sector

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Mōrena Al

Thanks for this, really keen to chat, sounds like a perfect plan.

Olivia and Nicki, next week perhaps for a discussion? If you let me know who the small group is I can start firing out potential times.

Much appreciated  
Shannon

**Shannon Wallace (he/him)**  
Principal Analyst, Policy Implementation and Delivery

Ministry for the Environment – Manatū Mō Te Taiao  
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8 Willis St, PO Box 10362, Wellington 6143



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**From:** Al Cross <[Al.Cross@teurukahika.govt.nz](mailto:Al.Cross@teurukahika.govt.nz)>  
**Sent:** Tuesday, August 20, 2024 8:46 AM  
**To:** Clare Wooding <[Clare.Wooding@mfe.govt.nz](mailto:Clare.Wooding@mfe.govt.nz)>  
**Cc:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>; Nicola Green <[Nicola.Green@boprc.govt.nz](mailto:Nicola.Green@boprc.govt.nz)>; Olivia Cook <[olivia.cook@ecan.govt.nz](mailto:olivia.cook@ecan.govt.nz)>  
**Subject:** Re: S 70 potential amendments and connecting with the regional sector

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Mōrena Clare

Thanks for connecting about these possible amendments.

Olivia and Nicki are pulling together a small group to engage with, and they'll in turn look to report to a slightly bigger group of leaders / experts from our Consents and Policy Managers SIGs.

So, please link in with Nicki and Olivia and cc me in too.

Thanks

Al

**Al Cross**

Director – Resource Management Reform and Climate Adaptation  
**Te Uru Kahika**  
Mobile: [027 201 3571](tel:0272013571)

---

**From:** Clare Wooding <[Clare.Wooding@mfe.govt.nz](mailto:Clare.Wooding@mfe.govt.nz)>  
**Sent:** Monday, August 19, 2024 2:43 PM  
**To:** Al Cross <[Al.Cross@teurukahika.govt.nz](mailto:Al.Cross@teurukahika.govt.nz)>  
**Cc:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>  
**Subject:** S 70 potential amendments and connecting with the regional sector

Hi Al

Water policy are keen to talk about potential amendments to s70 of RMA.

This needs to happen in the next 2 weeks

Is this ideally a combination of CMG and PSIG members?

Clare

**Clare Wooding**

*Principal Adviser Kaitohutohu Mātāmua*

*Partnerships, Investments and Enablement*

Ministry for the Environment | Manatū Mō Te Taiao

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**From:** [Shannon Wallace](#)  
**To:** [Olivia Cook](#)  
**Cc:** [Nicola Green](#); [Crystal McKnight](#); [Rowan Taylor](#); [Nicola Green](#); [Fleur Matthews](#); [Liz Devery](#)  
**Subject:** RE: S 70 potential amendments and connecting with the regional sector  
**Date:** Friday, 23 August 2024 11:07:31 am  
**Attachments:** [image001.jpg](#)  
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[image012.png](#)  
[image013.png](#)  
[image014.jpg](#)

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Kia ora

Amazing thanks Olivia.

1 – 2 on Thursday sounds great. Invite coming soon.

Speak then

Cheers  
Shannon

---

**From:** Olivia Cook <olivia.cook@ecan.govt.nz>  
**Sent:** Thursday, August 22, 2024 2:14 PM  
**To:** Shannon Wallace <Shannon.Wallace@mfe.govt.nz>  
**Cc:** Nicola Green <Nicola.Green@boprc.govt.nz>; Crystal McKnight <Crystal.McKnight@mfe.govt.nz>; Rowan Taylor <TaylorRow@mfe.govt.nz>; Nicola Green <Nicola.Green@boprc.govt.nz>; Fleur Matthews <Fleur.Matthews@orc.govt.nz>; Liz Devery <Liz.Devery@es.govt.nz>  
**Subject:** RE: S 70 potential amendments and connecting with the regional sector

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Kia ora Shannon,  
We've had a bit of a chat and pulled together a group from TUK to have an initial chat – Nicki from EBOP, myself, Fleur from Otago RC and Liz from Southland RC (all cced to this email).

Timing wise next Thursday looks best for us if possible – 1-2pm would be the preferred slot if possible – but if we can't do that then sometime that afternoon. Is that possible?

Ngā mihi  
Olivia

---

**From:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>  
**Sent:** Wednesday, August 21, 2024 9:13 AM  
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Crystal McKnight <[Crystal.McKnight@mfe.govt.nz](mailto:Crystal.McKnight@mfe.govt.nz)>; Rowan Taylor <[TaylorRow@mfe.govt.nz](mailto:TaylorRow@mfe.govt.nz)>  
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Mōrena Al

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Much appreciated  
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**Shannon Wallace (he/him)**  
Principal Analyst, Policy Implementation and Delivery

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**Cc:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>; Nicola Green <[Nicola.Green@boprc.govt.nz](mailto:Nicola.Green@boprc.govt.nz)>; Olivia Cook <[olivia.cook@ecan.govt.nz](mailto:olivia.cook@ecan.govt.nz)>  
**Subject:** Re: S 70 potential amendments and connecting with the regional sector

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Mōrena Clare

Thanks for connecting about these possible amendments.

