

In Confidence

Office of the Minister for the Environment

Chair, Cabinet Legislation Committee

Resource Management Amendment Bill – Supplementary Order Paper

Proposal

1. I propose that Cabinet authorise the submission to the House of Representatives the proposed amendments outlined in the attached supplementary order papers (SOP).

Policy

2. The Resource Management Amendment Bill 2019 (the Bill) proposes a number of amendments to the Resource Management Act 1991 (RMA), as the first of a two-stage approach to reform of the resource management system.
3. The Bill was introduced on 23 September 2019 and referred to the Environment Select Committee, which presented its report on 30 March 2020.
4. The Bill includes amendments aimed at reducing complexity, improving certainty, and reinstating public participation opportunities in existing RMA processes. The Bill also includes amendments that form an integral part of the Government's *Essential Freshwater programme*, and amendments to link RMA decision-making with plans to be issued under the Climate Change Response Act 2002 (CCRA)¹.
5. The amendments that I propose to include are set out below (excluding minor drafting correction/clarifications).
6. Two result from the recently agreed outcome of *Essential Freshwater, Action for healthy waterways package*:
 - a. extending the notification deadline for freshwater planning instruments to 31 December 2024
 - b. requiring fertiliser company reporting.

Two are in response to COVID-19:

- c. to enable commencement of climate change amendments to be extended by Order in Council
- d. making RMA changes enacted by the COVID-19 (Further Management Measures) Legislation Act 2020 (CRLA), enabling hearings to be held by

¹ As amended by the Climate Change Response (Zero Carbon) Amendment Act 2019

audio visual link and documents to be made available electronically, permanent.

7. Matters a, c, d, and the minor drafting correction/clarifications are provided as tracked changes to the Bill, attached as SOP 1 in Appendix 1. Matter b, relating to requiring fertiliser company reporting has been added to the already approved SOP 2 [CAB-20-MIN-0231 refers] regarding farm environment plans, attached as Appendix 2.

Extending the notification deadline for freshwater planning instruments

8. The Bill establishes a new freshwater planning process. This includes a requirement that regional councils notify freshwater planning instruments for public consultation by 31 December 2023. However councils, iwi and others have consistently emphasised the challenges they would face to notify freshwater plans within this timeframe. This poses risks in terms of the quality of notified plans and ultimately to achieving the Government's goals as set out in the Action for healthy waterways package.
9. On 18 May 2020, Cabinet agreed to extend the deadline for notification of these instruments from 31 December 2023 to 31 December 2024 [CAB-20-MIN-0231 refers]. This will provide councils and communities, including iwi, an additional 12 months to meet the plan notification timeframe.
10. Amendments to give effect to this are proposed at clause 13 of SOP 1.

Requiring fertiliser company reporting

11. On 18 May, as part of the *Action for healthy waterways* package of reforms, Cabinet directed officials to collect and report information on annual usage of synthetic nitrogen fertiliser applied across New Zealand annually [CAB-20-MIN-0231 refers].
12. The Minister of Agriculture and I want to make sure the package is implemented in a way that delivers real results, including to reduce excessive nitrogen use. We therefore proposed that the Government commits to monitoring and annual reporting on the use of nitrogen fertiliser across New Zealand, beyond the requirements under the CCRA and voluntary measures undertaken by the Fertiliser Association [CAB-20-MIN-0231 refers].
13. Cabinet authorised the Minister for the Environment and Minister of Agriculture to make final policy decisions and drafting changes as needed, provided changes are consistent with the broad objectives of the proposals as set out in the recommendations in that paper [CAB-20-MIN-0231 refers].
14. Consistent with this authorisation, we have instructed a new Part 9B of clause 35B in SOP 2 to be drafted. This clause provides the Minister for the Environment with a new power to make regulations requiring fertiliser companies to report on the sales of nitrogenous fertiliser. Sales data is considered a good proxy for fertiliser use on a regional basis, without imposing reporting requirements on all land owners.

