

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Legislation Committee

Resource Management Amendment Bill: Approval for Introduction

Proposal

1. This paper attaches the Resource Management Amendment Bill (the Bill) and recommends that the Cabinet Legislation Committee authorise introduction of the Bill to the House.
2. The paper also seeks agreement to:
 - 2.1. additional aspects to improve workability of the proposed freshwater planning process
 - 2.2. an additional proposal to rename the head of the Environment Court
 - 2.3. commencement, transitional and savings provisions for effective implementation of the Bill and to provide continuity for resource management processes that will be underway at the time of enactment.

Background

3. On 8 October 2018, Cabinet agreed to an initial set of legislative changes to improve the operation of the Resource Management Act 1991 (RMA), as the first of a two-stage approach to reform of the resource management system [CAB-18-MIN-0485.01 refers]. At that time, Cabinet also authorised ministerial subgroups to make further decisions on specific policy details [CAB-18-MIN-0485.01, paragraphs 35 to 37 and 52 to 54]. Ministerial subgroups made those decisions in November 2018 and January 2019.
4. On 1 July 2019, Cabinet made further decisions to include a specialised planning process for freshwater, agreed to clarify existing proposals and make technical amendments to the RMA, and affirmed decisions made by ministerial subgroups [CAB-19-MIN-0337.01]. Cabinet also authorised the Minister for the Environment to:
 - 4.1. determine if additional amendments to the RMA were required to ensure that unreasonable financial contributions cannot be imposed on notices of requirement [CAB-19-MIN-0337.01, paragraph 50 refers]
 - 4.2. issue drafting instructions to the Parliamentary Counsel Office to make consequential amendments to the RMA and other affected statutes to ensure the workability of the agreed amendments [CAB-19-MIN-0337.01, paragraph 59.1 refers], and

- 4.3. further clarify and develop policy matters relating to the proposals in the paper under ENV-19-SUB-0037 in a manner not inconsistent with the policy recommendations contained in the paper [CAB-19-MIN-0337.01, paragraph 60 refers].
5. Following advice from officials, the Bill includes a proposed amendment to clarify that financial contributions cannot be recommended or imposed on any notices of requirement lodged by the Minister of Education as a requiring authority. This addresses the risk that financial contributions could otherwise lead to unreasonable cost and delays to delivering the National Education Growth Plan.¹ Following feedback from the Minister of Defence, I seek a decision as to whether the proposed amendment should also apply to the Minister of Defence.
6. The Bill (Appendix 1) gives effect to Cabinet's policy decisions from October 2018 and July 2019 [CAB-18-MIN-0337.01 and CAB-19-MIN-0337.01 refers], and authorised Ministers' decisions.
7. The Bill also includes further policy details to improve workability of the freshwater planning process, and an additional proposal to rename the head of the Environment Court, which I seek Cabinet agreement to in this paper.

Additional policy decisions sought from Cabinet

Freshwater planning process

Process to apply to all provisions of freshwater planning documents that relate to freshwater

8. Cabinet previously agreed that regional and unitary councils must use the new freshwater planning process for any changes required to their freshwater planning documents² to implement a new National Policy Statement for Freshwater Management (NPS-FM) [CAB-19-MIN-0337.01, paragraph 5 refers].
9. In some instances, a regional council might propose provisions in freshwater planning documents that go beyond what will be required under the NPS-FM. I now propose that all aspects of freshwater planning documents that relate to freshwater must go through this process (whether or not those aspects specifically implement the NPS-FM). This will provide certainty that these matters can be considered holistically and efficiently in a single process.

Freshwater planning documents must be publicly notified

10. Currently, the RMA enables notification of proposed planning documents to be limited to directly affected parties, and that a hearing is not mandatory if no submitters wish to be heard. In practice, it is unlikely a freshwater planning document would be eligible for limited notification, given the wide public interest in how these documents address natural resources.

¹ The *National Education Growth Plan* anticipates the schools needed to keep pace with the projected population growth over the next 10 years.

² In this paper, 'freshwater planning document' refers to regional policy statements and regional plans that include provisions which relate to freshwater.

11. Cabinet has previously agreed that the proposed freshwater planning process will involve restricted appeal rights [CAB-19-MIN-0337.01, paragraphs 22 to 24], to support a faster planning process overall. To provide better balance between the pace of process and natural justice, I propose that freshwater planning documents under this process must be publicly notified, and that a hearing must be held, to ensure there is adequate opportunity for public participation. This is consistent with the process that was used for the Auckland Unitary Plan (which the new freshwater planning process is broadly based on).

