



PROACTIVE RELEASE COVERSHEET

Minister	Bishop	Portfolio	RMA Reform
Title of briefing paper	BRF-4816 Proactive release for Resource Management (Freshwater and Other Matters) Amendment Bill and Extending Port Coastal Permits	Date to be published	19 August 2024

List of documents that have been proactively released

Date	Title	Author
20/06/2024	Briefing note: BRF-4816 Proactive release for Resource Management (Freshwater and Other Matters) Amendment Bill and Extending Port Coastal Permits	Ministry for the Environment
	Appendix 1: Cabinet Paper – <i>First Resource Management Act Amendment Bill: Approval for Introduction</i> (marked up)	Ministry for the Environment
	Appendix 2: CAB-24-MIN-0170 Minute of Decision – First Resource Management Act Amendment Bill: Approval for Introduction	Cabinet Office
	Appendix 3: Cabinet Paper - <i>Resource Management Act 1991 amendment to extend port coastal permits</i> (marked up)	Ministry for the Environment
	Appendix 4: ECO-24-MIN-0050 Minute of Decision - <i>Resource Management Act 1991 amendment to extend port coastal permits</i> (marked up)	Cabinet Office

Information redacted

YES

Any information redacted in this document is redacted in accordance with the Ministry for the Environment's policy on proactive release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Summary of reasons for redaction

Some information has been withheld for the reasons of legal professional privilege.



Briefing: Proactive release for Resource Management (Freshwater and Other Matters) Amendment Bill and Extending Port Coastal Permits

Date submitted: 20 June 2024

Tracking number: BRF-4816

Sub Security level: In-Confidence

MfE priority: Non-urgent

Actions sought from Ministers		
Name and position	Action sought	Response by
To Hon Chris BISHOP Minister Responsible for RMA Reform	Review and approve documents for proactive release	26 June 2024

Actions for Minister's office staff
<p>Forward this briefing to: Hon Shane Jones, Minister for Resources, Regional Development Hon Simeon Brown, Minister of Local Government, Transport Return the signed briefing to the Ministry for the Environment (RM.Reform@mfe.govt.nz and ministerials@mfe.govt.nz).</p>

Appendices and attachments
<ol style="list-style-type: none"> Cabinet Paper – <i>First Resource Management Act Amendment Bill: Approval for Introduction</i> (marked up) CAB-24-MIN-0170 Minute of Decision – <i>First Resource Management Act Amendment Bill: Approval for Introduction</i> Cabinet Paper - <i>Resource Management Act 1991 amendment to extend port coastal permits</i> (marked up) ECO-24-MIN-0050 Minute of Decision - <i>Resource Management Act 1991 amendment to extend port coastal permits</i> (marked up)

Key contacts at Ministry for the Environment			
Position	Name	Cell phone	First contact
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Minister's comments

Briefing: Proactive release for Resource Management (Freshwater and Other Matters) Amendment Bill and Port Coastal Permits

Key messages

1. This briefing seeks your approval to proactively release a second tranche of Cabinet materials relating to the Resource Management (Freshwater and Other Matters) Amendment Bill (the Bill) with redactions.
2. This follows on from your recent approval to release the Cabinet paper *First Resource Management Act Amendment Bill to address a small number of time critical changes* and related documents [BRF-4754 refers].
3. We also seek your approval (in consultation with the Minister of Transport) to proactively release Cabinet materials relating to proposed amendments to the Resource Management Act to extend port coastal permits, which is intended to be included in Resource Management Amendment Bill 2.

Background

4. You presented the Cabinet paper *Resource Management (Freshwater and Other Matters) Amendment Bill: Approval for Introduction* to Cabinet on 20 May 2024.
5. The paper indicated that it would be proactively released within 30 business days, subject to redactions as appropriate under the Official Information Act (OIA).
6. We recommend releasing this paper and the associated Cabinet Minutes. This is consistent with the release of tranche one materials, supports transparency, and responds to public interest in proposed reforms to the resource management system.
7. You and Hon Simeon Brown, Minister for Transport, presented the Cabinet paper *Resource Management Act 1991 amendment to extend port coastal permits* to the ECO Committee on 10 April 2024, with the decision being confirmed by Cabinet on 15 April 2024.
8. The paper indicated that it would be proactively released within 30 business days, subject to redactions as appropriate under the OIA. Ministry of Transport officials have requested that this paper be published on the Ministry for the Environment's website, as it forms part of amendments to the resource management system.

Proactive release of Cabinet Paper and associated minutes

9. We recommend that the following papers are proactively released:
 - i Cabinet Paper – *First Resource Management Act Amendment Bill: Approval for Introduction* (with redactions set out below)

- ii CAB-24-MIN-0170 Minute of Decision – *First Resource Management Act Amendment Bill: Approval for Introduction*
10. We propose withholding some information from the Cabinet paper under section 9(2)(h) of the OIA, to maintain legal professional privilege. Refer appendix 1, paras 22.3 and 25.
11. We note that paras 11 – 13 and rec 4 of the Cabinet paper (appendix 1) and CAB-24-MIN-0170 rec 4 (appendix 2) refer to potential amendments to the Water Services Act 2021. We note that this proposal is being progressed via an amendment paper to the Local Government (Water Service Preliminary Arrangements) Bill, which has now been introduced to the House. As this information is in the public domain, we recommend these sections be released in full.¹
12. We recommend that you consult with Hon Simeon Brown, as Minister of Transport, regarding the proactive release of the following Cabinet materials relating to extending port coastal permits. We propose withholding some information as follows:
- i The Cabinet paper, redactions under section 9(2)(h) of the OIA to maintain legal professional. Refer appendix 3, paras 26 – 35, rec 11.
 - ii ECO-24-MIN-0050 Minute of Decision - Resource Management Act 1991 amendment to extend port coastal permits, redactions under section 9(2)(h) of the OIA to maintain legal professional privilege. Refer appendix 4, rec 13.

