



2019 Environment Legislation Programme Bids

Date Submitted:		Tracking #: 2018-B-05058	
Security Level	In-confidence	MfE Priority:	Non-Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decision	27/11/18
CC Hon Nanaia Mahuta, Associate Minister for the Environment	Noting	
CC Hon Eugenie Sage, Associate Minister for the Environment	Noting	

Actions for Minister's Office Staff	<p>Return the signed report to MfE.</p> <p>Finalise the attached letter to Cabinet Office with the five legislation bids by 30 November 2018.</p>
Number of Attachments 6	<p>Titles of attachments:</p> <ol style="list-style-type: none"> Draft covering letter to Cabinet Office Resource Management (Authorisation of Deposits) Amendment Bill: Request for Priority in the 2019 Legislation Programme Resource Management Amendment Bill: Request for Priority in the 2019 Legislation Programme Hazardous Substances and New Organisms (Reassessments and other matters) Amendment Bill: Request for Priority in the 2019 Legislation Programme Freshwater Management Bill: Request for Priority in the 2019 Legislation Programme s 9(2)(f)(iv) & s 9(2)(j)
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Francesca Bakker	022 517 3322	
Responsible Manager	Alice King	022 044 1189	✓
Director	Jane Strachan	027 243 7486	

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2019 Environment Legislation Programme Bids

Key Messages

1. This paper seeks your agreement to submit two legislation bids for inclusion in the 2019 Legislation Programme.
2. The proposed bid requests in order of priority are:
 - a. Resource Management (Authorisation of Deposits) Amendment Bill – category 2 (must be passed by the end of 2019)
 - b. Resource Management Amendment Bill – category 3 (to be passed if possible in the year)
 - c. Hazardous Substances and New Organisms (Reassessments and other matters) Amendment Bill – category 5 (instructions to be provided to Parliamentary Counsel Office in the year)
 - d. Freshwater Management Bill – category 5 (instructions to be provided to Parliamentary Counsel Office in the year)
 - e. s 9(2)(f)(iv) & s 9(2)(j)
3. Attached for your approval is a draft covering letter and draft papers to the Legislation Coordinator in the Cabinet Office.
4. You are required to submit bids for the Legislation Programme 2019 to the Legislation Coordinator in the Cabinet Office by 10am on Friday 30 November 2018 (as requested in the Cabinet Office Circular CO (18) 5). Bids must be submitted with a covering letter that ranks all bids in each portfolio.

Recommendations

5. We recommend that you:
 - a. **agree** that the following bids in the Environment portfolio be submitted for inclusion in the 2019 Legislation Programme, ranked in the following order of priority:
 - a. Resource Management (Authorisation of Deposits) Amendment Bill – category 2 (must be passed by the end of 2019)

Yes/No
 - b. Resource Management Amendment Bill – category 3 (to be passed if possible in the year)

Yes/No
 - c. Hazardous Substances and New Organisms (Reassessments and other matters) Amendment Bill – category 5 (instructions to be provided to Parliamentary Counsel Office in the year)

Yes/No

d. Freshwater Management Bill – category 5 (instructions to be provided to Parliamentary Counsel Office in the year)

Yes/No

e. s 9(2)(f)(iv) & s 9(2)(j)

Yes/No

b. **sign** the attached letter to the Cabinet Office requesting the above Bills be awarded a place in the 2019 Legislation Programme

Yes/No

c. **submit** the letter and Cabinet papers for the Bills within the Environment portfolio to the Cabinet Office by 10am on Friday 30 November 2018.

Yes/No

Signature



Jane Strachan
Director
Legal and Procurement

Hon David Parker
Minister for the Environment

Date

2019 Environment Legislation Programme Bids

Supporting material

Context

1. Cabinet Office Circular CO (18) 5 sets out the requirements for the preparation of requests ('bids') from Ministers for bills to be awarded places on the 2019 Legislation Programme.
2. Ministers are asked to arrange for bids for the 2019 Legislation Programme to be delivered to the Legislation Coordinator in the Cabinet Office by 10am on Friday, 30 November 2018.
3. A standard format for each bid is set out in the annex to the Cabinet Office Circular. Each bid must be authorised by the Minister, or in the case of multiple bids, attached under a covering letter authorised by the Minister. Where a Minister is submitting more than one bid in a portfolio, the bids must be provided under a covering letter authorised by the Minister that ranks all bids in that portfolio.
4. The priorities given to bills for a calendar year are as follows:
 - a. Category 1: must be passed or introduced in the year as a matter of law
 - b. Category 2: must be passed in the year
 - c. Category 3: to be passed if possible in the year
 - d. Category 4: to be referred to a select committee in the year
 - e. Category 5: instructions to be provided to Parliamentary Counsel Office (PCO) in the year
 - f. Category 6: on hold
 - g. Category 7: not to proceed.
5. These bids are compiled by the Legislation Coordinator in the Cabinet Office, and submitted to the Cabinet Legislation Committee (LEG) for a decision on which bills are to be included in the Legislation Programme, and the priority that they will be given
6. A place on the annual Legislation Programme must be sought for the following matters:
 - a. every bill that is currently before the House or a select committee;
 - b. bills that are currently undergoing policy development work, or are being drafted, and have a place on the previous (2018) Legislation Programme;
 - c. policy proposals that may result in a bill in 2019 (including bills likely to be proposed in Law Commission reports).
7. A Cabinet paper for each bill in the Environment portfolio, its proposed ranking within the portfolio, and a covering letter to the Cabinet Office, is included in this briefing. Each bill and its proposed priority is summarised below.