Councils to forward material to the Chief Freshwater Commissioner within six months of notification

12. Cabinet previously agreed that councils forward all relevant information (eg, the notified freshwater planning document, summary of submissions, relevant iwi management plans etc) to the freshwater hearings panel [CAB-19-MIN-0337.01, paragraph 6 refers].
13. I now propose that councils forward all relevant information to the Chief Freshwater Commissioner, instead of the panel, and that this occur no later than six months after public notification of these documents. This will provide the Chief Freshwater Commissioner with the necessary information he or she needs to determine the appropriate composition of each panel. This will allow the panels to have sufficient time for consideration, to make recommendations within the overall two-year timeframe.

Enabling secretariat support by the Environmental Protection Authority (EPA)

14. The previous policy Cabinet paper noted that the group of freshwater commissioners would be provided secretariat support, either by the Ministry for the Environment or the Environmental Protection Authority (EPA).
15. I propose that initial secretariat support for freshwater commissioners will be provided by the Ministry for the Environment, but that in the future this role may be transferred to the EPA if it is efficient to do so.³ To enable this, I propose to amend the list of EPA functions in the RMA, for the EPA to provide secretariat support services to the group of freshwater commissioners if and when directed by the Minister for the Environment.

Allowing for smaller hearings panel sizes

16. Cabinet agreed that hearings panels have five members, comprising two government appointed freshwater commissioners, two accredited councillors, nominated by the council (or two accredited independent commissioners nominated by the council), and one accredited person with an understanding of tikanga Māori and mātauranga Māori (to be selected from nominations by local tangata whenua). Cabinet also agreed that in particular circumstances a hearings panel size could exceed five, in order to

³ Funding for the establishment of the freshwater planning process has been provided for as part of Budget 2019. Once operating, the costs of the freshwater hearings panels will be met by regional councils, as this is a core part of their responsibilities. A decision about whether to transfer the secretariat support function to the EPA, which will include funding, is yet to be taken.

accommodate circumstances unique to a region or locality [CAB-19-MIN-0337.01, paragraphs 11-12 refer].

17. I propose that the Chief Freshwater Commissioner also have discretion to convene a hearings panel with fewer than five members, but no fewer than three members (with a minimum of one freshwater commissioner (government appointed), one council nominated, and one selected from nominations by local tangata whenua. In any case, a freshwater commissioner would chair the panel and have a casting vote.
18. This will enable hearings panels to be convened at a size that is commensurate with the scale of the freshwater planning document. For example, a smaller panel may be appropriate if a plan change is for a single catchment rather than a full region, or if the matters to be heard are relatively straightforward (such as an adjustment to a low flow regime).

Hearings panels to produce further evaluation reports

19. Cabinet previously agreed that the relevant council be required to prepare a further evaluation report, under section 32AA, if it rejects any panel recommendations and makes alternative provisions [CAB-MIN-19-0337.01, paragraph 20.2].
20. I now propose that, when councils reject recommendations and make alternative provisions, they will not be required to produce a further evaluation report. Instead, I propose that, in cases where the hearings panel makes recommendations that differ from the initial proposed freshwater planning document, a further evaluation report be prepared by the panel (as was required in the Auckland Unitary Plan process).
21. This will provide for transparent and robust hearings panel recommendations, while enabling councils to make decisions efficiently within the required 20 working days. If councils reject any particular recommendations, they will still be required to provide reasons why, and those aspects of the councils' decision will be subject to merit appeals to the Environment Court.

Variations to freshwater planning documents

22. The RMA enables variations to be sought on proposed planning documents that are still in progress.⁴ At times, variations may be useful to improve the quality of freshwater planning documents before they are completed. However, allowing variations at any point in the freshwater planning process may risk delaying timeframes, particularly the 2025 timeframe to implement the NPS-FM.
23. I propose to provide the Chief Freshwater Commissioner the ability to accept or reject, for hearing by a freshwater hearings panel, variations in the freshwater planning process.⁵ There may be instances where a variation could be progressed without risk to the overall timeframe. As the Chief Freshwater Commissioner is responsible for running a timely and efficient process, he or she is most appropriate to make this decision.