Olivia and Nicki are pulling together a small group to engage with, and they'll in

turn look to report to a slightly bigger group of leaders / experts from our Consents and Policy Managers SIGs.

So, please link in with Nicki and Olivia and cc me in too.

Thanks

Al

**Al Cross**

Director – Resource Management Reform and Climate Adaptation  
**Te Uru Kahika**  
Mobile: [027 201 3571](tel:0272013571)

---

**From:** Clare Wooding <[Clare.Wooding@mfe.govt.nz](mailto:Clare.Wooding@mfe.govt.nz)>  
**Sent:** Monday, August 19, 2024 2:43 PM  
**To:** Al Cross <[Al.Cross@teurukahika.govt.nz](mailto:Al.Cross@teurukahika.govt.nz)>  
**Cc:** Shannon Wallace <[Shannon.Wallace@mfe.govt.nz](mailto:Shannon.Wallace@mfe.govt.nz)>  
**Subject:** S 70 potential amendments and connecting with the regional sector

Hi Al

Water policy are keen to talk about potential amendments to s70 of RMA.

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Clare

**Clare Wooding**

*Principal Adviser Kaitohutohu Mātāmua  
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**From:** [Rowan Taylor](#)  
**To:** [Olivia Cook](#)  
**Subject:** RE: Some s70 questions for Thursday  
**Date:** Wednesday, 4 September 2024 11:29:00 am

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Many thanks Olivia

Rowan

---

**From:** Olivia Cook <[olivia.cook@ecan.govt.nz](mailto:olivia.cook@ecan.govt.nz)>  
**Sent:** Wednesday, September 4, 2024 10:40 AM  
**To:** Rowan Taylor <[TaylorRow@mfe.govt.nz](mailto:TaylorRow@mfe.govt.nz)>; Fleur Matthews <[Fleur.Matthews@orc.govt.nz](mailto:Fleur.Matthews@orc.govt.nz)>; Liz Devery <[Liz.Devery@es.govt.nz](mailto:Liz.Devery@es.govt.nz)>; Nicola Green <[Nicola.Green@boprc.govt.nz](mailto:Nicola.Green@boprc.govt.nz)>  
**Subject:** RE: Some s70 questions for Thursday

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Kia ora Rowan

We'll try and pull together some responses on the below from a Canterbury perspective and send this through next week.

Some of the questions require us to make some assumptions– thus our responses will be subject to caveats. Will be in touch.

---

**From:** Rowan Taylor <[TaylorRow@mfe.govt.nz](mailto:TaylorRow@mfe.govt.nz)>  
**Sent:** Tuesday, September 3, 2024 1:28 PM  
**To:** Fleur Matthews <[Fleur.Matthews@orc.govt.nz](mailto:Fleur.Matthews@orc.govt.nz)>; Liz Devery <[Liz.Devery@es.govt.nz](mailto:Liz.Devery@es.govt.nz)>; Nicola Green <[Nicola.Green@boprc.govt.nz](mailto:Nicola.Green@boprc.govt.nz)>; Olivia Cook <[olivia.cook@ecan.govt.nz](mailto:olivia.cook@ecan.govt.nz)>  
**Subject:** RE: Some s70 questions for Thursday

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Kia ora

Following up on our chat last Thursday, I'm wondering if it's possible to get some rough numbers from each of you on the likely impacts of retaining vs changing s70.

In particular:

- How many additional discharge consents might result in your region? (From retaining s70)
- How many current discharge consents are in effect?
- Cost implications:
  - (a) for your council,
  - (b) for dischargers

Also:

Does your council currently have permitted activity rules for discharges?

If so, are these tied to any other rule controlling discharges or their effects?

Many thanks  
Rowan

Kia ora

Thank you for making the time to meet earlier and help us better understand how s107 is being implemented in Canterbury.

As you are aware, the Ministry are undertaking early policy development of potential s107 amendments, and we would greatly appreciate some information to support this.

Anything you can provide on:

1. The number of resource consent applications you estimate need to be processed between now and the end of July 2025 where s107 of the RMA would be a consideration? If possible, also the number between now and the end of October 2024.