Consultation and collaboration

13. We have consulted with the Ministry for Primary Industries, the Ministry of Business, Innovation and Employment, the Ministry of Transport, the Department of Internal Affairs and the Ministry for Foreign Affairs and Trade on the release of the appended materials.

Recommendations

We recommend that you:

- a. **review and approve** the appended marked up documents for proactive release

Yes | No

- b. **advise** if any additional redactions or changes are required before the papers are published on the Ministry for the Environment website

Yes | No

¹ Parliament's website states that: 'The Finance and Expenditure Committee has been asked to consider Amendment Paper 41 alongside the Bill. The Amendment Paper provides that, when making wastewater environmental performance standards, Taumata Arowai must not have regard to the hierarchy of obligations contained in Te Mana o te Wai.' "[Local Government \(Water Services Preliminary Arrangements\) Bill - New Zealand Parliament \(www.parliament.nz\)](http://www.parliament.nz)

- c. **forward** this briefing note and the attachments to Hon to Shane Jones, Minister for Resources, and Regional Development, and to Hon Simeon Brown, Minister of Local Government, and Transport

Yes | No

- d. **consult** Hon Simeon Brown, as Minister of Transport, regarding the proactive release of the Cabinet materials relating to extending port coastal permits

Yes | No

Signatures



Hayden Johnston
General Manager – Natural Environment Policy
21 June 2024

Hon Chris BISHOP
Minister Responsible for RMA Reform
Date

Appendix 1: Cabinet Paper – Resource Management (Freshwater and Other Matters) Amendment Bill: Approval for Introduction

Policy and Privacy

In-Confidence

Office of the Minister Responsible for RMA Reform

Chair, Cabinet

Resource Management (Freshwater and Other Matters) Amendment Bill: Approval for Introduction

Proposal

- 1 This paper seeks Cabinet approval for the introduction of the Resource Management (Freshwater and Other Matters) Amendment Bill.

Policy

- 2 On 15 April 2024, Cabinet agreed to include the following policy changes in the first RMA Amendment Bill [CAB-24-MIN-0121.01 refers]:
 - 2.1 excluding the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (NPS-FM) from resource consent application and decision-making processes
 - 2.2 amending the special provisions for coal mining in¹ wetlands and Significant Natural Areas (SNAs) as set out in the NPS-FM, National Policy Statement for Indigenous Biodiversity (NPSIB), and National Environmental Standards for Freshwater (NES-F)
 - 2.3 amending the NPSIB to suspend, for three years, the requirement for councils to identify new SNAs
 - 2.4 amending stock exclusion regulations in relation to sloped land
 - 2.5 repealing the intensive winter grazing regulations.
- 3 Cabinet also agreed to include amendments to speed up the process to develop or amend national direction (the details of which are set out below).
- 4 The proposals in this Bill deliver on, or support, coalition agreement commitments. It is focused on a small number of time-critical changes to the Resource Management Act 1991 (RMA), and associated national direction, that can take effect quickly and give certainty to councils and consent applicants. The Bill will reduce regulatory burden and support development in key sectors.
- 5 The Bill is attached at Appendix One.

¹ The special provisions apply to activities in 'or around' wetlands.

Extending the implementation timeframes in the NPSIB that councils must assess and notify SNAs in their policy statements and plans by

- 6 During engagement on the proposal to suspend the requirement for councils to identify new SNAs under the NPSIB, some councils were concerned about how it would impact on, and align with, the wider implementation timeframes specified in the NPSIB. Currently, the NPSIB requires councils to identify and notify SNAs by August 2028. This would provide less than two years for this to be completed when the suspension expires.
- 7 I have consulted with the Associate Minister for the Environment on this matter and have agreed to extend this timeframe to 31 December 2030 in line with my delegation to make further policy and drafting decisions [CAB-24-MIN-0121.01 refers]. This extension will support councils in determining their priorities on this matter and align with Long Term Plan timelines.

Amendments to speed up the process to develop or amend national direction

- 8 On 15 April 2024 Cabinet “agreed to also include in the Bill amendments to speed up the process to develop or amend national direction” and authorised the Minister Responsible for RMA Reform to make further policy and drafting decisions in relation to these amendments [CAB-24-MIN-0121.01 refers].
- 9 After further consideration, I propose to:
 - 9.1 remove the no longer used Board of Inquiry (BOI) process to provide one clear default process for making and amending national direction
 - 9.2 make it easier to make simple updates to existing national direction
 - 9.3 remove unnecessary prescription from the process to make or amend national direction
 - 9.4 make evaluation report requirements more flexible and less onerous.
- 10 Combined, these amendments will simplify and streamline the national direction process. This will help ensure the speedy delivery of the national direction component of Phase 2 of the Government’s resource management reforms.

Amendments to the Water Services Act 2021 to ensure consistency of approach to the exclusion of the hierarchy of obligations within the NPS-FM from resource consenting

- 11 On 15 April 2024, Cabinet authorised the Minister Responsible for RMA Reform and Minister of Local Government to determine if amendments to the Water Services Act 2021 (WSA) are required to ensure consistency of approach with the proposal to exclude the hierarchy of obligations within the NPS-FM from resource consenting. Specifically, whether the hierarchy of obligations should not apply to the setting of wastewater standards under the WSA.
- 12 After consulting with the Minister of Local Government, I do not consider consequential amendments are required to the WSA for consistency reasons. However, we do consider that amendments are required to the WSA.