⁴ Clause 16A of Schedule 1 of the RMA

⁵ The Chief Freshwater Commissioner would only have this power from the date he or she receives the materials from the council. Prior to that date the process is managed by the council and the usual Schedule 1 provisions apply.

Other procedural matters

24. Cabinet agreed that the freshwater hearings panel will be required to follow normal RMA plan and policy statement decision-making requirements, in formulating its recommendations [CAB-19-MIN-0337.01, paragraph 15].
25. In current practice, submissions may be received after the closing date by councils. In the freshwater planning process, freshwater hearings panels will determine the hearing procedures and make recommendations to the relevant councils. I propose that freshwater hearings panels also be able to accept or reject late submissions.

Renaming the head of the Environment Court

26. The current legal title of the head of the Environment Court is 'Principal Environment Judge'. The 'Principal' title was carried over from the former Planning Tribunal when it became the Environment Court in 1996. However, the role of the head of the Environment Court is closer to that of other 'Chief' Judges (eg, the Chief District Court Judge and Chief Māori Land Court Judge), than other 'Principal' Judges. This discrepancy risks confusion regarding the current status of the head of the Environment Court.
27. I therefore propose that the Bill include amendments to rename the head of the Environment Court the 'Chief Environment Court Judge', for consistency with similar courts.

Financial contributions on notices of requirement lodged by the Minister of Defence

28. The Minister of Defence commented on this paper as follows:
 - 28.1. *The proposal to clarify only that financial contributions cannot be recommended or imposed on notices of requirement lodged by the Minister of Education creates an expectation that financial contributions can be imposed on other requiring authorities, including the New Zealand Defence Force.*
 - 28.2. *A reason given in the paper for exempting the Minister of Education is that the requirement to pay financial contributions could "lead to unreasonable costs and delays to delivering the National Education Plan". However, the same reasoning could apply to the New Zealand Defence Force implementing the Defence Estate Regeneration Plan, for which Cabinet approved \$2.1 billion of indicative funding out to 2030 across Defence Force camps and bases around New Zealand [GOV-19-MIN-0012 refers].*
 - 28.3. *Specific risks for Defence could include increased costs and delays to the delivery of the Defence Capability Plan 2019, the Defence Estate Regeneration Programme and any development arising from the First Principles Review, which could impact on the national security benefits delivered to New Zealand by the Defence Estate. This could be compounded if the First Principles Review leads to significant changes in the Defence footprint over time, such as major new infrastructure development. This could significantly increase the cost of routine delivery and protection of Defence infrastructure. Uncertainty arises because the quantum of financial contribution would vary from council to council.*

28.4. Therefore, I⁶ believe that the exemption afforded to the Minister of Education should also apply to the Minister of Defence as a requiring authority.

29. I seek a decision as to whether the amendment outlined in paragraph 5 of this paper should also apply to the Minister of Defence.

Commencement, transitional and savings provisions

30. Cabinet authorised the Minister for the Environment to develop commencement, transitional and savings provisions with the Parliamentary Counsel Office and noted that these provisions would be subject to approval by Cabinet when it considers the Bill for introduction [CAB-18-MIN-0485.01, paragraphs 63-64 and CAB-19-MIN-0337.01, paragraph 59.2].
31. I seek agreement to a suite of commencement, transitional and savings provisions set out in Appendix 2.

Proposed Bill and aspects of the Bill that may be contentious

32. The Bill will amend the RMA, Resource Legislation Amendment Act 2017, District Court Act 2016, Statutes Amendment Bill, Remuneration Authority Act 1997, Judicial Conduct Commissioner, Judicial Conduct Panel Act 2004, and Judicial Salaries and Allowances (2018/19) Determination 2018 to implement the proposals.

33. The following aspects of the Bill may be contentious:

33.1. Local Government New Zealand has written to me and raised concerns about the proposal to enable the EPA to take over investigation and enforcement responsibilities from councils in relation to particular cases. The EPA will, in the main, assist councils with their enforcement investigations and actions.

However, I also consider it necessary that the EPA be empowered to intervene and take over a council's responsibilities in certain circumstances. This is to ensure appropriate action can be taken in cases where a council is unable or unwilling to perform this function effectively. I anticipate the EPA will use these intervention powers sparingly, and the proposed annual reporting requirement will provide accountability on this matter.

33.2. Local Government New Zealand has communicated its support for an increase in the maximum infringement fees, but considers that the increase should be larger than what is currently proposed. I do not propose a greater increase than what Cabinet has already agreed at this stage. This is a matter that may be raised in submissions and considered further by Select Committee, and I recommend we remain open-minded about it.

