



Cabinet

Minute of Decision

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Resource Management Amendment Bill: Matters for Inclusion in the Departmental Report to Select Committee

Portfolio Environment

On 24 February 2020, following reference from the Cabinet Environment, Energy and Climate Committee (ENV), Cabinet:

Background

1 **noted** that on 1 October 2018, Cabinet agreed to a set of amendments to the Resource Management Act 1991 (RMA) to reduce complexity, increase certainty, restore previous public participation opportunities and improve processes, in advance of a more comprehensive review of the resource management system [CAB-18-MIN-0485.01];

Considering climate change under the RMA in light of the Climate Change Response (Zero Carbon) Amendment Act 2019 being enacted

2 **noted** that the RMA does not currently provide for climate change mitigation to be considered in plan making or consenting (with some limited exceptions), and that there is now a mismatch between the RMA and mitigation measures (including emissions reduction plans) under the Climate Change Response (Zero Carbon) Act 2019 (ZCA);

3 **noted** that the New Zealand Emissions Trading Scheme is not enough to ensure a transition to a low emissions economy and that regulatory measures, including though the RMA, have an important complementary role;

4 **noted** that it is desirable to remedy the mismatch that now exists between the RMA and the ZCA, and to develop a coherent basis on which RMA planning and consent authorities can make decisions relating to climate change mitigation, with Ministerial call in being a backstop in the interim;

5 **agreed** to amend the RMA, with immediate commencement upon passage of the Resource Management Amendment Bill 2019 (the RM Bill), to remove the constraint on decision-makers under section 142 of the RMA when matters of national significance are 'called in', if the Minister for the Environment believes an application for a resource consent or plan change could give rise to a significant increase, or decrease, in climate changing emissions;

6 **agreed** that, to give effect to paragraph 5 above, sections 70A and 104E of the RMA would not apply to such an application (pending the repeal of those sections as per paragraph 9 below);

- 7 **noted** that the first emissions reduction plan will be gazetted by 31 December 2021;
- 8 **agreed** to amend sections 61, 66 and 74 of the RMA, with effect from 31 December 2021, to provide for councils to explicitly consider emissions reductions plans and national adaptation plans under the ZCA when making or amending regional policy statements, regional plans and district plans;
- 9 **agreed** to repeal sections 70A and 104E of the RMA, and associated sections 104E and 104F, with effect from 31 December 2021;
- 10 **noted** that the 31 December 2021 commencement date, referred to in paragraphs 8 and 9 above, allows time both for the first emissions reduction plan to be gazetted, and a national environmental standard (NES) and/or other national direction to be developed under the RMA on climate change mitigation;
- 11 **note** that the Ministry for the Environment will use baseline funding to develop national direction to support decision-makers with considering climate change mitigation under the RMA;
- 12 **invite** the Minister for the Environment to report to ENV by 31 May 2020 with detailed timeframes;
- 13 **agreed** that an NES and/or other national direction be completed by 31 December 2021, to support local government with making consistent decisions regarding climate change mitigation;
- 14 **noted** that Ministry for the Environment officials will provide the Minister for the Environment with advice on options for national direction;

Freshwater planning process

- 15 **noted** that on 1 July 2019, Cabinet agreed to amend the RMA to provide for a new freshwater planning process, and that regional and unitary councils will use this process to implement a new National Policy Statement for Freshwater Management (NPS-FM) [CAB-19-MIN-0337.01];

Providing the Chief Freshwater Commissioner with the ability to extend timeframes

- 16 **noted** that on 1 July 2019, Cabinet agreed that councils may seek, from the chair of the freshwater commissioners (ie the Chief Freshwater Commissioner), an extension to the timeframe for final approval of regional planning documents [CAB-19-MIN-0337.01, paragraph 21.1];
- 17 **rescinded** the decision referred to in paragraph 16 above;
- 18 **agreed** to allow a council and/or the chair of a freshwater hearing panel to apply to the Chief Freshwater Commissioner to extend any timeframe during the two year freshwater planning process post-notification, up to a cumulative maximum extension of 12 months;
- 19 **agreed** to require the council and/or the chair of a freshwater hearing panel to apply in writing setting out the justification for why any such extension is warranted and how they intend to meet the new timeframe;
- 20 **agreed** to enable the Chief Freshwater Commissioner to grant or decline any such extension upon application from the council and/or chair of the freshwater hearing panel;

21 **noted** that, at the latest, final decisions must be made by 31 December 2026;