- 13 The Minister of Local Government will be seeking approval to make the amendments via an amendment paper to the Local Government (Water Services Preliminary Arrangements) Bill.

Impact analysis

- 14 For the following policies, Regulatory Impact Statements (RIS) were prepared in accordance with Cabinet's impact analysis requirements, and were submitted when Cabinet Committee approval of the policy was sought:
- 14.1 excluding the hierarchy of obligations contained in the NPS-FM from resource consent application and decision-making processes, [ECO-24-MIN-0046]
 - 14.2 amending stock exclusion regulations in relation to sloped land [ECO-24-MIN-0051]
 - 14.3 repealing the intensive winter grazing regulations [ECO-24-MIN-0051]
- 15 Treasury has determined that the proposal to amend the NPSIB to cease implementation of the new SNAs for three years [ECO-24-MIN-0021 refers] is not subject to Cabinet's impact analysis requirements.
- 16 For the following policies, a RIS was required but there was not enough time to prepare and submit one to Cabinet at the policy approval stage. For these policies, Supplementary Analysis Reports are attached to this paper:
- 16.1 amending the consenting pathway for coal mining in or around wetlands and significant natural areas (Appendix Two)
 - 16.2 amendments to speed up the process to develop or amend national direction (Appendix Three)

Supplementary Analysis Report – amending the consenting pathway for coal mining in or around wetlands and significant natural areas

- 17 The Supplementary Analysis Report partially meets the requirements. There are limitations to: the consideration of options, the extent of consultation and the assessment of impacts.

Supplementary Analysis Report – amendments to speed up the process to develop or amend national direction

- 18 A quality assurance (QA) panel with members from the Ministry for the Environment's Regulatory Impact Analysis Team has reviewed the Supplementary Analysis Report, "Streamlining National Direction Processes" produced by the Ministry for the Environment on May 14th, 2024. The QA panel considers that it partially meets the Quality Assurance criteria.
- 19 The QA panel notes that the Streamlining National Direction Processes Supplementary Analysis Report is convincing, well-written and in response to a defined need, with risks and constraints defined and discussed.
- 20 There is, however, a very constrained analysis of options to address the problem, a lack of data and uncertainty with the analysis, particularly with monetised costs and

benefits. There is also a lack of adequate consultation, however, there will be an opportunity for public participation during the Select Committee process.

- 21 It will be important to develop the performance indicators and use these to tangibly review the performance of the proposed changes discussed in the document.

Compliance

- 22 The bill complies with each of the following:

- 22.1 the disclosure statement requirements. A disclosure statement has been prepared and is attached to the paper at Appendix Four

- 22.2 the principles and guidelines set out in the Privacy Act 2020

- 22.3 relevant international standards and obligations [REDACTED]

- 23 Compliance with the principles of the Treaty is addressed below at Treaty of Waitangi considerations.

- 24 The Ministry of Justice is vetting the Bill against the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993 and will produce a compliance report before the Bill is introduced.

- 25 [REDACTED]

Treaty of Waitangi considerations

- 26 The policies in the bill have all been developed separately and with bespoke approaches to engagement with iwi/Māori. Treaty of Waitangi considerations for each policy is provided below.

Excluding the hierarchy of obligations contained in the NPS-FM from resource consent application and decision-making processes

- 27 Key points conveyed by many iwi and Māori from the limited engagement on the proposal (see the Consultation section for the engagement that occurred) include:

- 27.1 concern about or opposition to the changes, predominantly due to concerns about potential impacts on freshwater quality, as well as impacts on customary rights, and Treaty settlement commitments for some iwi

- 27.2 that the engagement process has been inadequate (for reasons including insufficient information, lack of time, and that decisions appeared to have already been taken).

I N C O N F I D E N C E

- 28 A Treaty Impact Analysis is contained in the RIS that was provided to Cabinet at the time that ECO approval of the policy was sought [ECO-24MIN-0046].

Amending the special provisions for coal mining in wetlands and SNAs as set out in National Direction

- 29 Due to the limited time available, it has not been possible to engage with iwi/Māori on these proposals nor fully assess the Treaty impacts, including on the Crown's Treaty settlement commitments.

Amending the NPSIB to suspend, for three years, the requirement for councils to identify new SNAs

- 30 Officials carried out an assessment of the impacts on Māori and on the consistency of the NPSIB with Te Tiriti o Waitangi prior to the NPSIB being made in 2023. The final NPSIB sought to address the concerns about SNA identification raised by tangata whenua through the development of the national direction.

- 31 Officials undertook limited engagement with Iwi Leaders Group and Te Tai Kaha² (TTK) about the proposed changes. No strong views for or against the changes were expressed. Key points conveyed were:

- 31.1 the need to respect Te Tiriti obligations and Māori private property rights
- 31.2 Māori have a significant interest in maintaining indigenous biodiversity on their land and also seek to ensure they have a continued ability to use and develop their land
- 31.3 concern that councils may delay applying the more development oriented NPSIB provisions to existing SNAs on Māori land while the suspension of new SNAs is in force
- 31.4 concern that the consultation was limited in time and scope and did not allow for a full analysis of the implications, nor time for a considered response.

- 32 It has not been possible to fully assess the Treaty impacts, including on the Crown's Treaty settlement commitments.

Amending stock exclusion regulations in relation to sloped land, and repealing the intensive winter grazing regulations

- 33 In seeking your agreement to these proposals, the following has been considered:
- 33.1 previous consultation on related policy, and concerns raised about the lack of engagement
 - 33.2 the nature of some Treaty settlement commitments; and

² Te Tai Kaha is a Māori collective of prominent Māori organisations and has been formed to engage with the government on Māori rights and interests in freshwater and resource management reform.

