



Cabinet

Minute of Decision

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Proposed Resource Management Amendment Bill

Portfolio Environment

On 8 October 2018, following reference from the Cabinet Environment, Energy and Climate Committee (ENV), Cabinet:

Improving the resource management system

- 1 **noted** that Cabinet has confirmed ENV's work programme, which includes a commitment to improving the effectiveness of the resource management system [ENV-18-MIN-0028];
- 2 **noted** that there are a small set of problems that are relatively straightforward to correct through a narrowly-focused set of amendments to the Resource Management Act 1991 (RMA);
- 3 **noted** that the Minister for the Environment considers meaningful public participation and access to justice as fundamental principles in resource management decision-making;
- 4 **noted** that the government's current priority work areas across urban development, climate change and freshwater may identify desirable long-term changes to the resource management system;
- 5 **noted** that the Minister for the Environment intends to undertake a more comprehensive review of the resource management system in 2019, which will include consideration of the role of public participation, and be undertaken in conjunction with legislative changes arising as part of the Urban Growth Agenda;
- 6 **invited** the Minister for the Environment to report back to ENV on the scope and process of the review referred to in paragraph 5 by April 2019;

Objectives of a narrowly-focused bill to amend the RMA

- 7 **noted** that the Minister for the Environment proposes a narrowly-focused bill to amend the RMA with its objectives being to reduce complexity, increase certainty, restore previous public participation opportunities, and improve RMA processes;

Reducing the powers of the Minister for the Environment to prohibit or overturn local plan rules

- 8 **noted** that the existing section 360D of the RMA provides unduly broad powers to issue regulations that prohibit or remove district or regional plan rules that duplicate, overlap, or deal with the same subject matter as other legislation;

- 9 **agreed** to repeal section 360D of the RMA (and consequentially section 360E) with the effect that the Minister for the Environment is no longer able to make regulations that either prohibit or remove rules in council plans that duplicate or overlap with subject matter that is included in other legislation;
- 10 **noted** that the Minister for the Environment has directed officials to explore the merits of a more narrowly-scoped regulation-making power, that will be informed by work being progressed concurrently as part of the Urban Growth Agenda, which is addressing unduly restrictive rules in district plans, and report back to the Minister for the Environment in early 2019 with advice;

Removing preclusions on public notification and appeals for subdivision and residential activity resource consents, and restrictions on the scope of appeals

- 11 **agreed** to repeal the public notification preclusions relating to resource consent applications for residential activities and subdivision of land as set out in section 95A(5)(b)(ii) of the RMA;
- 12 **agreed** to amend section 120 of the RMA to repeal the current preclusions on the ability to appeal against the whole or part of a decision of a consent authority relating to the subdivision of land and residential activities;
- 13 **agreed** to reinstate the ability to appeal to the Environment Court a decision on an objection relating to the subdivision of land and residential activities;
- 14 **agreed** to repeal section 120(1B) of the RMA that restricts the scope of an appeal on a resource consent to matters raised in a person's submission;
- 15 **agreed** to repeal section 360H of the RMA with the effect that the Minister for the Environment is no longer able to recommend the making of regulations that would preclude public or limited notification for certain activities, or prescribe who may be considered an affected person in relation to limited notification;

Repealing the regulation-making power for additional fast-track activities

- 16 **agreed** to repeal section 360G of the RMA with the effect that the Minister for the Environment is no longer able to recommend the making of regulations that would prescribe certain activities as fast-track and prescribe the information that an application for fast-track resource consent must include;

Reversing the change to the subdivision presumption

- 17 **agreed** to change the subdivision presumption from permitted to restricted;

Reinstating the use of financial contributions

- 18 **agreed** to repeal all provisions in the Resource Legislation Amendment Act 2017 that are intended to remove the ability to impose financial contributions as from 18 April 2022;

Enabling applicants to have the processing of non-notified resource consent applications suspended

- 19 **noted** that section 91A of the RMA currently enables an applicant to suspend the processing of a notified resource consent application in certain circumstances;
- 20 **agreed** to amend the RMA in respect of a non-notified resource consent application to:

- 20.1 enable an applicant to request the suspension of the processing of a resource consent for a period of up to 20 working days, with the request being able to be made at any

- time between lodging the application for resource consent up to when a hearing is completed or a decision is made;
- 20.2 specify that a request to suspend processing cannot be made if the circumstances in either section 91A(3)(a) or (b) exist, or if the application has been suspended for a total of 20 or more working days;
 - 20.3 specify that the suspension of processing will cease in the same manner as specified for notified resource consent applications;
 - 20.4 enable the consent authority to return the resource consent application, or to continue to process the resource consent if the application has been suspended for a total of 20 or more working days;
 - 20.5 require the consent authority to provide a written explanation to the applicant in the event that the suspended resource consent application is returned and provide the applicant an objection right;
 - 20.6 clarify that if a decision is made to notify a previously suspended non-notified resource consent application that the days it was suspended are added to the period of time set out in section 91C(1)(a);