Increasing the time for council decision-making from 20 to 40 working days

22 **noted** that on 1 July 2019, Cabinet agreed that councils must make decisions following receipt of the freshwater hearing panel recommendations in 20 working days [CAB-19-MIN-0337.01, paragraph 20];

23 **rescinded** the decision referred to in paragraph 22 above;

24 **agreed** that the default timeframe for councils to make decisions following receipt of the freshwater hearing panel recommendations be 40 working days;

Providing the Chief Freshwater Commissioner with further powers to manage and appoint freshwater hearing panel members;

25 **noted** that on 1 July 2019, Cabinet agreed that the group of freshwater commissioners will support regional freshwater planning by convening freshwater hearing panels to run hearings in each region and form the core of each panel [CAB-19-MIN-0337.01, paragraph 10];

26 **rescinded** the decision referred to in paragraph 25 above;

27 **noted** that the role of the Chief Freshwater Commissioner includes appointing regional freshwater hearing panels;

28 **agreed** to allow the Chief Freshwater Commissioner to:

28.1 notify members when their appointment to a freshwater hearings panel commences/ceases;

28.2 remove members from a freshwater hearings panel at any time for just cause;

28.3 appoint new members to a freshwater hearings panel;

29 **agreed** that freshwater hearings panel members will have appropriate skills and experience, including in relation to water-related matters, scientific considerations and tikanga Māori;

Response when a freshwater hearing panel's recommendation is out-of-scope of submissions

30 **agreed** that where a council rejects a recommendation that is outside the scope of submissions and provides an alternative solution, any person who made a submission on the freshwater planning instrument may make an appeal on the merits to the Environment Court on the council's alternative solution;

31 **agreed** that where a council accepts a recommendation that is outside the scope of submissions, any person who made a submission on the freshwater planning instrument may appeal on a question of law to the High Court;

32 **agreed** that where a council rejects a recommendation which is beyond the scope of submissions, the council may develop an alternative solution which may also be beyond the scope of submissions;

Providing for the appointment of a 'friend of submitter'

- 33 **agreed** to enable the chair of a freshwater hearings panel to appoint a friend of submitter, where they consider this is appropriate, in consultation with the relevant council;

Providing clarity on commissioner remuneration under the freshwater planning process

- 34 **agreed** that costs of the Chief Freshwater Commissioner will be met by the Crown, except where he/she is appointed to chair a freshwater hearings panel, in which case the relevant regional council will be responsible for those costs;
- 35 **agreed** that the costs of freshwater commissioners that are not specific to a hearings panel, such as meetings and training as directed by the Chief Freshwater Commissioner, will be met by the Crown;
- 36 **agreed** that the remuneration rates for freshwater commissioners will be the same for both hearing related and non-hearing related tasks;
- 37 **agreed** that daily hearing rates will be set by Cabinet under the Cabinet Fees Framework for the Chief Freshwater Commissioner, Minister-appointed freshwater commissioners, council-nominated commissioners and tangata whenua nominated commissioners, except where any of these is an elected councillor;
- 38 **agreed** that existing councillor rates set by the Remuneration Authority will continue to apply to any councillors appointed to a freshwater hearing panel;

Treaty settlement legislation and the freshwater planning process

- 39 **noted** that there may need to be consequential amendment/s to the RM Bill to make clear that Treaty settlement arrangements relating to the standard planning process under Part 1 of Schedule 1 of the RMA also apply to the freshwater planning process;
- 40 **noted** that the proposed RMA changes are not intended to override existing Treaty settlement arrangements;

Ability to call in a change to a regional policy statement

- 41 **agreed** to enable the Minister for the Environment to call in, if it is a matter of national significance, a change to a regional policy statement (or part of a change), or a request for a change to a regional policy statement (or part of such a request);

Amending regulation-making power for the purpose of excluding stock from the margins of water bodies, estuaries, and coastal lakes and lagoons

- 42 **agreed** to amend section 360(1)(hn) of the RMA to extend the regulation-making power to prescribing measures for the purpose of excluding stock from the margins of water bodies, estuaries, and coastal lakes and lagoons;

A potential future matter: an amendment relating to farm plans

- 43 **noted** that as part of the Essential Freshwater work programme, the Minister for the Environment will be receiving advice on whether farm plans should be enforceable;

44 **noted** that this advice may result in a further change being proposed to the RM Bill.

Michael Webster
Secretary of the Cabinet

Secretary's Note: This minute replaces ENV-20-MIN-0003. Cabinet agreed to the recommendations in paragraphs 17, 23 and 26 to rescind earlier Cabinet decisions.

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