- The **minimum** number of applications we estimate will need to be processed between now and the end of July 2025 is ~ **525**.
  - We have 366 applications in process to discharge contaminants to land or to water.
  - A further 58 discharge permits are due to expire before January 2025. For these activities to remain lawful (under s124 of the RMA), replacement consent applications would need to be lodged by the end of October 2024.
  - Considering expiry dates for existing consents, we estimate a further 100 applications will need to be lodged for replacement consents before the end of July 2025.
  - Section 107 of the RMA will be a relevant consideration for **all** of these applications.
- We will continue to receive applications for discharge permits for new activities. We can't estimate how many we will receive, however any applications for new activities will be in addition to the numbers quoted above.

2. Any examples of current consent applications where the recent High Court interpretation of section 107 may be a barrier to that consent being granted?

- By way of general comment, the Court's decision is adding to the overall complexity of the consent decision-making process, and this is having implications for the efficiency, and effectiveness of the resource management system.
- Given consent decisions are made on a case-by-case basis it's not possible for us to predict, ahead of time, which applications might be declined as a result of the High Court's interpretation.
- We anticipate the High Court's decision will have implications for the processing of consents for critical infrastructure, stormwater proposals, sewage plants, industrial activities and agricultural activities. The implications of this decision will depend on a range of factors, including the state of the receiving environment.

- The High Court’s interpretation was only made recently, and we expect some applicants (or would-be-applicants) are taking a ‘wait-and-see’ approach before proceeding further with proposals. Consequently, the full implications for proposals are not yet evident.
- An example of a recent application affected by the High Court’s interpretation is [CRC194958](#). This is an application by District Council for a global stormwater consent (for the existing Geraldine township). In a recent [minute](#), the decision-maker stated he was “unconvinced” the application could be granted in its current form, and that further information would be needed to demonstrate the tests in s107(g) could be passed at the time the consent (if granted) is exercised.
- We also note that:
  - the High Court’s decision will have implications for “global” discharge permits and individual on-site discharges.
  - if infrastructure providers cannot obtain a global discharge permit, discharges will need to be authorised by individual consents.
  - there is no guarantee applications for individual permits will be granted. There are also negative impacts (in terms of efficiency, cost, and timeliness if the Council is required to process individual applications. By way of example, individual consents may be required for all discharges within the 315 hectare area to be covered by the Geraldine stormwater proposal.
  - we anticipate the Government’s recent housing announcements (e.g. relaxation of granny flat rules, and requirements for Councils to zone 30 years’ worth of land for housing immediately) will incentivise development in greenfield areas and this could further increase the number of consents required. As indicated above, there may be barriers to granting consents.
  - the High Court’s decision may also have implications for projects considered through the “one-stop shop consenting process” (previously called the ‘fast-track’ process). We note section 107 is a relevant consideration for decision-makers (refer Schedule 4, clauses 32 and 35).

3. If the government were to publicly confirm that s107 would be changed, what implications this may have on consent processing before a change came into law? (aka would this make consent processing difficulty and/or more costly? Do you have levers available to delay consent processing etc.?)

- Public announcements on proposed law changes may provide more certainty for consent applicants and communities:

- **for parties contemplating whether to lodge a consent application**, public announcements can inform decisions relating to the timing of lodgement and the level of assessment that may need to be included in an application. These decisions will, in turn, have implications for the type of work and costs required to prepare a consent application.
- **for consent applicants with applications in process** - public announcements can inform decisions on how, and whether, to proceed with a consent application:
  - sections 91A (for notified applications) and s91D (for non-notified applications/prior to notification) of the RMA allow an applicant to request a suspension in the processing of an application. These sections may be utilised by an applicant but given the time limits on these suspensions they are only likely to be useful when announcements around legislative change provide clarity on when changes are due to take effect.
  - for proposals where there is a high potential for the application to be declined, or additional costs incurred (i.e. through procurement of additional information), public announcements can inform applicants' decisions on whether to withdraw a proposal.
- **for parties where applications have been declined on the basis of s107**, public announcements can inform a decision on whether to appeal a decision, or delay in anticipation of future law changes.
- **for appellants to consent decisions**, public announcements can inform decisions on whether to proceed with legal challenges in the Court. For example, where a consent has been granted (and a party is considering whether to appeal that decision on the basis of an incorrect application of s107), parties may delay proceeding with challenges until outcomes of law changes are known.
- **for consent authorities**, public announcements, in advance of changes passing into law, are not expected to have significant implications or benefits for consent processing. This is because:
  - consent authorities are required to apply the law as it stands:
  - a **suspension** or **extension** in consent processing is only available in limited circumstances (i.e. where further applications are required (s91) or where further information is necessary (s92), or where special circumstances are met (s37). All decisions must be justified and there is no ability to extend timeframes for the purpose

of facilitating a delay in decision-making. Furthermore, we anticipate decisions would be subject to a high degree of scrutiny.