33.3. The repeal of preclusions on public notification and appeals for residential and subdivision resource consent applications may be opposed by some, due to the potential costs of notification for some consent applications that are currently precluded. Others will agree, including those with infrastructure at risk of being hampered by reverse sensitivities. I also note that the 2017 amendments to the

⁶ The Minister of Defence

RMA that are being repealed were opposed by the majority of submitters.⁷

I consider that the benefits of reinstating public participation and access to justice outweigh any potential costs that might arise from removing preclusions on notification and appeals.

- 33.4. Regional council planning practitioners have indicated general support for the freshwater planning process, but may find the proposed notification and decision timeframes to implement the new NPS-FM challenging to meet. Individuals and groups that participate in planning processes across multiple regions may also be stretched, such as planners, technical experts and submitters with a national presence (eg, Government agencies, industry and non-governmental organisations).

The Ministry for the Environment is currently scoping how it can best utilise the \$12 million allocated in Budget 2019 to support councils with developing and implementing freshwater plans over the next four years.

Impact analysis

34. A Regulatory Impact Summary for the initial proposals was provided in October 2018 [CAB-18-MIN-0485.01 refers]. This includes the reinstatement of financial contributions. This has been updated to include the proposal to remove the ability to impose financial contributions on notices of requirement lodged by the Minister of Education as a requiring authority (attached as Appendix 3). The Ministry for the Environment's Regulatory Impact Analysis Panel reassessed this after it was updated, and did not change its initial overall assessment as a result.
35. The following were provided in July 2019:
- 35.1. a Regulatory Impact Statement for the new freshwater planning process
 - 35.2. a Regulatory Impact Summary for clarification of earlier proposals, EPA enforcement functions, and legal protection for special advisors to the Environment Court [CAB-19-MIN-0337.01 refers].
36. The Treasury Regulatory Quality Team has determined that the proposal to change the name of the Principal Environment Judge to Chief Environment Court Judge is not subject to the Regulatory Impact Analysis requirements, as it is suitable for inclusion in a Statutes Amendment Bill (as provided for in Standing Orders).

Compliance

37. The Ministry for the Environment considers the Bill complies with the following:

⁷ Of the submitters who submitted on these topics in the Resource Legislation Amendment Bill, 74 per cent opposed the preclusion of public notification, and 73 per cent opposed the preclusion on appeals. See Ministry for the Environment, 2015. Departmental Report Addendum of the Resource Legislation Amendment Bill 2015, Wellington: New Zealand Parliament (pp. 265-333).

- 37.1. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 37.2. the principles and guidelines set out in the Privacy Act 1993
 - 37.3. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.
38. Existing Treaty settlement arrangements, and other arrangements between Māori and the Crown or councils, can be applied to proposals on a case-by-case basis (including the proposed freshwater planning process).
 39. A disclosure statement has been prepared by the Ministry for the Environment and is attached to this paper (Appendix 4).

Consultation

40. The following consultation has been undertaken on the proposals contained in this Bill:
 - 40.1. The following departments have been consulted: Te Puni Kōkiri, Ministry for Culture and Heritage, Department of Conservation (DoC), Department of Internal Affairs, Department of Prime Minister and Cabinet, Office for Māori Crown Relations – Te Arawhiti, Ministry of Justice, Ministry of Transport, Ministry of Health, Land Information New Zealand, Ministry of Primary Industries, Ministry of Business, Innovation and Employment, Ministry of Housing and Urban Development (HUD), Treasury, Ministry of Education, Department of Corrections, and New Zealand Defence Force.
 - 40.2. Selected council planning practitioners were consulted on technical aspects of the majority of proposals to ensure that the options are workable in practice.
 - 40.3. The proposed freshwater planning process was tested with advisory groups under the Essential Freshwater programme (including Kāhui Wai Māori) and discussed with the Freshwater Iwi Leaders Group.
 - 40.4. I have consulted with the judiciary⁸ on the proposed amendment relating to the renaming the head of the Environment Court. The judiciary is supportive of the amendment. Consultation with the judiciary on other proposals in the Bill was considered by Cabinet in the previous policy papers.
 - 40.5. The Privacy Commissioner was consulted and did not have any particular comments.
 - 40.6. No public consultation was undertaken on the proposed Bill, and private organisations were not consulted. There was no formal consultation with iwi or hapū on proposals in the Bill before policy decisions were made.