15. This new regulation making power is needed to enable officials to collect and report information. Existing powers under the RMA do not currently allow for this type of information to be collected by central government. Reporting under the CCRA required for climate change purposes is not regional, and a regional breakdown of fertiliser use is needed to monitor trends. The Minister for Climate Change and I will ensure future reporting aligns.

Enabling commencement of climate change amendments to be extended by Order in Council

16. The Bill contains proposed amendments for local government decision-makers to consider climate change under the RMA. As currently drafted, these changes will commence on 31 December 2021 to align with the deadline for the first emissions reduction plan under the CCRA, and allow time for national direction to be prepared to support implementation.
17. On 2 June 2020 Cabinet agreed to retain the current commencement date in the Bill, but allow this to be extended by Order in Council. The ability to extend provides flexibility if more time is needed to develop national direction as a result of resources being diverted during the response to COVID-19. These amendments include a backstop deadline of 30 November 2022, which is when the first national adaptation plan must be gazetted under the CCRA [CAB-20-MIN-0246 refers].
18. Amendments to give effect to this are proposed at clauses 2(3) and (4) of SOP 1.

Making RMA changes enacted by the COVID-19 (Further Management Measures) Legislation Act 2020 (CRLA) permanent

19. The CRLA made two temporary amendments, which clarify the use of remote access facilities (including audio-visual links) in RMA hearings and allow certain documents to be made available for inspection electronically. The CRLA amendments are due to expire on 31 October 2021, as the CRLA was not an appropriate vehicle to make permanent legislative changes. On 2 June 2020 Cabinet agreed that these amendments be made permanent via an SOP to the Bill [CAB-20-MIN-0246 refers].
20. Amendments to give effect to this are proposed at clauses 4A and 8A of SOP 1.
21. SOP 1 also contains some minor drafting amendments to clarify existing proposals in the Bill, consistent with previously agreed policy decisions.

Legally Privileged

22. 9(2)(h)

Impact analysis

23. The proposed freshwater planning process, including the original 31 December 2023 deadline for notification of freshwater planning instruments, was subject to initial regulatory impact analysis [CAB-19-MIN-0337.01 refers]. Substantive amendments to the freshwater planning process made through the Select Committee process were subject to supplementary analysis [CAB-20-MIN-0051.01 refers].
24. Extending the notification deadline for freshwater planning instruments is designed to ease the burden on councils and not add to regulatory costs. The Ministry for the Environment's Regulatory Impact Analysis Panel considers this amendment does not alter its original quality assurance statement for the proposed freshwater planning process.
25. The proposed climate change amendments in the Bill, including the original commencement timeframe, was subject to initial regulatory impact analysis [CAB-20-MIN-0051.01 refers].
26. No regulatory impact analysis was carried out for the amendment to enable commencement extension by Order in Council. This is consistent with the decision made by Cabinet on 23 March 2020 to suspend the regulatory impact analysis requirements for regulatory proposals responding directly to the COVID-19 pandemic that are submitted to Cabinet before 1 September 2020 [CAB-20-MIN-0138 refers].
27. The proposal to make changes enacted by the CRLA permanent was subject to regulatory impact analysis [CAB-20-MIN-0246 refers].
28. The requirement for fertiliser companies to report their sales data has been the subject of a regulatory impact analysis (see Appendix 3). The regulatory impact analysis panel considers that it partially meets the quality assurance criteria. See Page 1, Appendix 3 for the full statement from the panel.

Compliance

29. These proposals in the SOPs are not intended to affect Treaty settlement arrangements. Extending the notification deadline for freshwater planning instruments, and allowing more time for climate change national direction to be issued if necessary, will provide greater flexibility for councils and the Crown to ensure Treaty settlement arrangements are provided for in implementation of those proposals.
30. With regard to the CRLA amendments, directions to use remote access facilities in hearings can only be issued under section 39AA of the RMA if it is appropriate and fair to do so. Existing provisions for RMA hearing procedures to recognise tikanga Māori if appropriate, and to receive evidence in te reo Māori, continue to apply.
31. These provisions in the SOPs comply with:

- a. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
- b. the disclosure statement requirements (Appendix 4)
- c. the principles and guidelines set out in the Privacy Act 1993
- d. relevant international standards and obligations
- e. the Legislation Guidelines (2018 edition).