Analysis and Advice

8. To give effect to the Government's priorities the Ministry proposes that you request the following bills be awarded a place on the 2019 Legislation Programme. The bills in order of priority are:
 - a. Resource Management (Authorisation of Deposits) Amendment Bill – category 2 (must be passed by the end of 2019)
 - b. Resource Management Amendment Bill – category 3 (to be passed if possible in the year)
 - c. Hazardous Substances and New Organisms (Reassessments and other matters) Amendment Bill – category 5 (instructions to be provided to Parliamentary Counsel Office in the year)
 - d. Freshwater Management Bill – category 5 (instructions to be provided to Parliamentary Counsel Office in the year)
 - e. s 9(2)(f)(iv) & s 9(2)(j)

9. The Cabinet paper for each bill and its proposed priority is summarised below.

Resource Management (Authorisation of Deposits) Amendment Bill

10. In April 2017 the Resource Management (Exemption) Regulations 2017 (the Regulations) were made in Executive Council. The Regulations were the subject of judicial review in the High Court, which held that the Regulations were validly made. The decision of the High Court was appealed to the Court of Appeal. s 9(2)(h)

[REDACTED] s 9(2)(h)

11. s 9(2)(h)

[REDACTED] This process involving public notification, hearings and appeals to the Environment Court and beyond will impact upon the ability to undertake planned time-critical pest control operations (including the Department of Conservation's Battle for our Birds programme), with the consequent threat to New Zealand's indigenous biodiversity.

12. The proposed Bill will have the effect of preserving the intent of the Regulations by ensuring that the pest control operations exempted from the need to obtain resource consent under the RMA can continue to benefit from that exemption, and can proceed as planned.
13. Timing and the need for a bill will depend on the timing and substance of the Court's decision. At this stage, the Court's decision is expected in late November; if this occurs as anticipated, it is possible that Cabinet decisions will need to be sought in December to allow for the Bill to progress in time to be relied on for time-critical pest control operations in May – July 2019. The Resource Management Amendment Bill may not proceed as quickly as is required for these Regulations.
14. We recommend this Bill is given priority of Category 2 on the Legislation Programme (must be passed in the year).
15. We propose the following key next steps:
 - a. Late November – early December 2018: drafting instructions sent to PCO (with Attorney-General approval).

- b. December 2018: Cabinet decisions on policy.
- c. January 2019: Cabinet decisions on legislation.
- d. February 2019: Bill is introduced.
- e. February 2019: Report back from Select Committee (to be confirmed).
- f. February-March 2019: Bill is enacted and commences (dependent on whether there is Select Committee).

Resource Management Amendment Bill

16. The Bill will contain a number of amendments to the RMA, with objectives to reduce complexity, increase certainty, restore public participation opportunities, and improve RMA processes. Some of the proposals in the bill will reverse widely criticised amendments that were made through the Resource Legislation Amendment Act 2017 (RLAA 2017). Other proposals will improve resource consenting, freshwater management, enforcement and Environment Court operations.
17. On 8 October 2018, Cabinet agreed to progress a bill making a set of changes to improve the operation of the Resource Management Act 1991 (RMA) [CAB-18-MIN-0485.01 refers]. This Bill will comprise the first stage of a two-stage approach to reform of the resource management system.
18. Policy work is underway for additional matters for consideration in the Bill, including the scope of powers for the EPA to take enforcement action under the RMA, enabling the Environment Court to review councils' resource consent notification decisions, provision of legal protection for special advisors to the Environment Court and enabling the regulation of high-risk land use activities to achieve improved water quality outcomes.
19. A number of aspects of the Bill may be contentious:
 - a. The repeal of preclusions on public submissions and appeals for residential and subdivision consent applications may be opposed by some groups, due to potentially higher process costs and delay of notified consent applications. We consider that the benefits of reinstating public participation and access to justice outweigh any potential costs of development delay caused by reinstating notification and appeal rights.
 - b. The proposal for the Environment Court to make declarations on consent notification decisions may be opposed on the basis that this could lead to more risk aversion by consent authorities or longer consent notification reports. We consider this proposal provides an appropriate check and balance on consent authorities' decisions and encourages meaningful public participation.
 - c. There may be some concern from land users about the proposal to enable regulation of high risk land use activities to achieve improved water quality outcomes, due to costs that regulation may have for some businesses responsible for discharges. The detailed costs and benefits of any such regulations would be considered if and when they are subsequently proposed.
20. We recommend this Bill is given Category 3 priority (to be passed if possible in the year).
21. We propose the following key next steps for this Bill:
 - a. November 2018: initial drafting instructions sent to PCO.
 - b. December 2018: Cabinet approval of final policy proposals and drafting instructions issued to PCO.
 - c. Late March/early April 2019: Introduction of the Bill to Parliament.

- d. September 2019: Report back from Select Committee.
- e. October 2019: Bill is enacted. Commencement date to be confirmed.

Hazardous Substances and New Organisms (Reassessments and other matters) Amendment Bill

- 22. A HSNO (Reassessments and other matters) Amendment Bill is required to improve the chemical reassessment process and ensure that decisions from trusted overseas regulators can be implemented in a timely and effective way. The amendments are expected to appropriately incentivise the substitution of high risk substances for 'greener' versions, and enable the EPA to more efficiently and effectively manage the risks to people and the environment of existing approved hazardous substances. It is highly desirable for the Bill to be enacted by 2021.
- 23. The Bill will progress changes required following a review of the chemical reassessment process and possible other matters under the HSNO to enable the EPA to more efficiently and effectively manage the risks to people and the environment of existing approved substances. This Bill will also include consideration of the recommendations of a technical working group which has recently been established to review the hazardous substances compliance and enforcement system.
- 24. One aspect of the Bill is likely to be contentious. The proposed Bill is likely to look at adjusting the legal responsibilities of industry and chemical users during the reassessment process, for example, responsibility for information provision. Such a change requires active consultation to test the potential regulatory impacts on these stakeholders. Consultation with interested parties in the form of a discussion document will be undertaken before the Bill is introduced.
- 25. We recommend this Bill is given Category 5 priority (instructions to be provided to PCO in the year).
- 26. We propose the following key next steps for this Bill:
 - a. November 2019: Cabinet decisions on Policy
 - b. December 2019: Drafting instructions provided to PCO.
 - c. May 2020: Cabinet approval of the Bill.
 - d. May 2020: Introduction of the Bill to Parliament.
 - e. November 2020: Report back from Select Committee.
 - f. April 2021: Bill is enacted.
 - g. May 2021: Bill commences.