33.3 concerns raised through previous consultation about the potential impact of the changes on freshwater, and Māori freshwater rights and interests.

34 A Treaty Impact Analysis is contained in the RIS that was provided to Cabinet at the time that ECO approval of the policies was sought [ECO-24-SUB-0051].

Amendments to speed up the process to develop or amend national direction

35 Officials have undertaken an analysis of Treaty settlement and other legislative arrangements to assess the impacts of these proposals including Board of Inquiry provisions. The analysis indicates the proposed changes to national direction to remove the Board of Inquiry process will not have a significant impact on Treaty settlements and other legislative arrangements. The mechanisms that do apply to national direction will continue to apply to the processes conducted by the Minister (even if the Board of Inquiry does not exist), and/or they can be amended to apply.

36 It will be important that Post Settlement Governance Entities (PSGEs) are invited to make a submission on any draft national direction to compensate for the fact that they would no longer be able to submit to a Board of Inquiry (which was part of the context within which the settlements were negotiated). The ability to submit is provided for iwi authorities currently (s46A(4)(a) of the RMA), and ideally should be extended to PSGEs. However, the Crown has not undertaken engagement with affected groups who may consider the proposal to be significant. Officials have identified a small number of settlements and other arrangements that will be directly affected. This will require the Crown to discuss the changes with affected groups and seek agreement to any necessary amendments to their legislation following enactment of the amendment bill.

37 A high-level Treaty Impact Analysis for this proposal with further detail is contained in the SAR at Appendix Three.

Consultation

Excluding the hierarchy of obligations within the NPS-FM from resource consenting

38 I sent two letters in late December 2023 and late January 2024 that outlined the Government's intent to exclude the hierarchy from resource consent applications and decisions to iwi (including Post-Settlement Governance Entities (PSGEs), and unsettled iwi), and local government. The January 2024 letter also included primary sector stakeholders and environmental non-government organisations (ENGOS), and practitioners.

39 Officials undertook targeted engagement with these groups on the Government's intent. Key points conveyed by iwi and Māori are outlined in the Treaty of Waitangi considerations section. Local government was neutral to the proposal but raised specific implementation concerns (which will be addressed in the drafting of the bill). ENGOS and practitioners were generally opposed to the proposal, primary sector stakeholders were supportive of the proposal.

Amending the special provisions for coal mining in wetlands and SNAs as set out in national direction

- 40 The proposals in the bill that would remove the special provisions³ on new coal mining or extending existing thermal coal mines past 31 December 2030 have not specifically been consulted on either before or after Cabinet decisions were made on the policy.

Amending the NPSIB to suspend, for three years, the requirement for councils to identify new SNAs

- 41 In March 2024, officials undertook targeted engagement and met with representatives from the Biodiversity Collaborative Group (BCG), Iwi Leaders Group and TTK, and local government.

- 42 The key feedback from the key groups was:

42.1 Federated Farmers and Forestry Owners association supported the suspension and review of SNAs

42.2 ENGOs did not support the suspension or review and raised legal concerns

42.3 Key points conveyed by iwi and Māori are outlined in the Treaty of Waitangi considerations section above

42.4 Council representatives raised concerns that the suspension will create considerable uncertainty and the suspension significantly shortens the timeframes for councils to implement NPSIB requirements (I have proposed an amendment to this policy to help address these concerns in consultation with the Associate Minister for the Environment).

- 43 Common themes noted across all groups was that there was insufficient time and information to consider the proposal and that the suspension and review have a range of implications for biodiversity and council processes and budgets. In addition, most groups indicated a strong desire to be involved with the review.

- 44 Officials consulted with agencies on the proposed changes to the NPSIB. Some agencies noted that the proposed changes do not alter obligations under the RMA. Most agencies indicated a desire to participate in any review of the NPSIB.

Amending stock exclusion regulations in relation to sloped land and repealing the intensive winter grazing regulations

- 45 Due to the short timeframes associated with the bill, there was no public or stakeholder consultation on the proposed changes to the stock exclusion and intensive winter grazing regulations.

- 46 However, I am advised that the proposal to remove the map of low slope land and associated requirements, and instead relying on local planning and/or farm planning, was consulted on in 2023. At that time, most of the primary sector and some regional

³ Under the status quo resource consent can be sought if it is for the purpose of coal extraction or ancillary activities as part of operating or extending a mine lawfully established before 5 January 2023 for mines in or around wetlands and 4 August 2023 for coal mines in or around SNAs.

councils supported the proposal. However, some Treaty partners, ENGOs, and regional councils expressed a preference for not making changes.

- 47 The most recent consultation on intensive winter grazing was undertaken in 2021. At that time, some submitters supported a slope threshold (in the range 10-20 degrees) while others were concerned with the practicality of the threshold which would require a consent.

Amendments to speed up the process to develop or amend national direction

- 48 There has been insufficient time to consult on these proposals due to the short timeframes associated with the bill.
- 49 However, similar amendments to the evaluation report requirements were previously consulted on during the development of the Natural and Built Environment Act 2023 (NBA). Submitters generally supported the idea of streamlining evaluation reports and making them less burdensome to produce, although some expressed concern that proposals would not be as robustly evaluated as a result.