⁸ The Chief Justice of New Zealand, the Chief High Court Judge, the Chief Māori Land Court Judge, the Chief District Court Judge, and the Principal Environment Judge.

41. The Essential Freshwater consultation document includes content to inform the public, stakeholder organisations and Māori about the proposed freshwater planning process, and their opportunity to submit through the select committee process.
42. When the Bill is introduced, communication material will distinguish between these proposals and the comprehensive review of the RMA, to provide clarity regarding the scope of this Bill.

Proactive release

43. I intend to proactively release this paper at the time of the introduction of the Bill subject to the redaction of any material as consistent with the Official Information Act 1992.

Binding on the Crown

44. The proposed amendments will be binding on the Crown.

Associated regulations

45. Minor consequential updates will be necessary to the Resource Management (Forms, Fees and Procedure) Regulations 2003 and the Resource Management (Discount on Administrative Charges) Regulations 2010 to bring the resource consent process changes into operation. The specific detail of amendments required will depend on the final wording of the Bill when it becomes law.
46. These amendment regulations will need to be made within three months of enactment, which is when the relevant provisions will commence.
47. Cabinet has already authorised me to draft any consequential amendments to the RMA and other statutes [CAB-18-MIN-0485.01, paragraph 62]. I also propose to issue drafting instructions to the Parliamentary Counsel Office and will seek Cabinet agreement to amend these regulations shortly after enactment of the Bill.

Commencement of legislation

48. Most of the amendments in the Bill are proposed to commence the day after Royal assent, and some amendments are proposed to commence three months after.

Parliamentary stage

49. I propose that the Bill be introduced in September 2019 and passed by mid-2020. I propose that the Bill be referred to the Environment select committee.

Recommendations

The Minister for the Environment recommends that the Committee:

1. **note** that on 8 October 2018, Cabinet agreed to a narrowly-focused set of amendments to reduce complexity, increase certainty, restore previous public participation opportunities, and improve Resource Management Act 1991 (RMA) processes, in advance of a more comprehensive review of the resource management system [CAB-18-MIN-0485.01 refers];

2. **note** that on 1 July 2019, Cabinet agreed to further expand the scope of the Bill to include a specialised planning process for freshwater planning documents in order to implement a new National Policy Statement for Freshwater Management (NPS-FM), as the current planning process in the RMA will not be able to resolve the problems relating to freshwater planning [CAB-19-MIN-0337.01 refers];
3. **note** that the Resource Management Amendment Bill holds a category 3 priority on the 2019 Legislation Programme (to be passed, if possible, within the year);
4. **note** that the Minister for the Environment has delegated authority to decide whether an amendment to the RMA is necessary to ensure that unreasonable financial contributions cannot be imposed on notices of requirement [CAB-19-MIN-0337.01, paragraph 50 refers];
5. **note** that the Minister for the Environment has decided to remove the ability for territorial authorities to recommend, or the Environment Court or boards of inquiry to impose, financial contributions on any notices of requirement lodged by the Minister of Education as a requiring authority, due to risks of unreasonable cost and delays that these may pose to delivering the National Education Growth Plan;
6. **EITHER:**
 - 6.1. **agree** that the proposal to remove the ability for territorial authorities to recommend, or the Environment Court or boards of inquiry to impose, financial contributions apply only to notices of requirement lodged by the Minister of Education as a requiring authority;
 - OR**
 - 6.2. **agree** that the proposal to remove the ability for territorial authorities to recommend, or the Environment Court or boards of inquiry to impose, financial contributions apply both to notices of requirement lodged by the Minister of Education and by the Minister of Defence as requiring authorities;

Additional policy decisions

Freshwater planning process

7. **note** that Cabinet:
 - 7.1. authorised the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to make consequential amendments to the RMA and other affected statutes to ensure the workability of the agreed amendments [CAB-MIN-19-MIN-0337.01, paragraph 59.1];
 - 7.2. agreed that the Minister for the Environment has the ability to further clarify and develop policy matters relating to the proposals in the paper under ENV-19-SUB-0037 in a manner not inconsistent with the policy recommendations contained in the paper [CAB-19-MIN-0337.01, paragraph 60];

Applying the freshwater planning process to all planning documents that relate to freshwater

