

## Overview of updates to Cabinet paper: Proposed Resource Management Amendment Bill: Stage 1 of a resource management system review

The following provides an overview of changes made to the Cabinet paper since the version sent to the Minister's Office on Wednesday 5 September.

### **Enabling the Environmental Protection Authority (EPA) to take enforcement action**

On 6 September, in a meeting with officials, the Minister for the Environment directed that the matter relating to the Environmental Protection Authority taking enforcement action be included in the Cabinet paper. Policy detail on this matter still needs to be worked through.

We have made a number of amendments in response to the Minister for the Environment's direction that we include this matter in the Cabinet paper.

- Addition to paragraph 6 (Executive Summary)
- Amendment to paragraph 13, replacing 'Compliance Oversight Unit' with 'Enforcement Oversight Unit' to reflect the name used when this was considered by Cabinet in May 2018
- A proposed approach to this matter, set out in new paragraphs 63-67 and recommendations 27-32 (described below)
- Reference to this matter in the 'Financial implications' section of the paper, particularly Cabinet's agreement to allocate \$3.1 million to the Enforcement Oversight Unit in Budget 2018

The proposed approach to this matter we have reflected in the Cabinet paper is to:

- seek delegated authority from Cabinet for a group of Ministers to agree detailed policy (considering advice from officials), and subsequently issue drafting instructions to Parliamentary Counsel Office on this matter if agreed
- seek agreement that this group of Ministers consist of:
  - o Minister for the Environment
  - o Associate Minister for the Environment (with EPA responsibility), and
  - o Minister of Justice
- note that an additional Regulatory Impact Statement will be provided at the Cabinet Legislation Committee (LEG) stage on this issue, if an amendment is proposed to be progressed (paragraph 107)

Other Ministers may also be interested in this matter, and may be consulted during the policy development process. We have not include this detail in the Cabinet paper.

## **Special advisors to the Environment Court**

The Minister for the Environment has directed this matter be included in the Cabinet paper. Policy detail on this matter also needs to be worked through.

We have updated the Cabinet paper (paragraphs 76-78, and recommendations 47-50) to seek delegation from Cabinet for the Minister for the Environment and Minister of Justice to jointly agree, upon advice from officials, whether to amend the RMA in relation to this issue, and subsequently issue drafting instructions to Parliamentary Counsel Office.

The paper notes that an additional Regulatory Impact Statement will be provided at the Cabinet Legislation Committee (LEG) stage on this issue, if an amendment is proposed to be progressed (paragraph 107).

We have also moved the text for this matter out of the consultation section, and into the main body of the Cabinet paper (paragraphs 76-78), and removed references to this being a suggestion from the Environment Court.

## **New Zealand Defence Force comment**

On 11 September, a representative of the New Zealand Defence Force asked that the consultation section of the paper be updated to note their endorsement of the existing Ministry of Education comment regarding the proposal to repeal the limitation on scope of appeals to matters raised in original submissions.

We have updated paragraphs 95 and 96 to reflect this.

## **High Court judicial review process in relation to Environment Court declarations**

The Minister suggested one change in what is now paragraph 70, regarding the process of High Court judicial review in relation to the proposed Environment Court declaration process for resource consent notification decisions.

If a person has a right to refer any matter to the Environment Court for inquiry or as an appeal, section 296 of the RMA precludes judicial review to the High Court, unless that right to take the matter to the Environment Court has been exercised by the applicant and the Environment Court has made a decision. It is unclear whether declarations fall within the scope of section 296 of the RMA.

The proposal in the Cabinet paper clarifies that the proposed Environment Court declarations process for notification decisions on resource consent applications, would be treated the same as matters for inquiry or appeals to the Environment Court under section 296 of the RMA - i.e. that judicial review to the High Court would only be available once the Environment Court process has been expended. This is reflected in paragraph 236 of the Regulatory Impact Statement.

The Minister suggested alternative text that:

*“The jurisdiction of the High Court for judicial review will not be excluded, although consideration will be given to whether the Environment Court declaration process must be exhausted before High Court judicial review proceedings can be initiated.”*

Instead we seek the Minister's direction to propose the process outlined above to Cabinet (as included in the previous version of the Cabinet paper, and carried over into this version at paragraph 70 and recommendation 40), for consistency with other RMA procedures.

*"I propose to retain the avenue to challenge a notification decision by way of judicial review to the High Court. However, I propose that the Environment Court declaration process must be exhausted before High Court judicial review proceedings can be initiated."*

Other changes that were suggested by the Minister for the Environment have largely been incorporated into the Cabinet paper (other than some minor typographical changes for consistency and readability).

Proactively released