



## Next steps for the resource management amendment bill

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	<b>Action sought:</b>	<b>Response by:</b>
To: Hon David Parker, Minister for the Environment	Decision	15 October 2018

Actions for Minister's Office Staff	<b>Return</b> the signed report to MfE
Number of Attachments	Nil
Note any feedback on the quality of the report	

### Ministry for the Environment contacts

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## Next steps for the resource management amendment bill

### Purpose

1. The purpose of this briefing is to outline the next steps for the resource management amendment bill. This includes our advice on feasible timeframes for introduction and suggestions for stakeholder engagement and communications on the bill.

### Key Messages

2. On 8 October, Cabinet approved the policy for the resource management amendment bill [CAB-18-MIN-0485.01 refers]. Cabinet has authorised you to instruct the Parliamentary Counsel Office (PCO) to draft the proposed bill.

### Upcoming advice

*More advice is required prior to introduction of the bill*

3. Four matters still require policy work. These relate to:
  - a. the regulation of high-risk land use activities to achieve improved water quality outcomes (additional policy approval at a relevant Cabinet committee would be required, if progressed) [CAB-18-MIN-0485.01, decision 27 refers]
  - b. enabling the Environmental Protection Authority (EPA) to take enforcement actions under the Resource Management Act 1991 (RMA) (delegated to the Minister for the Environment, Associate Minister for the Environment with responsibility for the EPA, Minister of Finance and Minister of Justice to consider and agree) [CAB-18-MIN-0485.01, decision 35 refers]
  - c. determining how declarations on notification decisions will work in relation to judicial review (delegated to the Minister for the Environment and Minister of Justice to consider and agree) [CAB-18-MIN-0485.01, decision 48 refers]
  - d. protecting special advisors to the Environment Court from legal proceedings under the RMA (delegated to the Minister for the Environment and Minister of Justice to consider and agree) [CAB-18-MIN-0485.01, decision 54 refers].
4. The Water Taskforce is undertaking policy work on the regulation of high-risk land use activities to achieve improved water quality outcomes (matter 'a' above). We will provide you with advice on this policy in late October. If you wish to progress this matter, agreement will be needed by a relevant Cabinet committee to facilitate drafting, prior to introduction of the bill.
5. Cabinet has authorised the relevant Ministers to consider and agree policy details on matters 'b-d' above, following advice from officials. As agreement is required by relevant Ministers, we will work with other agencies and their Minister's offices to arrange consultation on the policies.
6. We will provide you with briefing notes to seek policy agreement from yourself and relevant Ministers on matters 'b-d' (enabling the EPA to take enforcement actions under the RMA, and the two Environment Court matters) in mid-November.
7. You have been authorised to develop commencement, transitional, and any savings provisions, which will be subject to approval by Cabinet when it considers the bill for introduction [CAB-18-MIN-0485.01, decision 63 and 64 refers]. We will work with the PCO and provide you with advice on these matters prior to the bill going to the Cabinet Legislation

Committee (LEG) for introduction.

*Advice on Stage 2 of changes to the resource management system*

8. Cabinet invited you to report back to Cabinet Environment, Energy and Climate Committee (ENV) on the scope and process of the comprehensive review of the resource management system by April 2019 [CAB-18-MIN-0485.01, decision 6 refers].
9. We will provide you with initial advice on Stage 2 comprehensive review by mid-November.

**We have revised the timeframe for introduction of the bill**

10. We previously advised you that this bill could be introduced by the end of 2018. This was based on getting Cabinet approval for policy in mid-September, and allowing 10 weeks for drafting the bill before LEG in early December. The advice was based on a bill that had a narrower scope, without the additional matters referred to above.
11. Given that Cabinet only approved the policy on 8 October and the proposed resource management amendment bill has now increased in scope, this timeframe is no longer feasible. For these reasons, the bill will not be ready for introduction this year.
12. At this stage, we anticipate that the bill could go to LEG and be introduced in early 2019. This is consistent with your recent announcements of legislative amendments in relation to Essential Freshwater, which include some of the proposals in this resource management amendment bill.<sup>1</sup> We are discussing revised estimates for drafting with the PCO and will keep you informed of these discussions.

**Releasing the Cabinet paper and Regulatory Impact Statement**

13. We recommend that you release the Cabinet paper and the current Regulatory Impact Statement (RIS) by early November 2018. Following the Essential Freshwater announcements, there is likely to be increased interest in the details of the proposals in the resource management amendment bill. Proactively releasing the Cabinet paper and RIS will increase transparency around the proposals.
14. Alternatively, you could release the RIS and Cabinet paper after final policy decisions on outstanding matters have been made in early 2019.