Freshwater Management Bill

- 27. This Bill, is intended to implement a range of policy initiatives to improve the management of freshwater. These changes are likely to include changes to how fresh water and discharge rights are allocated. The Bill would be one part of the Essential Freshwater work programme and the overall package, which includes regulations and guidance, to support better management of fresh water. The Bill would have broad connections to the resource management work programme and a broad programme of policy and practical interventions to improve freshwater quality across government.
- 28. It is anticipated that all of the issues addressed by the proposed Bill would be contentious.
- 29. We recommend this Bill is given Category 5 priority (instructions to be provided to PCO in the year).

s 9(2)(f)(iv) & s 9(2)(j)

Consultation and Collaboration

37. PCO has reviewed the draft bids and advise that timeframes are very short in respect of the Resource Management (Authorisation of Deposits) Amendment Bill. In respect of the Resource Management Amendment Bill, PCO have advised that timeframes are tight, and achievement of these timeframes will depend upon completion of the outstanding policy work and the complexity of drafting required for this remaining work.

Risks and mitigations

38. Depending on the outcome of the Court of Appeal proceedings, if the Resource Management (Authorisation of Deposits) Amendment Bill is not passed promptly, the ability to undertake planned time-critical pest control operations will be impacted, with a consequent threat to New Zealand's indigenous biodiversity.

39. s 9(2)(h)

Legal issues

40. There are no legal issues associated with the submission of the attached legislation bids for inclusion on the 2019 Legislation Programme.

Financial, regulatory and legislative implications

41. No financial, regulatory or legislative sensitivities or implications have been identified in respect of the submission of the attached legislation bids for inclusion on the 2019 Legislation Programme.

Next Steps

42. You must submit a bid for each bill you would like to be included in the 2019 Legislation Programme for each portfolio. The requests must be submitted in the form of the attached letter and Cabinet papers for each Bill, to the Cabinet Office by 10.00am on Friday, 30 November 2018.

43. Two hard copies of each bid must be provided to the Legislation Coordinator in the Cabinet Office. In addition, an electronic version of each bid must be emailed to the Legislation Coordinator (gerrard.carter@dpmc.govt.nz).

Appendices

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Cabinet Office
Level 10
Executive Wing
PARLIAMENT BUILDINGS

Attention: Legislation Coordinator

2019 Legislation Programme: Submission of Bids for the Environment Portfolio

As requested in the Cabinet Office Circular CO (18) 5, I wish to submit the following bids, in order of rank within the Environment portfolio, for consideration for inclusion in the 2019 Legislation Programme:

- a) Resource Management (Authorisation of Deposits) Amendment Bill – category 2 (must be passed by the end of 2019)
- b) Resource Management Amendment Bill – category 3 (to be passed if possible in the year)
- c) Hazardous Substances and New Organisms (Reassessments and other matters) Amendment Bill – category 5 (instructions to be provided to Parliamentary Counsel Office in the year)
- d) Freshwater Management Bill – category 5 (instructions to be provided to Parliamentary Counsel Office in the year)
- e) s 9(2)(f)(iv) & s 9(2)(j)

Yours sincerely

Hon David Parker
Minister for the Environment

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Office of the Minister for the Environment

Cabinet Legislation Committee

Resource Management (Authorisation of Deposits) Amendment Bill: Request for Priority in the 2019 Legislation Programme

Summary information

1 Details for the bid for the proposed Resource Management (Authorisation of Deposits) Amendment Bill:

1.1 **Portfolio of sponsoring Minister:** Minister for the Environment;

1.2 **Department responsible:** Ministry for the Environment

1.3 **Departmental contact for clarification for further information:**

Name: Robert McLean
Email: rober.mclean@mfe.govt.nz
Phone: 022 067 6655

1.4 **Title of the proposed Bill:** Resource Management (Authorisation of Deposits) Amendment Bill

1.5 **Proposed ranking of Bill within the bids from this portfolio:** 1 of 5

1.6 **Estimated number of clauses in the Bill:** 10

1.7 **Complexity of clauses:** low complexity

1.8 **Proposed priority:** priority 2 (must be passed in the year).

Policy

2 In April 2017 the Resource Management (Exemption) Regulations 2017 (the Regulations) were made in Executive Council. The effect of the Regulations was to exempt the aerial application and ground use of certain vertebrate toxins from the requirement of gaining a section 15 resource consent under the Resource Management Act 1991 (RMA) provided certain conditions specified in the Regulations were met. The underlying policy intent behind the Regulations was to remove unnecessary legislative complexity and duplication relating to the control of the specified pest control substances.

3 However, the Regulations were the subject of judicial review in the High Court challenging their validity, and seeking declarations as to whether a consent for a deposit in on or under the foreshore or seabed, or in on or under the bed of a lake or a river was also required (section 12 and 13 resource consents). The High Court held that the Regulations were validly made, and that section 12 and/or 13 resources were not also required.

- 4 The decision of the High Court was appealed to the Court of Appeal. The decision of the Court of Appeal is expected in late November 2018. If the Court of Appeal determines that the additional consents are required, the policy intent of the Regulations is undermined. The purpose of this Bill, therefore, would be to uphold the intent of the Regulations by amending the RMA to exclude the pest control substances covered by the Regulations from any additional consenting requirement.
- 5 The Regulations themselves were developed with broad stakeholder support, as they address and remove unnecessary regulatory complexity and duplication. The Court of Appeal decision is pending, and as such no Cabinet decisions have yet been sought. Timing and the need for seeking such Cabinet approval will depend on the timing and substance of the Court's decision. At this stage, the Court's decision is expected in late November; if this occurs as anticipated, it is possible that Cabinet decisions will need to be sought in December to allow for the Bill to progress in time to be relied on for time-critical pest control operations in May – July 2019.
- 6 Due to the litigation that has taken place to-date and the media interest in pest control operations generally, the entire Bill will be contentious.