8. **note** that Cabinet agreed that regional and unitary councils will be required to use this process for any changes required to their regional plans and policy statements (freshwater planning documents) to implement a new NPS-FM [CAB-19-MIN-0337.01, paragraph 5 refers];
9. **agree** that the freshwater planning process will also be mandatory for any provisions in freshwater planning documents that relate to freshwater (even if they do not solely implement the NPS-FM);

Freshwater planning processes to involve public notification

10. **agree** that all freshwater planning documents subject to the freshwater planning process must be publicly notified and a hearing must be held;

Councils to forward material to the Chief Freshwater Commissioner within six months of public notification

11. **agree** to rescind the previous Cabinet decision that councils forward information to the freshwater hearings panel [CAB-19-MIN-0337.01, paragraph 6 refers];
12. **agree** that councils must forward all relevant information to the Chief Freshwater Commissioner within six months from the date of notification;

Enabling secretariat support by the Environment Protection Authority

13. **agree** to enable the Environment Protection Authority to provide secretariat support to the group of freshwater commissioners, including the Chief Freshwater Commissioner;

Allowing for smaller hearings panel sizes

14. **note** that Cabinet agreed that each freshwater hearings panel must include two freshwater commissioners, one of whom will serve as chair and hold the casting vote; two accredited councillors, nominated by the council (or two accredited independent commissioners nominated by the council); and one accredited person with an understanding of tikanga Māori and mātauranga Māori (to be selected from nominations by local tangata whenua) [CAB-19-MIN-0337.01, paragraph 11 refers];
15. **note** that Cabinet agreed that in particular circumstances a hearings panel size could exceed five, in order to accommodate circumstances unique to a region or locality [CAB-19-MIN-0337.01, paragraph 12 refers];
16. **agree** that, despite the previous agreement detailed in (14 and 15) above, the Chief Freshwater Commissioner has the discretion to convene a freshwater hearings panel with fewer than five members, but no less than three members;
17. **agree** that each freshwater hearings panel must have, at a minimum, one freshwater commissioner (to serve as chair of the panel and hold the casting vote), one accredited councillor, nominated by the council (or one accredited independent commissioners nominated by the council); and one accredited person with an understanding of tikanga

Māori and mātauranga Māori (to be selected from nominations by local tangata whenua);

Further evaluation reports to be produced by hearings panels

18. **note** that Cabinet previously agreed that, in cases where a council rejects any recommendations of a freshwater hearings panel, the council must publicly notify its decisions identifying alternative provisions, together with a further evaluation report under section 32AA of the RMA [CAB-19-MIN-0337.01, paragraph 20.2 refers];
19. **agree** to amend the previous decision [CAB-19-MIN-0337.01, paragraph 20.2 refers] so that councils are not required to prepare a further evaluation report where they reject any freshwater hearings panel recommendations;
20. **agree** that a freshwater hearings panel must prepare a further evaluation report regarding any recommendations it makes to the relevant council that differ from the proposed planning document when it was notified;

Variations to planning documents

21. **agree** that the Chief Freshwater Commissioner has the discretion to accept or reject, for hearing by a freshwater hearings panel, variations to proposed plan changes, or proposed regional policy statements or changes, that are already in the freshwater planning process;

Other procedural matters

22. **note** that Cabinet agreed that the freshwater hearings panel will be required to follow normal RMA plan and policy statement decision-making requirements, in formulating its recommendations on freshwater planning related matter [CAB-19-MIN-0337.01 paragraph 15];
23. **agree** to enable the hearings panels to accept or reject late submissions;

Renaming the head of the Environment Court

24. **agree** to rename the head of the Environment Court from Principal Environment Judge to Chief Environment Court Judge;

Consequential changes to RMA regulations

25. **note** that consequential amendments will need to be made to the Resource Management (Forms, Fees and Procedures) Regulations 2003 and to the Resource Management (Discount on Administrative Charges) Regulations 2010 to update the necessary forms and references prior to the commencement of these provisions;
26. **authorise** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to prepare these consequential amendments to the regulations, for Cabinet approval before the relevant provisions of the Bill commence three months after the Bill is enacted;

