



Final Cabinet paper and Regulatory Impact Statement for a proposed bill to amend the Resource Management Act 1991

Date Submitted:	5 September 2018	Tracking #: 2018-B-04868	
Security Level	In-Confidence	MfE Priority:	Urgent

	Action sought:	Response by:
To Hon David Parker, Minister for the Environment	Decision	6 September

Actions for Minister's Office Staff	Return the signed report to MfE.
Number of Attachments 2	Titles of attachments: 1. Final Cabinet paper 2. Regulatory Impact Statement
Note any feedback on the quality of the report	

Ministry for the Environment contacts

Position	Name	Cell phone	1 st contact
Principal Author	Harriet Cruden		
Responsible Manager	Robert McClean		
Director	Jo Gascoigne	027 531 7202	✓

Final Cabinet paper and Regulatory Impact Statement for a proposed bill to amend the Resource Management Act 1991

Purpose

1. The purpose of this briefing is to:
 - a. Seek your agreement to lodge the attached Cabinet paper (Appendix 1) and Regulatory Impact Statement (RIS) (Appendix 2) with the Cabinet Office by Thursday 6 September 2018.
 - b. Inform you that we will investigate, in consultation with the Ministry of Justice about the issue of lack of a protection from legal proceedings for special advisers to the Environment Court, and provide advice when this is complete.
 - c. Inform you that we will investigate, in consultation with the Ministry of Business, Innovation and Employment (MBIE) around potential opportunities that a narrow regulation-making power may assist with the Urban Growth Agenda, as part of ongoing policy development within the Urban Planning Pillar, and report back in early 2019.
 - d. Seek your agreement to prepare for you a Request for Priority in the 2018 Legislation Programme, for the new legislation to have a category 5 priority (to be referred to a select committee in 2018).

Key messages

2. We recommend you lodge the Cabinet paper and RIS by 6 September, so that a bill to amend the Resource Management Act 1991 (RMA) may be introduced to the House before the end of 2018.
3. We have provided a copy of the RIS for your information. The RIS has partially met the quality assessment criteria.
4. On 24 August 2018 you received a request from the Principal Environment Judge to amend the RMA to provide protection from legal proceedings for special advisers to the Environment Court. We are investigating this matter, in consultation with the Ministry of Justice, and will provide you with advice once this is complete. If an amendment is recommended as a result of that work, this can be drafted and included in the Cabinet Legislation Committee (LEG) paper prior to the introduction of the bill.
5. s 9(2)(h)
6. We will investigate, in consultation with MBIE a potential new or revised regulation-making power, which may be useful to support implementation of the Urban Planning Pillar of the Urban Growth Agenda. We will provide you with further advice on this matter in early 2019 for potential inclusion in the Bill during latter stages of the legislative process.
7. We have updated the Cabinet paper to include a request for the bill to have a category 5 priority on the 2018 Legislation Programme, in accordance with your intention to introduce

the bill before the end of 2018 (see paragraph 96 and recommendation 46 of the Cabinet paper).

Recommendations

8. We recommend that you:

- a. **Agree** to submit the final version of the Cabinet paper (Appendix 1) and RIS (Appendix 2) for Cabinet Consideration by Thursday 6 September.

Yes/No

- b. **Note** that if the Cabinet paper is not lodged in the week of 6 September, it is unlikely that the bill will be ready to be introduced to the House in 2018.

- c. **Note** that we will advise you on the matter of a potential lack of protection from legal proceedings for special advisers to the Environment Court, following investigation of this issue.

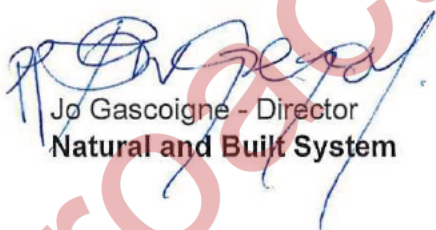
- d. s 9(2)(h)

- e. **Note** that the Cabinet paper includes a recommendation noting that we will report back to you in early 2019 about whether a narrower regulation-making power may be appropriate to support work within the Urban Planning Pillar of the Urban Growth Agenda.

- f. **Agree** that the Cabinet paper seeks approval for the new legislation to have a category 5 priority on the 2018 Legislation Programme (to be referred to a select committee in 2018).

Yes/No

Signature


Jo Gascoigne - Director
Natural and Built System

Date 5.9.18

Hon David Parker
Minister for the Environment

Date

Final Cabinet paper and Regulatory Impact Statement for a proposed bill to amend the Resource Management Act 1991

Supporting material

Context

1. A draft Cabinet paper was delivered to your office on 4 July 2018. Following feedback from your office, we have now updated the Cabinet paper (Appendix 1). A copy of the RIS is attached for your information (Appendix 2).
2. Following your approval, the Cabinet paper is ready to be lodged on 6 September, in order to be considered by the Cabinet Environment, Energy and Climate Committee on 11 September 2018.
3. During consultation on the Cabinet paper, a few issues about the proposed bill have been raised. We provide you with advice on these matters in the paragraphs below. The relevant paragraphs in the Cabinet paper have been updated to reflect our advice.