Need for legislation

- 7 s 9(2)(h)
[REDACTED]
[REDACTED] This process involving public notification, hearings and appeals to the Environment Court and beyond will impact upon the ability to undertake planned time-critical pest control operations (including the Department of Conservation's Battle for our Birds programme), with the consequent threat to New Zealand's indigenous biodiversity.
- 8 The proposed Bill will have the effect of preserving the intent of the Regulations by ensuring that the pest control operations exempted from the need to obtain resource consent under the RMA, can continue to benefit from that exemption, and can proceed as planned.
- 9 We recommend that the Bill is given a priority of category 2 on the Legislation Programme (must be passed in the year). Subject to the Court of Appeal judgement, this would ideally allow pest control operations to proceed as planned in the second quarter of 2019. These legislative changes to the RMA would be occurring whilst other changes are made to the RMA through the Resource Management Amendment Bill (for which a bid has also been submitted). However, we are recommending a priority of category 3 for that Bill and it may not proceed as quickly as is required for the Regulations.

Compliance

- 10 The Bill will comply with each of the following:
- 10.1 the principles of the Treaty of Waitangi;
 - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 10.3 the principles and guidelines set out in the Privacy Act 1993
 - 10.4 the relevant international standards and obligations; and

- 10.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Binding on the Crown

- 11 The provisions in the Bill will be binding on the Crown, consistent with the primary legislation.

Consultation

- 12 To date my officials have been preparing joint advice on this policy with the Department of Conservation.
- 13 Consultation on the Cabinet Paper seeking policy approvals for this policy will be undertaken in accordance with Cabinet Manual requirements and will be undertaken in December.
- 14 This Bill is not a significant new principal Act, and is short with low complexity. As such, referral to the Legislation Design and Advisory Committee for advice will not be necessary.
- 15 An exposure draft of the Bill will not be released for consultation purposes.
- 16 No agency consultation has as yet been undertaken, but once completed, consultation will also be undertaken with coalition and confidence and supply partners, and other parties represented in Parliament.

Associated regulations

- 17 Depending on the manner in which the Bill is drafted, the Regulations may also need to be amended or replaced.

Timeline

- 18 The Department of Conservation's Save our Birds programme has planned operations from May 2019. If these operations are to be undertaken as planned the Bill needs to be passed in early 2019 to ensure that least risk of disruption to the planned operations.
- 19 The proposed timeline for the Bill is set out below:

<i>Step</i>	<i>Proposed date</i>	<i>Consistency assurance</i>
Date on which final policy approvals were, or will be, obtained from Cabinet.	December 2018	Relevant government agencies will be consulted on the draft Cabinet paper in accordance with Cabinet requirements.
Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter.	Late November – early December	Officials are currently requesting that Ministers agree to officials requesting Attorney-General approval to issue drafting instructions for the Bill prior to obtaining policy approvals from Cabinet in December. PCO have been advised.

Date by which the Bill will be released for exposure draft (if an exposure draft is planned).		An exposure draft of the Bill is not planned.
Date by which the Bill will be provided to the Ministry of Justice (or the Crown Law Office if applicable) for an assessment of consistency with the New Zealand Bill of Rights Act 1990.	January 2019	
Dates on which the Bill will be before LEG and Cabinet for approval for introduction.	January 2019	
Date by which any policy decisions for associated regulations will be before Cabinet.	January 2019	
Date requested for introduction of the Bill.	February 2019	
Date of report back from select committee.	February 2019	Officials propose a truncated select committee process given the short and simple nature of the Bill. This will be a time-unlimited debateable motion in the House.
Date on which final policy approvals will be obtained from Cabinet for any substantive SOP to Bill (if already introduced)		Not applicable.
Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter for any substantive SOP to Bill (if already introduced).		It is not anticipated that there will be any SOP.
Date by which final drafting instructions for any associated regulations will be sent to the Parliamentary Counsel Office.	January 2019	Early to mid-January

Date of enactment.	February-March 2019	Dependent on select committee timing.
Date of commencement.	February-March 2019	Dependent on select committee timing.

Recommendations

20 The Minister for the Environment recommends that the Committee:

- 20.1 **note** that the Resource Management (Authorisation of Deposits) Bill will have the effect of enabling Regulations made in April 2017, under section 360(1)(h) of the Resource Management Act 1991 (RMA) to continue to operate as intended, in the event of an adverse Court of Appeal judgment.
- 20.2 **approve** the inclusion of the Resource Management (Authorisation of Deposits) Bill in the 2019 Legislation Programme, with a priority of Category 2 (must be passed in the year).
- 20.3 **note** that drafting instructions will be provided to the Parliamentary Counsel Office by late November 2018;
- 20.4 **note** that the Bill should be introduced no later than February 2019;
- 20.5 **note** that the Bill should be passed no later than March 2019.

Authorised for lodgement

Hon David Parker
Minister for the Environment

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Office of the Minister for the Environment

Cabinet Legislation Committee

Resource Management Amendment Bill: Request for Priority in the 2019 Legislation

Programme

Summary information

1 This bid for legislation has the following details:

1.1 **Portfolio of sponsoring Minister:** Minister for the Environment

1.2 **Department responsible:** Ministry for the Environment

1.3 **Departmental contact for clarification for further information:**

Name: Jo Gascoigne
Phone: 027 531 7202
Email: jo.gascoigne@mfe.govt.nz

1.4 **Title of the Proposed Bill:** Resource Management Amendment Bill;

1.5 **Proposed ranking of Bill within the bids from this portfolio:** 2 of 5;

1.6 **Estimated length and complexity of the Bill:** medium length (20-80 clauses) and complexity;

1.7 **Proposed priority:** priority 3 (to be passed if possible in the year).

Policy

2 The current resource management and planning system is underperforming in its management of key environmental issues such as freshwater quality, climate change adaptation, and meeting people's needs for affordable housing and thriving urban communities.

3 On 8 October 2018, Cabinet agreed to progress a bill making a set of changes to improve the operation of the Resource Management Act 1991 (RMA) [CAB-18-MIN-0485.01 refers]. This Bill will comprise the first stage of a two-stage approach to reform of the resource management system.

4 The Bill will contain a number of amendments to the RMA, with objectives to reduce complexity, increase certainty, restore public participation opportunities, and improve RMA processes. Some of the proposals in the Bill will reverse widely criticised amendments that were made through the Resource Legislation Amendment Act 2017 (RLAA 2017). Other proposals will improve resource consenting, freshwater management, enforcement and Environment Court operations.