Consultation

32. Feedback from submissions on the Bill informed policy development of the freshwater planning process, and the addition of proposed amendments regarding climate change.
33. The freshwater planning process notification timeframe extension is proposed in response to consistent feedback regarding the current timeframe, including from councils and iwi.
34. Any regulations made for the purposes of requiring fertiliser company reporting would need to consider potential privacy concerns associated with that recording and reporting that data. I have forwarded a copy of this Cabinet Paper to the Privacy Commissioner to make him aware of the proposal, and I expect to consult the Privacy Commissioner on any regulations made under this new regulation making power.
35. Two submissions were received by the Epidemic Response Committee on the amendments to the RMA made through the CRLA. Both of these were in support of the changes, with the New Zealand Society of Local Government Managers suggesting they be made permanent.
36. The following departments have been consulted on this paper: the Department of Internal Affairs, the Department of Conservation, the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Housing and Urban Development, the Ministry of Transport, the Treasury, the Ministry of Health, the Ministry of Education, Te Arawhiti, the New Zealand Defence Force, Te Puni Kōkiri, the Department of Corrections, the Ministry of Culture and Heritage, Land Information New Zealand, the State Services Commission, the Ministry of Justice, and the National Emergency Management Agency. The Department of Prime Minister and Cabinet has been kept informed. No feedback was received from departmental consultation.

Binding on the Crown

37. The proposed amendments in these SOPs will be binding on the Crown.

Commencement of legislation

38. These SOPs will commence the day after the date of Royal assent of the Bill.
39. If needed, an Order in Council to delay commencement of the climate change amendments, as enabled by SOP 1, will be considered in late 2021. This will depend on progress towards national direction by that time.

Parliamentary stages

40. The Cabinet Legislation Committee, with Power to Act, previously agreed that the Government propose that the Bill be enacted by mid-2020 [LEG-19-MIN-0146 paragraph 31.2 refers].

Proactive Release

41. I propose to release this paper proactively after these SOPs are tabled in the House of Representatives (which may be beyond the usual 30 business days, depending on House timeframes).

Recommendations

The Minister for the Environment recommends that the Committee:

1. **note** that on 18 May 2020, Cabinet agreed to extend the deadline for notification of freshwater planning instruments from 31 December 2023 to 31 December 2024 [CAB-20-MIN-0231 refers]
2. **note** that on 18 May 2020, Cabinet directed officials to collect and report information on annual usage of synthetic nitrogen fertiliser applied across New Zealand [CAB-20-MIN-0231 refers]
3. **note** that consistent with authorisation delegated by Cabinet [CAB-20-MIN-0231 refers] the Minister of Agriculture and I have agreed that a regulation making power be included in SOP 2 to enable the information referred to in recommendation 2 above to be collected and reported
4. **note** that on 2 June 2020, Cabinet [CAB-20-MIN-0246] agreed to retain the current commencement date for climate change amendments (31 December 2021), but allow this to be extended by Order in Council, with a backstop deadline of 30 November 2022, if national direction is not on track to be in place in time
5. **note** that on 2 June 2020, Cabinet [CAB-20-MIN-0246] agreed that changes enacted by the COVID-19 (Further Management Measures) Legislation Act 2020 relating to the use of remote access facilities in RMA hearings and allowing certain documents to be made available for inspection electronically, be made permanent

6. **note** that the attached Supplementary Order Papers are still subject to Parliamentary Counsel Office quality assurance
7. **approve** the attached Supplementary Order Papers to the Resource Management Amendment Bill for introduction for debate by Parliament at Committee of the Whole House, subject to any other minor changes that are required.

Authorised for lodgement

Hon David Parker
Minister for the Environment

Proactively released