Enabling councils to suspend the processing of resource consent applications until fixed administrative charges are paid

- 21 **agreed** to amend the RMA to:
 - 21.1 enable consent authorities to suspend the processing of a resource consent application if a fixed fee is required to be paid at lodgement, until the fixed fee is paid;
 - 21.2 ensure that the working days for which a resource consent application is suspended are excluded from the statutory working days within which to process the resource consent;

Enabling longer time periods to lodge retrospective resource consents for emergency works

- 22 **agreed** to extend the timeframe for applying for a resource consent for emergency works under section 330B of the RMA from 20 working days to 60 working days;

Enabling review of conditions of multiple resource consents

- 23 **agreed** to amend the consent condition review provisions in the RMA to better enable consent authorities to effectively review conditions of resource consents under section 128(1)(b) (certain regional rules) by:
 - 23.1 clarifying that a consent authority can review water and discharge permits when a relevant rule, part of a plan or plan has become operative;
 - 23.2 adding the ability for a consent authority to review a regional land use resource consent when a plan sets rules relating to minimum or maximum standards for water quality or quantity, and that rule, part of a plan or plan has become operative;
 - 23.3 adding a requirement that notification of resource consent reviews must include reference to the intent of a consent authority to manage the effects of the consented activity alongside all of the same or similar consents in a catchment, or catchments, that are affected by a regional plan;

Clarifying the legal status of deemed permitted activities

- 24 **agreed** to clarify that activities “deemed” to be permitted activities under section 87BA or 87BB of the RMA do not contravene any requirements, conditions, permissions specified in the Act, regulations (including any national environmental standard), plan, or proposed plan;
- 25 **agreed** to validate any “deemed” permitted activities already authorised by the application of section 87BA or 87BB of the RMA to the extent that they were lawfully established prior to the proposed amendment in paragraph 24 being enacted;

Enabling the regulation of high-risk land use activities

- 26 **noted** that the Minister for the Environment has instructed officials to undertake policy work on the regulation of high-risk land use activities to achieve improved water quality outcomes;
- 27 **noted** that the Minister for the Environment will seek policy approval at a relevant Cabinet committee to include the matter in this bill if it is considered that changes to the RMA are necessary;

Strengthening enforcement tools for improving environmental compliance

- 28 **noted** that the RMA currently contains empowering provisions that enable regulations to be made that can impose an infringement fee of up to \$2,000 for stock exclusion infringement offences, and up to \$1,000 for other infringement offences;
- 29 **agreed** to amend the RMA to enable regulations that can differentiate the quantum of infringement fees between natural persons and persons other than natural persons;
- 30 **agreed** to amend the RMA to enable regulations that can prescribe infringement offence fees of up to a maximum of \$2,000 for natural persons and up to \$4,000 for persons other than natural persons;
- 31 **agreed** to extend the statutory limitation period for filing charges for prosecutions of Category 3 offences under section 338(4), from six months from when a contravention giving rise to the charge first became known or should have become known, to 12 months from when that contravention giving rise to the charge first became known or should have become known;

Enabling the Environmental Protection Authority to take enforcement action under the RMA

- 32 **noted** that the Minister for the Environment is establishing an enforcement unit at the Environmental Protection Authority (EPA) to improve the transparency, consistency and effectiveness of council enforcement actions;
- 33 **noted** that the EPA does not have specific enforcement functions under the RMA;
- 34 **agreed** that the EPA be given enforcement functions under the RMA, for example through authorising the EPA to warrant enforcement officers to obtain evidence in the same manner as councils under the RMA;
- 35 **authorised** a group of Ministers, following advice from officials, to consider and agree detailed policy on the specific RMA enforcement functions appropriate for the EPA;
- 36 **agreed** that the group of Ministers for the purpose of paragraph 35 comprise the Minister for the Environment, the Associate Minister for the Environment (with portfolio responsibility for the EPA), the Minister of Finance, and the Minister of Justice;

37 **authorised** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office if detailed policy, referred to in paragraph 35, is agreed to by the group of Ministers;

38 **noted** that officials will prepare an additional Regulatory Impact Statement for this proposal, if agreed, when the Cabinet Legislation Committee considers the bill for introduction;

Enabling the Environment Court to review councils' resource consent notification decisions

39 **agreed** that any person who is dissatisfied with a council's notification decision on a resource consent may challenge that decision by seeking a declaration from the Environment Court;