- 5 Policy work is underway for four additional matters for consideration in the Bill:
- 5.1 Details on the scope of powers for the Environmental Protection Authority (EPA) to take enforcement action under the RMA [CAB-18-MIN-0485.01, decisions 32-38 refer]. Cabinet authorised a group of Ministers, comprising the Minister for the Environment, Associated Minister for the Environment with responsibility for the EPA, Minister of Finance and Minister of Justice, to consider and agree detailed policy, and issue drafting instructions for this matter.
 - 5.2 Details regarding enabling the Environment Court to review councils' resource consent notification decisions [CAB-18-MIN-0485.01, decisions 48-50 refer]. Cabinet authorised the Minister for the Environment and Minister of Justice to consider and agree detailed policy, and issue drafting instructions, for this matter.
 - 5.3 Whether to provide legal protection for special advisors to the Environment Court [CAB-18-MIN-0485.01, decisions 52-56 refer]. Cabinet authorised the Minister for the Environment and Minister of Justice to consider and agree detailed policy, and issue drafting instructions, for this matter.
 - 5.4 Whether to amend the RMA to enable the regulation of high-risk land use activities to achieve improved water quality outcomes [CAB-18-MIN-0485.01, decisions 26 and 27 refer]. I will seek additional policy approval at a relevant Cabinet committee in December 2018, if I consider changes to the RMA are necessary for this matter.
- 6 If agreed, these additional matters will be considered by the Cabinet Legislation Committee when it considers the Bill prior to introduction.
- 7 The following aspects of the Bill may be contentious:
- 7.1 The repeal of preclusions on public submissions and appeals for residential and subdivision consent applications may be opposed by some groups, due to potentially higher process costs and delay of notified consent applications. This proposal is to repeal amendments from the Resource Legislation Amendment Act 2017 that were widely opposed by submitters¹, including infrastructure companies concerned about being unable to submit or appeal on residential consent applications in their vicinity. I consider that the benefits of reinstating public participation and access to justice outweigh any potential costs of development delay caused by reinstating notification and appeal rights.
 - 7.2 The proposal for the Environment Court to make declarations on consent notification decisions may be opposed on the basis that this could lead to more risk aversion by consent authorities or longer consent notification reports. 69% of submitters on a similar proposal from the Resource Management Amendment Act 2005 (which never came into force) were in support or conditional support of the proposal, while 29% opposed. I consider this proposal provides an appropriate check and balance on consent authorities' decisions and encourages meaningful public participation.
 - 7.3 There may be some concern from land users about the proposal to enable regulation of high risk land use activities to achieve improved water quality outcomes, due to costs that regulation may have for some businesses responsible for discharges. The

¹ Of the submitters who submitted on these topics in the Resource Legislation Amendment Bill, 74% opposed the preclusion of public notification, and 73% opposed the preclusion on appeals. *Departmental Report no.2 on the Resource Legislation Amendment Bill 2015 (pages 265 and 333).*

detailed costs and benefits of any such regulations would be considered if and when they are subsequently proposed.

- 8 I will report back to the Cabinet Environment, Energy and Climate Committee (ENV) on the scope and process of the second stage of resource management reform by April 2019 [CAB-18-MIN-0485.01, decision 6 refers].

Need for legislation

- 9 The policy decisions made in [CAB-18-MIN-0485.01] require legislative change to be progressed through a bill to amend the RMA.
- 10 When the policy was agreed, Cabinet approved the Bill to be included in the 2018 Legislation Programme, with a priority of category 5 (to be referred to a select committee in the year) [CAB-18-MIN-0485.01, decision 60 refers]. Introduction of the Bill in 2018 is no longer feasible, and instead I intend to seek Cabinet agreement to introduce the Bill in early 2019, to be passed if possible before the end of 2019.
- 11 I recommend that the Bill be ascribed priority 3 on the Legislation Programme. It is desirable that the Bill be passed before the end of 2019, to then allow for stage two of resource management system reform to occur.

Compliance

- 12 The policies proposed for this Bill comply with each of the following:
- 12.1 the principles of the Treaty of Waitangi;
 - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 12.3 the principles and guidelines set out in the Privacy Act 1993;
 - 12.4 the relevant international standards and obligations; and
 - 12.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Binding on the Crown

- 13 Provisions in the Bill will be binding on the Crown, consistent with the existing RMA provisions.

Consultation

- 14 Policy development was informed by suggestions from a variety of individuals and organisations, and submissions on the RLAA 2017. My officials consulted practicing planning professionals from a range of councils, who are generally unopposed to the changes.
- 15 I consulted the Chief District Court Judge, Chief Māori Land Court Judge and Principal Environment Judge on the proposal to clarify that acting Judges are eligible to be appointed as alternate Environment Judges. All three Judges support that proposed amendment.

- 16 The following government departments and public bodies were consulted on the policy Cabinet paper: the Department of the Prime Minister and Cabinet (Policy Advisory Group and Ministry of Civil Defence & Emergency Management); Treasury; Ministry of Business, Innovation and Employment; Department of Conservation; Department of Internal Affairs; Te Puni Kōkiri; Ministry of Transport; Ministry of Justice; Ministry of Culture and Heritage; Ministry for Primary Industries; Land Information New Zealand; New Zealand Defence Force (NZDF); Ministry of Education (MoE); Ministry of Health; and the Department of Corrections. Issues raised in this consultation were addressed in the policy Cabinet paper.
- 17 My officials are consulting council officials, practitioners and the Environment Court to inform their analysis of additional matters noted in paragraph 5 above.
- 18 I do not intend to refer the Bill to the Legislation Design and Advisory Committee for advice as I consider the proposals are consistent with the *Legislation Guidelines (2018 edition)* and it is not a significant new principal Act.
- 19 I will consult with coalition and confidence and supply partners on the draft LEG paper for the Bill in advance of its consideration for introduction by the Cabinet Legislation Committee.
- 20 The policy Cabinet paper and accompanying regulatory impact statement were released on [8 November 2018]. I do not propose to release an exposure draft of the Bill for consultation before the Bill is introduced. The public will have an opportunity to participate and contribute to the refinement of these proposals through the select committee process.