- As part of its Long Term Plan, the Council has agreed to new service measures for processing resource consent applications.
  - These service measures anticipate a reduction in the number of legacy applications in process (as part of the Council's Sustainable Consents Delivery Plan) and an increase in the number of applications processed within statutory timeframes.
  - Extensions or suspensions to consent processing times would increase the number of applications in process and could result in financial penalties for the Council where timeframes are not met.

4. Any thoughts you may have on how any potential change to s107 could be implemented for consents already lodged. For example, would there be any practical implications or difficulties if an amended s107 effected consents that have already been lodged so long as a decision to grant or decline has not been made?

- The legislation used to repeal the Natural and Built Environment Act provides a good example of changes that have been implemented and applied to consent applications already in process (refer to changes relating to the processing of applications for 'freshwater' activities).
- From the Council's perspective the change was simple to administer and effective.
- Decision makers are required to apply current plan requirements as part of s104 considerations, and requirements to have regard to the current version of the RMA are no different.

5. Submissions on RMA Bill One have said "Since the enactment of the RMA, it has been generally accepted that ss 70 and 107 apply to point source discharges only, i.e. discharges from a single fixed point, such as a pipe or drain from sewerage, factory and dairy shed outfalls". Thinking specifically of section 107, does this align with ECAN experience?

- This does not align with the Canterbury Regional Council's interpretation of s70 and s107 of the RMA.
- Guidance material prepared by Government agencies (e.g. [the Department of Conservation Guidance Note on Policy 23 of the NZCPS](#)) supports an interpretation that these provisions apply to both point-source and diffuse discharges (refer paragraph 2 of Page 19).

- Consistent with the above interpretation, the Canterbury’s Land and Water Regional Plan includes policies and rules to manage diffuse discharges from agricultural activities (e.g. nitrate losses via percolation through the soil) and passive discharges of contaminants from historic activities (e.g. mobilisation of hydrocarbons through the soil from previous on-site storage of fuel).
- Given timeframes for this response, we have not had time to examine past Council reports to determine if the argument presented by some parties on the RM Bill #1, was advanced during the hearings for the Canterbury Land and Water Regional Plan.
- However, from our review of past submissions on the Canterbury Land and Water Regional Plan, we note some submitters (e.g. Department of Conservation) provided support for proposed rules that regulate the incidental discharge of nutrients from farming (i.e. diffuse discharges), provided the tests in s70 of the RMA continued to be met (refer to page 31 of this [submission](#)). This indicates at least some parties were of the view the s70 tests applied to both point-source and non-point source discharges. We also note this interpretation is consistent with the High Court’s decision on *Federated Farmers Southland Incorporated v Southland Regional Council CIV-2023-409-24* [2024] NZHC 726.

6. Anything further you think would be relevant to support decision making on potential 107 amendments.

- The High Court’s decision on s107 has broad implications for the application of the resource management system.
- While the Court’s ruling relates to a consent decision made under the Canterbury Land and Water Regional Plan, this decision has implications for:
  - consent decisions made throughout NZ; and
  - consent decisions made under current and future national direction (i.e. regulations and national environmental standards), in addition to decisions made under regional plans.
- There is a relationship between the Courts’ decisions on s70 and s107 of the RMA.
  - Both sections of the Act should be considered when contemplating if, and what type, of resolution may be required.
  - While it would be preferable to consider these matters together, we note Ministry officials are working to compressed timeframes and may need to prioritise one matter over the other. We offer the following observations:

- The High Court has issued a decision on the s107 matter. Consent authorities must apply the law as it stands, and the decision has immediate implications for the processing of resource consent applications.
- In contrast, the High Court has not ruled on whether Rule 24 in the proposed Southland Water and Land Plan is ultra vires in respect of the tests in s70 of the RMA. The High Court stated in its ruling that the Environment Court is entitled to hear evidence on that matter, and a decision is yet to be made. In the absence of that decision, plan rules which permit the discharge of diffuse / incidental contaminants continue to apply, and activities authorised under these rules remain lawful.
- **If** the Environment Court were to find Rule 24 in the proposed Southland Water and Land Plan is ultra vires, the implications for the application of plan rules across NZ could be significant.
  - The Council's Land and Water Regional Plan contains rules that permit the incidental discharge of contaminants from farming, provided the 'land use' associated with the discharge is authorised by a permitted activity rule or a resource consent.
  - We have ~10,000 farms in Canterbury. Notwithstanding the fact the Council would need to first assess the relevance of an Environment Court decision for its own regional plan, we note the decision could result in **several thousand additional resource consents being required** for incidental nutrient discharges from agricultural activities. Should this occur, it would place extreme pressure on the resource management system (consultants, resource users, community groups, mana whenua, consent authorities and the legal system).
- Future decisions relating to s70 will remain highly significant for all Councils and there remains a need for further consideration of this matter, albeit noting that s107 implications are being felt now.