40 **agreed** that the Environment Court be empowered to make a declaration that a notification decision by a consent authority on a resource consent application was unauthorised or otherwise invalid;

41 **agreed** that the Environment Court be empowered to issue interim orders with the effect of preserving the position of any party to the declaration;

42 **agreed** that the Environment Court may make an order setting aside a whole or a part of the consent authority's notification decision and refer a whole or a part of the notification decision back to the consent authority with or without any direction as to the reconsideration of the notification decision;

43 **agreed** that if the Environment Court makes a direction as to the reconsideration of the consent authority's notification decision, it must give reasons for those directions, and the consent authority must have regard to the reasons of the Court when making its new notification decision;

44 **agreed** that the Environment Court be empowered to make orders setting aside the whole or a part of the resource consent granted on the basis of a notification decision made by a consent authority;

45 **agreed** that, despite not being empowered to make an enforcement order in the event that a person is acting in accordance with a resource consent, the Environment Court may make an order preventing the exercise of a resource consent until the consent authority has made its notification decision in accordance with the order of the Environment Court;

46 **agreed** that trade competitors are not excluded from initiating an application for a declaration in the Environment Court related to a notification decision of a consent authority, but that the application cannot relate to trade competition or the effects of trade competition;

47 **agreed** that the prohibition on using a surrogate as set out in Part 11A of the RMA also applies to such an application;

48 **authorised** the Minister for the Environment and the Minister of Justice, following advice from officials, to consider and agree detailed policy about how declarations on notification decisions will work in relation to judicial review;

49 **authorised** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office if detailed policy, referred to in paragraph 48, is agreed to by the Minister for the Environment and the Minister of Justice;

- 50 **noted** that officials will prepare an additional Regulatory Impact Statement for the detail of this proposal as to how declarations on notification decisions will work in relation to judicial review, if required, when the Cabinet Legislation Committee considers the bill for introduction;

Clarifying who can be appointed as alternate Environment Judges

- 51 agreed to clarify that acting District Court Judges and acting Māori Land Court Judges can be appointed or hold office as alternate Environment Judges;

Protecting special advisors to the Environment Court

- 52 **noted** that the RMA provides Environment Court members, but not special advisors to the Environment Court, with protections from legal proceedings;
- 53 **noted** that officials are considering the matter, and will report back to the Minister for the Environment on whether this needs to be addressed through an additional RMA amendment;
- 54 **authorised** the Minister for the Environment and the Minister of Justice, following advice from officials, to consider and agree whether to provide special advisors to the Environment Court with protections from legal proceedings under the RMA;
- 55 **authorised** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office if agreement, referred to in paragraph 54, is reached by the Minister for the Environment and the Minister of Justice;
- 56 **noted** that officials will prepare an additional Regulatory Impact Statement for this proposal, if agreed, when the Cabinet Legislation Committee considers the bill for introduction;

Issues identified to progress in a more comprehensive review of the resource management system

- 57 **noted** that the Minister for the Environment intends to consider RMA changes relating to urban tree protection and climate change (both mitigation and adaptation) as part of a subsequent more comprehensive review of the resource management system;

Procedural considerations

- 58 **noted** the Ministry for the Environment's Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Summary (RIS) produced by the Ministry for the Environment, and considers that the RIS partially meets the quality assessment criteria;
- 59 **agreed** that the Minister for the Environment has the ability to further clarify and develop policy matters relating to the proposals in the paper under ENV-18-MIN-0037 in a manner not inconsistent with the policy recommendations contained in the paper;
- 60 **approved** the inclusion of the bill in the 2018 Legislation Programme, with a priority of category 5 (to be referred to a select committee in 2018);
- 61 **invited** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to implement the decisions set out above through a bill to amend the RMA, in consultation with relevant portfolio Ministers where appropriate;
- 62 **authorised** the Minister for the Environment to issue drafting instructions to the Parliamentary Counsel Office to make consequential amendments to the RMA and other affected statutes to ensure workability of the agreed amendments;

- 63 **authorised** the Minister for the Environment to develop commencement, transitional and any savings provisions with the Parliamentary Counsel Office, through the drafting process;
- 64 **noted** that the drafted commencement and transitional provisions will be subject to approval by Cabinet when it considers the bill for introduction;
- 65 **noted** the potential timeframes for progressing this bill are tighter than usual timeframes for legislative drafting;
- 66 **noted** the costs for progressing this reform package will be absorbed within existing budgets.

Michael Webster
Secretary of the Cabinet

Secretary's Note: This minute replaces ENV-18-MIN-0037. Cabinet added a new paragraph 6.

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