Associated regulations

- 21 Consequential amendments to the *Resource Management (Forms, Fees and Procedure) Regulations 2003* will be necessary to give effect to the resource consent process changes in this Bill.
- 22 Cabinet authorised me to develop commencement, transitional and savings provisions with the Parliamentary Counsel Office through the drafting process [CAB-18-MIN-0485.01, decision 63 refers]. This work will begin soon and is likely to be complex and time consuming. The drafted commencement and transitional provisions will be subject to Cabinet approval when the Bill is considered for introduction [CAB-18-MIN-0485.01, decision 63 refers].
- 23 I will also seek Cabinet approval to make consequential amendments to associated regulations to give effect to changes in the Bill, in accordance with any relevant commencement, transitional and savings provisions, when the Bill is considered by the Cabinet Legislation Committee prior to introduction.

Timeline

<i>Step</i>	<i>Proposed date</i>	<i>Consistency assurance</i>
Date on which initial policy approvals were obtained from Cabinet	8 October 2018	<p>Policy development and consultation occurred in advance (detailed above) [CAB-18-MIN-0485.01 refers].</p> <p>When Cabinet considered the policy paper in October 2018, the Bill was placed on the 2018 Legislation Programme with a category 5. Given additional policy work, the Bill will not be able to be introduced or referred to a select committee before the end of 2018.</p>
Date on which drafting instructions on initial matters agreed to by Cabinet will be sent to the Parliamentary Counsel Office	November 2018	
Date on which final policy approvals on additional EPA enforcement and Environment Court matters will be obtained from the delegated groups of Ministers	November 2018	<p>Cabinet authorised a delegated group of Ministers, being the Minister for the Environment, the Associate Minister for the Environment (with portfolio responsibility for the EPA), the Minister of Finance, and the Minister of Justice, to consider and agree detailed policy for EPA enforcement matter [CAB-18-MIN-0485.01, decisions 35 and 36 refer].</p> <p>Cabinet authorised the Minister for the Environment and Minister of Justice to consider and agree detailed policy for the Environment Court matters [CAB-18-MIN-0485.01, decisions 48 and 54 refer].</p>
Date on which final policy approvals will be obtained from Cabinet regarding enabling the regulation of high risk land use, if I consider changes to the RMA are necessary for this matter	December 2018	[CAB-18-MIN-0485.01, decision 27 refers]

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Date on which final drafting instructions on additional matters will be sent to the Parliamentary Counsel Office.	Mid-December 2018	
Date by which the Bill will be provided to the Ministry of Justice (or the Crown Law Office if applicable) for an assessment of consistency with the New Zealand Bill of Rights Act 1990.	Late March 2019	
Dates on which the Bill will be before LEG and Cabinet for approval for introduction.	Late March/early April 2019	
Date by which any decisions to draft consequential updates to associated regulations will be before Cabinet.	Late March/early April 2019 (when the Bill is considered by LEG and Cabinet before introduction)	
Date requested for introduction of the Bill.	April 2019	
Estimated date of report back from select committee.	September 2019	
Estimated date by which final drafting instructions for any associated regulations will be sent to the Parliamentary Counsel Office.	September 2019	
Estimated date of enactment.	October 2019	
Date of commencement.	To be confirmed	Transitional, commencement and savings provisions will be subject to approval by Cabinet when it considers the Bill for introduction [CAB-18-MIN-0485.01, decisions 63 and 64 refer].

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Recommendations

24 The Minister for the Environment recommends that the Committee:

- 24.1 **note** that the Resource Management Amendment Bill will contain a number of amendments to the Resource Management Act 1991 (RMA), with objectives to reduce complexity, increase certainty, restore public participation opportunities, and improve RMA processes;
- 24.2 **approve** the inclusion of the Resource Management Amendment Bill in the 2019 Legislation Programme, with a priority 3 (to be passed if possible in the year);
- 24.3 **note** that final drafting instructions will be provided to the Parliamentary Counsel Office by mid December 2018;
- 24.4 **note** that the Bill should be introduced no later than April 2019;
- 24.5 **note** that the Bill should be passed no later than December 2019 if possible.

Authorised for lodgement

Hon David Parker
Minister for the Environment

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Office of the Minister for the Environment

Cabinet Legislation Committee

Hazardous Substances and New Organisms (Reassessments and other matters) Amendment**Bill: Request for Priority in the 2019 Legislation Programme****Summary information**

- 1 Details for the bid for the proposed Hazardous Substances and New Organisms (Reassessments and other matters) Amendment Bill:
 - 1.1 **Portfolio of sponsoring Minister:** Minister for the Environment;
 - 1.2 **Department responsible:** Ministry for the Environment
 - 1.3 **Departmental contact for clarification for further information:**

Name:	Brian Hallinan
Email:	brian.hallinan@mfe.govt.nz
Phone:	022 066 8420
 - 1.4 **Title of the proposed Bill:** Hazardous Substances and New Organisms (Reassessments and other matters) Amendment Bill
 - 1.5 **Proposed ranking of Bill within the bids from this portfolio:** 3 of 5
 - 1.6 **Estimated size and complexity of the Bill:** medium size (20-80 clauses) and complexity
 - 1.7 **Proposed priority:** Category 5 (instructions to be provided to Parliamentary Counsel Office in the year).

Policy

- 2 A wide range of hazardous substances are used in New Zealand: more than 150,000 hazardous substances are administered by the Environmental Protection Authority (EPA) under the Hazardous Substances and New Organisms Act 1996 (HSNO Act). The EPA sets out controls on the importation, manufacture and use of hazardous substances in their approvals.
- 3 HSNO Act approvals do not expire and reassessments are a mechanism for the EPA to change or revoke existing approvals. Under section 62 of the HSNO Act, hazardous substance approvals can only be reviewed if there are grounds for reassessment. For example, if there is:
 - 3.1 significant new information relating to the effects of the substances;