Consultation with relevant government departments

- 50 The following agencies have been consulted on this paper, the Ministry for Primary Industries, Ministry of Transport, Ministry of Business, Innovation and Employment, Ministry for Foreign Affairs and Trade, Department of Internal Affairs, Department of Conservation, Te Arawhiti, and the Treasury. I have also consulted my colleagues on the contents of this paper.
- 51 The Department of the Prime Minister and Cabinet has been informed.
- 52 The Department of Conservation provided feedback on this paper. Key points include:
- 52.1 that it is unclear why the repeal of the BOI provisions for preparing or amending national direction is urgent or necessary;
 - 52.2 that the BOI process should be retained as its existence does not preclude the use of alternative processes; and
 - 52.3 BOI processes are likely to produce stronger and better accepted outcomes in the case of wide-ranging national directions.

Binding on the Crown

- 53 The proposed bill will bind the Crown.

Other instruments

- 54 The Bill includes no provisions that empower the making of new legislative or disallowable instruments. It includes provisions that amend the current processes to amend or develop national direction instruments but does not change the existing function of these instruments.

Commencement of legislation

- 55 The bill will come into force on the day after the date of Royal assent.

Parliamentary stages

- 56 The Bill is to be introduced by 31 May 2024 and passed by the end of 2024.
- 57 The Bill will be referred to the Primary Production Select Committee for a period of approximately four months. The Bill is being considered by the Primary Production Select Committee as the contents relate predominantly to the primary sector.

Proactive Release

- 58 I propose to release the paper proactively within 30 business days. Proactive release is subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

I recommend that Cabinet:

- 1 **note** that the Resource Management (Freshwater and Other Matters) Amendment Bill, holds a category three priority on the 2024 Legislation Programme (a priority to be passed by the end of 2024)
- 2 **note** the proposals in this Bill deliver on, or support, coalition agreement commitments. It is focused on a small number of time-critical changes that can take effect quickly and give certainty to councils and consent applicants
- 3 **note** that Cabinet agreed that the Bill will [CAB-24-MIN-0121.01 refers]:
 - 3.1 exclude the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (NPS-FM) from resource consent application and decision-making processes
 - 3.2 amend the special provisions for coal mining in wetlands and Significant Natural Areas (SNAs) as set out in the NPS-FM, National Policy Statement for Indigenous Biodiversity (NPSIB), and National Environmental Standards for Freshwater (NES-F)
 - 3.3 amend the NPSIB to suspend, for three years, the requirement for councils to identify new SNAs
 - 3.4 amend stock exclusion regulations in relation to sloped land
 - 3.5 repeal the intensive winter grazing regulations
 - 3.6 make amendments to speed up the process to develop or amend national direction
- 4 **note** the Minister of Local Government will report back on the policy proposal to amend the Water Services Act and seek approval to make the amendments via an amendment paper to the Local Government (Water Services Preliminary Arrangements) Bill.
- 5 **note** that the bill will extend the deadline in the NPSIB for councils to identify and notify SNAs in their policy statements and plans from August 2028 to 31 December 2030

I N C O N F I D E N C E

- 6 **approve** the Resource Management (Freshwater and Other Matters) Amendment Bill for introduction subject to the final approval of the Government caucus and sufficient support in the House of Representatives
- 7 **agree** that the Bill be introduced before 31 May 2024
- 8 **agree** that the Government propose that the Bill be:
 - 8.1 referred to the Primary Production Select Committee
 - 8.2 enacted by 31 December 2024
- 9 **note** that to meet the intended enactment date, the time provided for consideration by the Primary Production Select Committee will need to be less than the standard six months allowed for under Standing Order 303.

Authorised for lodgement

Hon Chris Bishop

Minister Responsible for RMA Reform

S

Appendix 2: CAB-24-MIN-0170 Minute of Decision – Resource Management (Freshwater and Other Matters) Amendment Bill: Approval for Introduction



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Resource Management (Freshwater and Other Matters) Amendment Bill: Approval for Introduction

Portfolio RMA Reform

On 20 May 2024, Cabinet:

- 1 **noted** that the Resource Management (Freshwater and Other Matters) Amendment Bill (the Bill), has a category 3 priority on the 2024 Legislation Programme (to be passed by the end of 2024);
 - 2 **noted** that the proposals in the Bill deliver on, or support, coalition agreement commitments, and are focused on a small number of time-critical changes that can take effect quickly and give certainty to councils and consent applicants;
 - 3 **noted** that on 15 April 2024, Cabinet agreed to include the following changes in the Bill:
 - 3.1 exclude the hierarchy of obligations contained in the National Policy Statement for Freshwater Management 2020 (NPS-FM) from resource consent application and decision-making processes;
 - 3.2 amend the special provisions for coal mining in wetlands and Significant Natural Areas (SNAs) as set out in the NPS-FM, National Policy Statement for Indigenous Biodiversity (NPSIB), and National Environmental Standards for Freshwater (NES-F);
 - 3.3 amend the NPSIB to suspend, for three years, the requirement for councils to identify new SNAs;
 - 3.4 amend stock exclusion regulations in relation to sloped land;
 - 3.5 repeal the intensive winter grazing regulations;
 - 3.6 make amendments to speed up the process to develop or amend national direction;
- [CAB-24-MIN-0121.01]
- 4 **noted** that the Minister of Local Government intends to report back on the policy proposal to amend the Water Services Act 2021 and seek approval to make the amendments via an amendment paper to the Local Government (Water Services Preliminary Arrangements) Bill;

- 5 **noted** that the Bill will extend the deadline in the NPSIB for councils to identify and notify SNAs in their policy statements and plans from August 2028 to 31 December 2030;
- 6 **approved** the Bill [PCO 26093/7.0] for introduction, subject to the final approval of the Government caucuses and sufficient support in the House of Representatives;
- 7 **agreed** that the Bill be introduced before 31 May 2024;
- 8 **agreed** that the Government propose that the Bill be:
- 8.1 referred to the Primary Production Select Committee;
 - 8.2 enacted by 31 December 2024;
- 9 **noted** that to meet the intended enactment date, the time provided for consideration by the Primary Production Select Committee will need to be less than the standard six months allowed for under Standing Order 303.