Updated Cabinet paper

We are investigating a potential lack of protection from legal proceedings for special advisers to the Environment Court


4. On Friday 24 August 2018, you received a letter from the Principal Environment Judge, seeking an amendment to the RMA so that special advisers to the Environment Court (appointed under section 259 of the RMA) have the same protection from legal proceedings that Environment Court members have under section 261 of the RMA.
5. We are actively working on this issue in consultation with the Ministry of Justice. We need to establish what role specialist advisers have in the Environment Court, whether there are other forms of protection from liability other than legislative protection, and how special advisers are treated in other jurisdictions.
6. We will provide you with advice as soon as possible once this work is complete.
7. If an amendment is necessary as a response to that work, there is the potential for an amendment to be drafted and agreement sought in the LEG paper prior to the introduction of the bill.
8. We have updated the Cabinet paper to reflect this¹.
9. While it is unlikely that this will solve the current issue arising in relation to 9(2)(a) (as outlined in Judge Newhook's letter to you) in a timely manner, we cannot recommend an amendment at this point, without undertaking analysis of the issue, possible solutions and any potential unintended consequences. That policy work will also identify whether any possible solution should have retrospective impact.

¹ New paragraphs 87-90, and recommendations 41-43.

We will work with MBIE to investigate whether a regulation-making power that is narrower than section 360D may be appropriate to assist with the Urban Planning Pillar of the Urban Growth Agenda.

10. Following your meeting with MBIE and Treasury officials on Tuesday 14 August, we worked with these agencies to resolve concerns they raised on a previous version of the draft Cabinet paper.
11. As a result of these discussions, we agreed to investigate the potential for a new or revised regulation-making power, which would be narrower than the current section 360D, and may be useful to support implementation of the Urban Planning Pillar of the Urban Growth Agenda. This is reflected in the Cabinet paper (at paragraph 26 and recommendation 8), which still recommends that section 360D be repealed.
12. We will report back to you in early 2019, on whether to include a revised regulation making power in the Bill during a latter stage of the legislative process.

s 9(2)(h)



Consultation and Collaboration

16. We are currently consulting with the Ministry of Justice around the risk of legal proceedings against special advisers to the Environment Court.
17. We will be working with MBIE around the potential for a narrow regulation-making power to assist with implementation of the Urban Planning Pillar of the Urban Growth Agenda.
18. We have consulted with the Legislation Coordinator at the Cabinet Office who has advised you may request the bill be added to the 2018 legislative programme through this Cabinet paper (detailed further in paragraphs 22 and 23 below).

Risks and mitigations

19. If the Cabinet Paper is not lodged during the week of 6 September due to additional policy work, then the Bill will not be able to be introduced to the House before the end of 2018. To mitigate this risk, we recommend instructing officials to develop advice on the two outstanding policy issues (as noted above) with a view to including further amendments in the Bill during latter stages of the legislative process if required.

Legal issues

20. No legal issues have been identified in respect of this paper.

Financial, regulatory and legislative implications

21. There are no known financial, regulatory and legislative implications in respect of this paper beyond the proposal to draft and introduce the bill.

22. The Cabinet paper seeks approval for the bill to be added to the 2018 Legislation Programme, with a priority of category 5. The Cabinet paper notes your intention for the bill to be introduced in December 2018 (paragraph 9).

23. We have updated the Cabinet paper (paragraph 96 and recommendation 46) to request Cabinet give the bill a category 5 priority (to be referred to a select committee in 2018), in accordance with your intentions for introduction before the end of the year.

Next Steps

24. We recommend you lodge the Cabinet paper and RIS with the Cabinet Office by Thursday 6 September 2018, to enable the bill to be drafted, and for Cabinet Legislation Committee approval to introduce the bill to the House before the end of 2018. This would follow the process set out in Table 1.

25. We will provide 35 hard copies of the appendices and submit them to the Cabinet Office.

Table 1. Process to introduce the proposed bill

Milestone	Date
Cabinet paper lodged for consideration by ENV Committee	6 September
ENV Cabinet Committee	11 September
Cabinet	17 September
PCO Drafting (10 weeks subject to PCO availability)	18 September to 27 November
Lodgement for LEG paper	29 November
LEG Committee	6 December
Cabinet	10 December
Introduction	10-13 December (last sitting of the year)

Appendix 1: Final Cabinet paper “Proposed Resource Management Amendment Bill: Stage 1 of a resource management system review”

The final version of this paper is available at <https://www.mfe.govt.nz/rma/improving-our-resource-management-system>

Proactively released

Appendix 2: Regulatory Impact Statement

The final version of this paper is available at <https://www.mfe.govt.nz/rma/improving-our-resource-management-system>

Proactively released