- 3.2 a change in any controls under the Health and Safety at Work Act 2015;
- 3.3 another substance with similar or improved beneficial effects and reduced adverse effects;
- 3.4 information showing a significant change of use, or a significant change in the quantity manufactured, imported, or developed has become available.
- 4 It is important to improve the reassessment process, including grounds for reassessments and options, to achieve more efficient and effective use of data and information from international jurisdictions.
- 5 The EPA has compiled a list of approximately 700 internationally designated “chemicals of interest”. Based on each chemicals’ hazard profile and their risk to human and environmental health, the EPA has identified a priority list of 39 chemicals it considers are most in need of review in New Zealand.
- 6 Since 2001, the EPA has only completed 24 reassessments. This is because reassessments are comprehensive and cover multiple chemicals and approvals. Therefore, the current reassessment process is time consuming and costly.
- 7 I am proposing a review of the chemical reassessment process (and possible other matters under the HSNO Act) to enable the EPA to more efficiently and effectively manage the risks to people and the environment of existing approved substances.
- 8 The review will investigate how data and assessments from other international regulators can be utilised more strategically and efficiently in the reassessment process. This trusted regulator approach is used globally for the chemical assessment process.
- 9 One aspect of the Bill is likely to be contentious. The proposed Bill may look at adjusting the legal responsibilities of industry and chemical users during the reassessment process, for example, responsibility for information provision. Such a change requires active consultation to test the potential regulatory impacts on these stakeholders. Consultation with interested parties in the form of a discussion document will be undertaken before the Bill is introduced.
- 10 No policy decisions have been made by Cabinet as at November 2018. The prospective date for final Cabinet decisions on policy is November 2019.

Need for legislation

- 11 A Bill is required to improve the chemical reassessment process and ensure that decisions from trusted overseas regulators can be implemented in a timely and effective way. The amendments to the HSNO Act are expected to appropriately incentivise the substitution of high risk substances for ‘greener’ versions, and enable the EPA to more efficiently and effectively manage the risks to people and the environment of existing approved hazardous substances. It is highly desirable for the Bill to be enacted by 2021.
- 12 The EPA is undertaking work to modernise its implementation of the regulation of hazardous substances under the HSNO Act. Additionally, a technical working group has recently been established to review the hazardous substances compliance and enforcement system. The policy process for this Bill will also include consideration of the recommendations of this group and the outcomes of the hazardous substances modernisation project.

Compliance

- 13 The proposed Bill will comply with:
- 13.1 the principles of the Treaty of Waitangi;
 - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 13.3 the principles and guidelines set out in the Privacy Act 1993;
 - 13.4 the relevant international standards and obligations; and
 - 13.5 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Binding on the Crown

- 14 The implications for government departments of the potential amendments binding the Crown will be minimal as the HSNO Act already binds the Crown and no changes are being made in this regard. Additional costs to the Crown are unlikely to be significant.

Consultation

- 15 Consultation will be required with relevant government agencies, industry and chemical users.
- 16 Public consultation on the policy issues is expected to be completed by the middle of July 2019.
- 17 The Bill will not be referred to the Legislation Design and Advisory Committee for advice because the Bill is not:
- 17.1 a significant new principal Act, or
 - 17.2 likely to impact on the coherence of the statute book (for example, because of a significant degree of overlap or interaction with other legislation), or
 - 17.3 likely to be inconsistent with principles in the LAC Guidelines (2018 edition), particularly on fundamental legal and constitutional principles.
- 18 An exposure draft of the Bill is not planned for consultation before the Bill is introduced.
- 19 Consultation with the Government caucuses and other parties represented in Parliament will be needed before the Bill is introduced.

Associated regulations

- 20 It has not yet been determined whether amendments to the Schedule to the Hazardous Substances (Methodology Order) 1998 will be needed to give effect to the provisions in the Bill. If required, drafting of regulations will follow final policy decisions in November 2019.

Timeline

21 I propose the following timing for the legislation:

<i>Step</i>	<i>Proposed date</i>	<i>Consistency assurance</i>
Date on which final policy approvals were, or will be, obtained from Cabinet.	November 2019	Initial policy development is undertaken from November 2018 to 15 April 2019. A discussion paper is expected to be released in April 2019.
Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter.	December 2019	
Date by which the Bill will be released for exposure draft (if an exposure draft is planned).	N/A	
Date by which the Bill will be provided to the Ministry of Justice for an assessment of consistency with the New Zealand Bill of Rights Act 1990.	April 2020	
Dates on which the Bill will be before LEG and Cabinet for approval for introduction.	May 2020	
Date by which any policy decisions for associated regulations will be before Cabinet.	May 2020	
Date requested for introduction of the Bill.	May 2020	
Date of report back from select committee.	November 2020	
Date on which final policy approvals will be obtained from Cabinet for any	December 2020	

substantive SOP to Bill (if already introduced)		
Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter for any substantive SOP to Bill (if already introduced).	February 2021	
Date by which final drafting instructions for any associated regulations will be sent to the Parliamentary Counsel Office.	To be determined	
Date of enactment.	April 2021	
Date of commencement.	May 2021	

Recommendations

- 22 The Minister for the Environment recommends that the Committee:
- 22.1 **note** that the Hazardous Substances and New Organisms (Reassessment and other matters) Bill will improve the process for reassessment of chemicals under the HSNO Act;
- 22.2 **approve** the inclusion of the Hazardous Substances and New Organisms (Reassessments and other matters) Bill in the 2019 Legislation Programme, with a priority category 5; instructions to be provided to Parliamentary Counsel Office in the year;
- 22.3 **note** that drafting instructions will be provided to the Parliamentary Counsel Office by December 2019;
- 22.4 **note** that the Bill should be introduced no later than May 2020;
- 22.5 **note** that the Bill should be passed no later than May 2021.

Authorised for lodgement

Hon David Parker
Minister for the Environment

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Freshwater Management Bill: Request for Priority in the 2019 Legislation Programme

Summary information

- 1 Details for the bid for the proposed Freshwater Management Bill:
- 1.1 **Portfolio of sponsoring Minister:** Minister for the Environment;
 - 1.2 **Department responsible:** Ministry for the Environment
 - 1.3 **Departmental contact for clarification for further information:**

Name: Martin Workman
Phone: 022 517 3268
Email: martin.workman@mfe.govt.nz
 - 1.4 **Title of the proposed Bill:** Freshwater Management Bill
 - 1.5 **Proposed ranking of Bill within the bids from this portfolio:** 4 of 5
 - 1.6 **Estimated length and complexity of Bill:** medium size, high complexity
 - 1.7 **Proposed priority:** category 5 (instructions to be provided to PCO in 2019).