Diana Hawker
for Secretary of the Cabinet

Appendix 3: Cabinet Paper – Resource Management Act 1991 amendment to extend port coastal permits

In Confidence

Office of the Minister of Transport

Office of the Minister Responsible for RMA Reform

Cabinet Economic Policy Committee

Resource Management Act 1991 amendment to extend port coastal permits

Proposal

1. This paper seeks agreement to extending the duration of coastal permits for port companies through the first Resource Management Act 1991 (RMA) Amendment Bill.

Relation to government priorities

2. The proposals in this paper deliver on or support coalition agreement commitments to facilitate the development and efficiency of ports and strengthen international supply networks (Coalition Agreement National Party/New Zealand First).

Executive Summary

3. The Minister for RMA Reform proposes to introduce a narrowly scoped RMA Amendment Bill by the end of May 2024 (the Bill) that will be enacted in November 2024. The changes proposed in this paper would be incorporated into this Bill.
4. Ports play an important role in the economy. As well as providing connectivity to inland and overseas markets, they generate local employment and support industries such as fishing and tourism. It is critical they have the certainty they need to operate effectively.
5. Section 384A of the RMA was designed to support the transition of New Zealand's 13 ports into the RMA planning framework. It enabled the Minister of Transport to grant port companies with a 35-year permit for a limited, but critical set of port activities in the coastal marine area. These include navigation aids, areas of exclusive occupation and some structures located above the marine coastal area that are not consented elsewhere (such as some wharves). These permits are limited to what was in place in 1991 and expire on 30 September 2026.
6. Although three port companies have transitioned to the RMA planning framework, the remaining ten face considerable regulatory costs if they are to do so before the permits expire. This is because the consenting environment for ports has become increasingly complex and expensive. This includes greater concerns about noise and emissions, increased environment effect mitigation obligations and more legal challenges.
7. Therefore, we are proposing to extend the duration of the s384A coastal permits for port companies. Our preference is to extend them for a period of 35 years to provide the greatest operational certainty. However, an alternative approach is to extend the permits for a shorter period of 20 years so the ports can transition into more permanent resource management arrangements sooner.

8. It is not possible to fully assess the extent this proposal impacts on Treaty of Waitangi settlements and Marine and Coastal Area (Takutai Moana) Act 2011 rights in the timeframe required to make these amendments via the Bill. To address this, we are proposing the port companies must engage with the affected iwi and hapū as an expectation of having their permits extended to understand the issues iwi and hapū have with existing port operations, and to consider what steps can be taken forward to address those issues.

Background

Port coastal permits were only intended to be a temporary arrangement for a limited, but critical set of port activities

9. Ports are pivotal to New Zealand's economy and are an important economic activity in the coastal marine area. They facilitate the movement of people and goods within New Zealand and internationally, generate local jobs and support a broad range of industries including fishing and tourism. It is important they can operate productively and safely and have long term certainty for business continuity and investment. There are also a limited number of places where such operations could be located.
10. Section 384A was inserted into the RMA in 1993 to transition the 13 port companies' activities in the coastal marine area into the new RMA planning framework. It enabled the Minister of Transport to approve 35-year permits giving port companies the right to undertake a limited, but critical set of activities in the coastal marine area. These permits cover navigation aids (such as buoys, lights, and fog signals), exclusive occupation areas (such as providing safe anchor areas), and some structures located within the coastal marine area that are not consented elsewhere (such as certain wharves) that were in place in 1991.
11. Section 384A coastal permits are limited to what was in place in 1991 and expire on 30 September 2026. Most port activities do not rely on s384A coastal permits and are covered under standard resource management consents or a relevant regional plan. This includes landside operations (such as freight transfer), noise and emissions from ships and port operations, and any infrastructure or coastal activities approved under resource management consent processes since 1991.
12. To give a sense of what is covered under the coastal permits, maps for the Port of Tauranga, Port of Auckland, and around the Picton ferry terminal are attached as Appendix One. These maps vary significantly in quality and detail.

However, port companies face significant regulatory challenges and costs transitioning into the RMA planning framework

13. Although three port companies¹ have transitioned their activities under their s384A permits into the RMA planning framework, it is not anticipated to be easy or fast for the remaining ports to do so before their permits expire. It is understood they have started discussions with their relevant regional council or unitary authority about new permits, but no applications have been lodged.
14. The consenting environment has become increasingly complex and significantly more expensive for ports over the last three decades, even with recent court decisions clarifying requirements relating to safe port activities in the New Zealand Coastal Policy Statement (NZCPS). There is greater concern about noise and emissions, increased obligations to mitigate environmental effects, and more legal challenges during the consenting process.

¹ These port companies are CentrePort Ltd in Wellington, Port of Napier and Port Otago Ltd.

15. If the ten remaining port companies' permits expire, they may face enforcement action by their regional council or unitary authority for unconsented activities or structures. Enforcement could range from fines, up to the regional council or unitary authority seeking the removal of unconsented structures and a prohibition on certain activities occurring until such time as a replacement consent is obtained. This would impact on their operations, depending on the scale of enforcement action taken.
16. Critically for port companies, they would also not be able to enforce their exclusive occupation of the coastal marine area. This would have safety implications as they would not be able to exclude other users from certain areas around wharves, ships, and safe anchorages. These areas are not in constant use but need to be kept clear of other water users (such as recreational boats) when a ship is arriving, departing, tied up, or anchored.
17. More broadly, there would be an impact on the New Zealand economy if port operations are interrupted, including potential supply chain disruptions. There would also be wider benefits if port companies can invest in upgrading, maintaining, and ensuring the resilience of their infrastructure rather than spending money on reconsenting. This will enable them to remain productive and competitive.