**There are different options for stakeholder engagement for the new policies**

15. In our previous advice to you on 2 May 2018, you agreed to officials undertaking limited consultation with selected councils to finalise policy proposals [2018-B-04498 refers]. This consultation was done mid-2018, before the new matters were added. We propose to update those council planning practitioners on the new matters and obtain any feedback from them to assist in our policy development.
16. We have not consulted our wider stakeholders on the specifics of the proposed resource management bill. Due to the release of the Essential Freshwater programme, which outlines intentions for RMA changes, we are likely to get public enquiries on the bill. As a result of time and resource constraints, we do not propose to undertake broader consultation, at this stage. The public will have an opportunity to participate and contribute to the refinement of these matters through the select committee process. As noted above, release of the Cabinet paper and RIS will facilitate transparency around the policy proposals.

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<sup>1</sup> The Essential Freshwater document (released 8 October 2018) notes that the resource management amendment bill is due to be introduced to Parliament late 2018 or early 2019.

17. Our proposed approach for further consultation on the new matters is outlined below. We seek your agreement to our proposed approach.

*Environment Court matters*

18. We will work with the relevant agencies in relation to these matters. To ensure workability of the policy, we would also like to consult with the Environment Court and the High Court during the policy development phase.
19. We would also like to consult with a practising lawyer who is a member of the Resource Management Law Association and has first-hand experience with both the process of Environment Court declarations and judicial review of resource consent notification decisions.

*EPA enforcement action under the RMA*

20. As well as working with the relevant agencies, we will work with the EPA to ensure workability of the policy.
21. We would like to consult with the Compliance and Enforcement Special Interest Group (CSIG), which is made up of compliance, monitoring and enforcement officers from councils around the country.

*Enabling the regulation of high-risk land use activities*

22. For the briefing in late October we propose to consult with regional and unitary councils. Following the briefing in late October, if directed to progress with the policy, we propose to undertake more detailed targeted consultation with selected regional and unitary councils during our policy development in November and December this year. We will also consult with Kahui Wai Māori and the Farming Leaders Group, which have been established as part of the Essential Freshwater programme of work. This would be part of wider consultation undertaken by the Water Taskforce.
23. We also propose to consult more widely with primary sector organisations such as Federated Farmers, Beef + Lamb New Zealand, and Dairy New Zealand to inform our policy on the regulation of high-risk land use. This would enable us to begin conversations with some key stakeholders early in the process. While consulting with this wider group will require time and effort, targeted consultation can be completed by the end of the calendar year, and would help ensure any proposal for the regulation of high-risk land use activities is fit-for-purpose.

**Summary table of next steps subject to your agreement**

Milestone	Date
Briefing on the regulation of high-risk land use activities	Late October
Possible release of Cabinet paper and RIS	Early November
Briefings on: <ol style="list-style-type: none"> <li>1. enabling the EPA to take enforcement actions under the RMA</li> <li>2. Environment Court matters</li> </ol>	Mid-November
Initial advice on Stage 2 comprehensive review of the resource management system	Mid-November
LEG and introduction to the House for the resource management amendment bill	Early 2019
ENV Cabinet report back on Stage 2 comprehensive review	By April 2019

## Recommendations

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24. We recommend that you:

- a. **Note** that officials are working on additional policy matters for the resource management amendment bill, as directed by Cabinet
- b. **Note** that the bill will not be ready for consideration by the Cabinet Legislation Committee (LEG) until early 2019
- c. **Note** that officials will provide you with advice on commencement, transitional, and any savings provisions for the bill, prior to going to LEG for introduction
- d. **Agree** to release the Cabinet paper and Regulatory Impact Statement (which were considered by Cabinet on 8 October 2018) in early November

Yes/No

- e. **Note** that officials will update the previously consulted council practitioners on the new matters
- f. **Agree** to officials consulting the Environment Court and the High Court on the Environment Court matters

Yes/No

- g. **Agree** to officials consulting with a practising lawyer on challenging notification decisions on resource consents

Yes/No

- h. **Note** that officials will work with the Environmental Protection Authority on undertaking enforcement functions under the Resource Management Act 1991

- i. **Agree** to officials consulting with the Compliance and Enforcement Special Interest Group on the policy to give the Environmental Protection Authority enforcement functions under the Resource Management Act 1991

Yes/No

- j. **Note** that officials will consult with regional and unitary councils, Kahui Wai Māori, and the Farming Leaders Group to inform policy work on the regulation of high-risk land use activities

- k. **Agree** to officials consulting with primary sector organisations such as Federated Farmers, Beef + Lamb New Zealand, and Dairy New Zealand to inform policy on the regulation of high-risk land use activities

Yes/No

**Signature**

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Robert McClean  
Manager  
RMA Practice

Hon David Parker  
**Minister for the Environment**

**Date**

Proactively released