Policy

- 2 This Bill, is intended to implement a range of policy initiatives to improve the management of freshwater.
- 3 These changes are likely to include changes to how fresh water and discharge rights are allocated.
- 4 The objective of the Bill will be to ensure that there is healthy water, which is fairly allocated and well managed. The Bill will be one part of the Essential Freshwater work programme and the overall package, which includes regulations and guidance, to support better management of fresh water. The Bill will have broad connections to the resource management work programme and a broad programme of policy and practical interventions to improve freshwater quality across government.
- 5 No policy decisions have been made by Cabinet as of November 2018. I intend to seek Cabinet decisions in the latter half of 2019.
- 6 Policy ideas for consideration include substantial reform of the existing RMA provisions for allocating rights to water use. This could be achieved through substantial change such as

market- based mechanisms for nutrient discharge, for example a cap and trade scheme, ongoing auctioning of permits, or charges.

- 7 Other policy matters to be considered through 2019 include measures to manage land use to achieve better water quality outcomes, the linkages with other national direction work on biodiversity and versatile soils, and how to improve direction to councils and the functions and responsibilities they hold around the management of fresh water.
- 8 It is anticipated that all of the issues addressed by the proposed Bill would be contentious.

Need for legislation

- 9 For allocation and discharge policies, the Resource Management Act 1991 (RMA) provides a very specific framework for applications based on a “first in first served model” of processing resource consent applications. The RMA also provides for transfer and trade of resource use and discharges between users, but only in limited circumstances. Fundamental change to this model, and therefore the RMA, is required to achieve any system change.
- 10 For any other changes progressed through this Bill around direction to councils and better management of fresh water, legislative change is needed wherever a policy proposal seeks outcomes or directions that are not within the current scope of the RMA, or which contradict existing requirements in the RMA.
- 11 The priority for this Bill is category 5 (instructions to be provided to PCO in 2019). This would allow for policy development work to be completed throughout 2019 and to ensure a Bill can be ready during the term of the current Government.
- 12 I am separately progressing other amendments to the RMA. It is likely further changes to the RMA will be needed, either as a result of, or directly within, the Freshwater Management Bill. However, the subject matter of each is fairly discrete, and the magnitude of potential changes to the RMA for freshwater management may be so great that a separate Act is preferable. I therefore consider it is necessary to progress two separate bills.

Compliance

- 13 The proposed Essential Freshwater Bill will be prepared to ensure it complies with:
- 13.1 the principles of the Treaty of Waitangi;
 - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 13.3 the principles and guidelines set out in the Privacy Act 1993
 - 13.4 the relevant international standards and obligations; and
 - 13.5 the *Legislation Guidelines (2018 edition)*, which are maintained by the Legislation Design and Advisory Committee.

Binding on the Crown

- 14 At this stage I am not aware of any reason for this Bill not to be binding on the Crown.

Consultation

- 15 I intend to publish a public consultation document describing the proposed policy goals, and options for achieving those goals, in June 2019.
- 16 I intend that development of the consultation document will take place in conjunction with the advisory network of science, business, regional council and Māori experts that have been set up for the Essential Freshwater work. Relevant government departments and industry bodies will be also be consulted during the development process.
- 17 The proposed Bill would be referred to the Legislation Design and Advisory Committee given the likely complexity of the Bill and the potential issues addressed by the Bill.
- 18 I may run a targeted consultation process with Kahui Wai Māori (KWM) and Freshwater Leaders Group (FLG) members on an exposure draft of the Bill. This will be important part of finalising the involvement of FLG and KWM in any aspects of the Essential Freshwater work programme being progressed through the Bill.
- 19 Consultation with the government caucus and confidence and supply partners will occur during the development of the public consultation document and in the policy decisions that occur after the public consultation.

Associated regulations

- 20 It is too early in the policy development process to determine whether the proposed Bill would need accompanying regulations. Regulations may be required however, to provide technical, administrative or detailed requirements to support the content of the Bill. It is likely such regulations would be required within 12 months of commencement of the Bill as they will be important to the effective functioning of any new processes in the Bill.

Timeline

- 21 The proposed timing is:

<i>Step</i>	<i>Proposed date</i>	<i>Consistency assurance</i>
Date on which final policy approvals were, or will be, obtained from Cabinet.	October 2019	This date is based on a three month public consultation period beginning in June 2019 followed by Cabinet decision-making processes.
Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter.	November 2019	
Date by which the Bill will be released for exposure draft (if an exposure draft is planned).	March 2020	

Date by which the Bill will be provided to the Ministry of Justice (or the Crown Law Office if applicable) for an assessment of consistency with the New Zealand Bill of Rights Act 1990.	April 2020	
Dates on which the Bill will be before LEG and Cabinet for approval for introduction.	May 2020	
Date by which any policy decisions for associated regulations will be before Cabinet.	Unknown at this stage.	
Date requested for introduction of the Bill.	May 2020	This date could be earlier if it is critical that the Bill be passed during the year.
Date of report back from select committee.	February 2021	
Date on which final policy approvals will be obtained from Cabinet for any substantive SOP to Bill (if already introduced)	February 2021	
Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter for any substantive SOP to Bill (if already introduced).	February 2021	
Date by which final drafting instructions for any associated regulations will be sent to the Parliamentary Counsel Office.	February 2021	
Date of enactment.	March 2021	
Date of commencement.	March 2021	

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Recommendations

22 The Minister for the Environment recommends that the Committee:

- 22.1 **note** that the Freshwater Management Bill will implement a range of policy initiatives to improve the management of freshwater, including changes to how fresh water and discharge rights are allocated;
- 22.2 **approve** the inclusion of the Freshwater Management Bill in the 2019 Legislation Programme, with a priority 5 (instructions to PCO within the year);
- 22.3 **note** that drafting instructions will be provided to the Parliamentary Counsel Office by November 2019;
- 22.4 **note** that the Bill should be introduced no later than May 2020;
- 22.5 **note** that the Bill should be passed no later than March 2021.

Authorised for lodgement

David Parker
Minister for the Environment

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