Extending port coastal permits will be the quickest way to provide port companies with certainty and reduce regulatory challenges and costs

18. We want to act with urgency to ensure port companies do not face unreasonable regulatory costs and have the certainty they need to operate in the coastal marine area in a safe manner. Therefore, we are proposing to extend the coastal permits under s384A through the first RMA Amendment Bill.
19. Under this proposal, only the expiry date of the permit will change for the ten port companies that have not transitioned to the RMA planning system. There will be no changes to the scope of activities covered under each permit. This will mean these port companies will continue to have approval to undertake the activities in the coastal marine area they were lawfully able to do in 1991 for a further period. They will then transition to the new resource management system the Government is developing.
20. The port industry has requested an extension of the permits' expiry dates for some time, including during the previous Government's RMA reforms. It has highlighted the high costs associated with reconsenting and the strong need for continuity of operation for ports due to the high risks associated with port disruption.
21. Our preference is to extend the port coastal permits for a further 35 years. This is efficient to implement, provides port companies with greatest amount of operational certainty, and defers the regulatory costs of transitioning to the RMA planning system. It also postpones the need for port companies to transition to a permanent solution until after our replacement for the RMA is in place and allow port operations to continue unhindered in the interim. The maximum duration a resource consent can be issued for under section 123 of the RMA is 35 years.
22. An alternative approach would be to extend the port coastal permits for a shorter period of 20 years.

23. Although a shorter period would provide less long-term certainty for port companies, it would provide an opportunity for earlier consideration of any environmental impacts arising from the activities covered by their permits. This is because resource management practice has changed since introducing the RMA in 1991 and what was an acceptable impact on the environment then may no longer be considered so. Other matters that could be considered include coastal marine area allocation, coastal occupation charges, and adaptation implications.
24. It will be important to consider how port companies eventually transition to more permanent arrangements when designing the replacement legislation for the RMA. This includes reducing the cost and complexity of replacing these permits and providing as much certainty as possible.
25. We recognise the three port companies that have already transitioned into the RMA planning framework may have needed to change how they operate to do so successfully. However, as they are no longer relying on s384A permits for their coastal marine activities, it is not possible to include them in the current proposal.

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Cost-of-living Implications

- 36. Ports play a key role in determining freight costs and supporting an effective supply chain. Reducing the regulatory challenges and costs they face and enabling them to operate efficiently is important for the costs of goods and services.

Financial Implications

37. Policy proposals in this paper are not expected to have any financial implications.

Legislative Implications

38. We propose Cabinet delegates authority to the Minister of Transport and Minister for Responsible for RMA Reform to make further policy and drafting decisions that are consistent with the decisions made in this paper.

Impact Analysis

Regulatory Impact Statement

39. The Regulatory Impact Statement (RIS) has been reviewed by a panel of representatives from Ministry of Transport and Ministry for the Environment. It has been given a 'does not meet' rating against the quality assurance criteria for the purpose of informing Cabinet decisions.
40. The Panel notes that the RIS sets out well the context, objectives, and options available in the circumstances. However, constraints imposed by the policy development process (i.e. the limited time available to undertake the analysis and the inability to conduct any consultation with iwi/Māori or stakeholders) have meant that the criteria cannot be fully or partially met. In some cases, the evidence base is missing on which to form a clear understanding of the policy problem, its causes, and the options available to address them.
41. The Panel also notes that officials were not able to land on a preferred option based on the RIS analysis. Consultation would have enabled stronger options analysis, and possibly different conclusions as greater levels of information would have been available for consideration.

Climate Implications of Policy Assessment

42. The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that CIPA requirements do not apply to this proposal as it not expected to result in any significant, direct emissions impacts.

Population Implications

43. The policies are not expected to have any other population implications.

Human Rights

44. There are no inconsistencies with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Use of External Resources

45. No contractors or consultants have been engaged or provided a material contribution to the preparation of the policy advice in the paper.
46. This work is intended to be carried out by officials from the Ministry of Transport and the Ministry for the Environment and not require external resources to further develop, implement or deliver this work.

Consultation

47. The ports industry has been raising its concerns with the expiry of the port coastal permits for some time. It strongly supports removing a significant source of uncertainty for ports, given the complex resource consenting environment they now face.
48. Due to the time-sensitive nature of progressing this proposal, there has not been engagement with local government or iwi/Māori. We note that Post-Settlement Governance Entities (PSGE) and Māori groups have been involved in legal challenges relating to resource consent applications for port operations and may have concerns about carrying over 1991-era permits for a further period.

Agency consultation

49. The Department of Conservation, Ministry for the Environment, Maritime New Zealand, Te Waihangā Infrastructure Commission, Te Puni Kokiri, Te Arawhiti, Crown Law, Ministry for Primary Industries, Department of Internal Affairs, Ministry of Business, Innovation and Employment and the Treasury were consulted on this proposal. The Department of Prime Minister and Cabinet has been informed of this proposal.
50. The Department of Conservation has advised in relation to the s384A port permits that in its view 35 years is too long and will lock in rights that could impede improvements in coastal management. Alternatively, providing a short extension for those port companies, who have not yet applied, to seek new consents or plan provisions would be preferable.

Communications

51. Subject to Cabinet approval of the proposals in this paper, we will work to prepare a press statement communicating the changes.