Commencement, transitional and savings provisions

27. **note** that Cabinet authorised the Minister for the Environment to develop commencement, transitional and savings provisions with the Parliamentary Counsel Office, through the drafting process for this Bill, and noted that these provisions would be subject to Cabinet approval when it considers the Bill for introduction [CAB-18-MIN-0485.01, paragraphs 63-64 and CAB-19-MIN-0337.01, paragraphs 59.2 and 61.1 refer];
28. **note** that the Bill includes a range of commencement, transitional and savings provisions with the majority of changes coming into force the day after Royal assent, and the provisions for the repeal of preclusions on resource consent notification and appeals, and the suspension of processing of resource consents, will come into force three months after Royal assent;
29. **agree** to the commencement, transitional and savings provisions set out in Appendix 2 of this paper;
30. **approve** the Bill for introduction, subject to the final approval of the Government caucus and sufficient support in the House of Representatives;
31. **agree** that the Bill be introduced in September 2019;
32. **agree** that the Government propose that the Bill be:
 - 32.1. referred to the Environment committee for consideration;
 - 32.2. enacted by mid-2020;
33. **agree** that the Bill bind the Crown;
34. **agree** that the Minister for the Environment may authorise Parliamentary Counsel Office to make any minor changes to Bill drafting after consideration by Cabinet Legislation Committee.

Authorised for lodgement

Hon David Parker
Minister for the Environment

Proactively released

Appendix 2

Proposed commencement provisions for the Resource Management Amendment Bill

The following legislative changes commence the day after the date of Royal assent:

- repeal regulation making powers that enable the Minister to prohibit or remove local plan rules that duplicate other legislation, preclude notification on certain activities or prescribe who may be considered affected, or prescribe additional fast-track activities;
- reverse the subdivision presumption to restricted (from permitted);
- reinstate the use of financial contributions under the RMA;
- enable the review of conditions of multiple resource consents;
- increase the maximum infringement fee able to be prescribed through regulations;
- protect special advisors to the Environment Court from legal proceedings;
- remove the restriction on scope of appeals;
- clarify the appointment of alternate Environment Judges and expand the pool of potential alternate Environment Judges to include retired Environment Judges;
- extend the time period for lodging retrospective resource consents for emergency works from 20 to 60 working days after the date of notification to the consent authority;
- enable councils to suspend processing of resource consent applications until fixed administrative charges are paid;
- extend the statutory limitation period for filing charges for prosecutions from 6 months to 12 months;
- enable the EPA to take enforcement action under the RMA;
- clarify the steps the Minister for the Environment must follow when a board of inquiry recommends an NES;
- renaming the head of the Environment Court from Principal Environment Judge to Chief Environment Court Judge;
- enable the freshwater planning process and require all freshwater planning documents to be developed under this process;
- repeal the collaborative planning process;
- remove the ability to impose financial contributions on notices of requirement by Minister of Education.

The following legislative changes commence three months after the date of Royal assent:

- remove preclusions on public notification for subdivision and residential activity resource consent applications;
- enable applicants to have processing of non-notified resource consent applications suspended;
- remove preclusions on appeals for subdivision and residential activity resource consents.

Proposed savings and transitional provisions

- The legal immunity for the appointment of special advisors to the Environment Court applies to special advisors appointed after the commencement of the Act;
- The new 60 day time period to lodge retrospective resource consents for emergency works applies to activities that were notified to the council, under section 330B(2) of the RMA, after commencement;
- Councils are only able to suspend processing of resource consent applications, until required fixed administrative charges are paid, for applications that were lodged after commencement;
- The new 12-month statutory limitation period for filing charges for prosecutions applies to contraventions that occurred after commencement;
- The EPA is able to apply its new functions in respect of matters (such as potential offences) that occurred prior to commencement;
- The following legislative changes only apply to new resource consent applications lodged after commencement:
 - remove preclusions on public notification for subdivision and residential activity resource consent applications;
 - enable applicants to have processing of non-notified resource consent applications suspended;
 - remove preclusions on appeals for subdivision and residential activity resource consents;
- Any plan changes or regional policy statements which implement the NPS-FM or relates to freshwater that were notified prior to the enactment of this Bill must use the Schedule 1 process as it currently stands. This includes any variations to these planning documents notified before the enactment of the Bill;
- Any pending notices of requirement lodged prior to commencement that are yet to be determined (ie, not proceeded to the stage at which no further appeal is possible) will be dealt with as if the RMA has not been amended;

- The Principal Environment Judge who holds office on the day before enactment will be able to carry on in their role under their new title Chief Environment Court Judge immediately following enactment.

Proactively released

Proactively released

Appendix 4 – Departmental Disclosure Statement

Proactively released