Proactive Release

52. We intend to release this paper within 30 business days of decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

Recommendations

The Minister of Transport and Minister Responsible for RMA Reform recommend that the Committee:

1. **note** that the Government is taking a three-phased approach to reform of the resource management system and that this work fits into the second of these phases “targeted legislative changes to the Resource Management Act 1991 (RMA) in 2024”

2. **note** that Cabinet agreed that the second phase of resource management reform would include making targeted amendments to the RMA via two amendment bills to streamline and simplify its operation [CAB-24-MIN-0069 refers]
3. **note** that the National/New Zealand First Coalition Agreement commits to work to 'facilitate the development and efficiency of ports and strengthen international supply networks'
4. **note** that ports are crucial to New Zealand as a trading nation, and the resource consenting environment for ports has become increasingly complex and costly
5. **note** that section 384A of the RMA enabled the Minister of Transport to approve 35-year permits for port companies for a limited, but critical set of activities in the coastal marine area to support their transition into the new Resource Management Act 1991 (RMA) planning framework
6. **note** that these permits under section 384A of the RMA relate to certain port activities that existed in 1991, and expire on 30 September 2026, and to date only three port companies have transitioned to the RMA planning framework
7. **note** that extending the duration of the s384A permits would be the quickest way to reduce the regulatory challenges and costs for port companies and provide them with the certainty they need to operate in the coastal marine area
8. **note** that three port companies that have already transitioned into the RMA planning system are no longer relying on s384A permits for their coastal marine activities, and so it is not possible to include them in the current proposal
9. **agree to:**
 - EITHER (preferred option)**
 - a. extend the duration of s384A port coastal permits by 35 years
 - OR**
 - b. extend the duration of s384A port coastal permits by 20 years
10. **agree** to make necessary consequential changes to the RMA to enable the extension
11. 
12. **agree** there will be an expectation that port companies having their permits extended must engage with the affected iwi and hapū to understand the issues iwi and hapū have with existing port operations, and to consider what steps can be taken forward to address those issues

Drafting instructions

13. **note** that the proposals will be given effect through the first RMA Amendment Bill, and I have sought a category three priority on the 2024 Legislation Programme (to be referred to a select committee in 2024)

14. **authorise** the Minister Responsible for RMA Reform to issue drafting instructions to the Parliamentary Counsel Office to implement the recommendations in this paper
15. **authorise** the Minister of Transport and the Minister Responsible for RMA Reform to make further policy and drafting decisions that are consistent with the decisions made in this paper.

Authorised for lodgement

Hon Simeon Brown

Minister of Transport

Hon Chris Bishop

Minister Responsible for RMA Reform

Appendix 4: ECO-24-MIN-0050 Minute of Decision - Resource Management Act 1991 amendment to extend port coastal permits



Cabinet Economic Policy Committee

Minute of Decision


This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Resource Management Act 1991: Amendment to Extend Port Coastal Permits

Portfolios **RMA Reform / Transport**

On 10 April 2024, the Cabinet Economic Policy Committee (ECO):

- 1 **noted** that the Government is taking a three-phased approach to the reform of the resource management system and that the work under ECO-24-SUB-0050 fits into the second of these phases;
- 2 **noted** that in March 2024, the ECO agreed that the second phase of resource management reform would include making targeted amendments to the Resource Management Act 1991 (RMA) via two amendment bills to streamline and simplify its operation [ECO-24-MIN-0022];
- 3 **noted** that the National-New Zealand First Coalition Agreement commits to work to ‘facilitate the development and efficiency of ports and strengthen international supply networks’;
- 4 **noted** that ports are crucial to New Zealand as a trading nation, and the resource consenting environment for ports has become increasingly complex and costly;
- 5 **noted** that section 384A of the RMA enables the Minister of Transport to approve 35-year permits for port companies for a limited, but critical set of activities in the coastal marine area to support their transition into the new RMA planning framework (s384A permits);
- 6 **noted** that s384A permits relate to certain port activities that existed in 1991, and expire on 30 September 2026, and to date only three port companies have transitioned to the RMA planning framework;
- 7 **noted** that extending the duration of the s384A permits would be the quickest way to reduce the regulatory challenges and costs for port companies and provide them with the certainty they need to operate in the coastal marine area;
- 8 **noted** that three port companies that have already transitioned into the RMA planning system are no longer relying on s384A permits for their coastal marine activities, and so it is not possible to include them in the current proposal;

- 9 **noted** that the Government intends to provide certainty to port operators and users, such as by extending their s384A permits by 20 years;
- 10 **noted** that the Government also intends to provide a process to introduce or modify consent conditions on s384A permits for ports;
- 11 **agreed** to consult iwi and stakeholders on proposals to achieve the above intentions;
- 12 **noted** that following the above consultation, it is intended that changes to s384A permits will be progressed through the second RMA Amendment Bill;
- 13 

Rachel Clarke
Committee Secretary

Present:

Rt Hon Christopher Luxon
 Hon David Seymour
 Hon Brooke van Velden
 Hon Shane Jones
 Hon Chris Bishop (Chair)
 Hon Simeon Brown
 Hon Todd McClay
 Hon Tama Potaka
 Hon Matt Doocey
 Hon Melissa Lee
 Hon Simon Watts
 Hon Penny Simmonds
 Hon Chris Penk
 Hon Andrew Bayly
 Hon Andrew Hoggard
 Hon Mark Patterson
 Simon Court MP

Officials present from:

Office of the Prime Minister
 Office of Hon Chris Bishop
 Office of Hon Simon Watts
 Department of the Prime Minister and Cabinet
 Ministry of Transport
 Ministry for the Environment
 Officials Committee for ECO