

Report No.	19-114
Decision Required	

RESOURCE MANAGEMENT REFORM 2019 - PHASE 1 AND PHASE 2

1. PURPOSE

- 1.1. To inform Council of recent announcements made by the Minister for the Environment on Resource Management reform, and options for Council to engage in the review process.

2. EXECUTIVE SUMMARY

- 2.1. The Minister for the Environment recently announced two phases of reform of the Resource Management Act to address the underperformance of the current resource management system. This report provides information and options on how Horizons may consider engaging in the two phases of reform.
- 2.2. Phase 1 includes rollback of some of the **Resource Management Act (RMA)** amendments made by the previous Government in 2017, some new provisions, and further enablers for improved freshwater management. Phase 2 is a more fundamental review of the Act, and includes consideration of the suite of related Acts that link with the RMA, including the Climate Change Response Act 2002, Local Government Act 2002 and the Land Transport Management Act 2003.
- 2.3. Horizons has been invited to engage in both phases of reform, including providing feedback on draft Terms of Reference for the Resource Management Review Panel, which sets out the context for phase 2.

3. RECOMMENDATION

That the Committee recommends that Council:

- a. receives the information contained in Report No. 19-114 and Annex.
- b. directs the Chief Executive to prepare a letter for the Chair to provide feedback to the Minister for the Environment on the Terms of Reference for phase 2 of the resource management reforms.

4. FINANCIAL IMPACT

- 4.1. There are no financial implications as a result of this report.

5. COMMUNITY ENGAGEMENT

- 5.1. No community consultation is required by the Council at this stage. Principal responsibility for community engagement on phase 1 and phase 2 of the resource management reforms rests with the Ministry for the Environment.

6. SIGNIFICANT BUSINESS RISK IMPACT

- 6.1. There is no significant business impact as a result of this report. However, as the reforms to the resource management system progress, the Council will need to remain agile in how it responds to upcoming legislation, and plan its work programme accordingly.

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7. BACKGROUND

- 7.1. On 24 July 2019 the Minister for the Environment announced two phases of reform of the Resource Management Act. The Minister considers that *the resource management system as a whole is underperforming for the environment and urban areas, including degradation of ecosystems and biodiversity by poorly managed cumulative effects*. [rec 7, Cabinet paper]
- 7.2. The Government has decided that the way to address this issue is through undertaking a comprehensive review of the Resource Management Act; including within this scope the spatial planning elements of the Local Government Act and the Land Transport Management Act (phase 2).
- 7.3. However, given that this work will be extensive and take substantial time and resources to complete, the Minister has decided to progress a smaller, targeted set of reforms (phase 1) that are timetabled to be given effect before the end of this current Government's term (i.e. mid-2020). These phase 1 reforms appear to be already a year behind schedule.

8. DISCUSSION

Phase 1 reforms

- 8.1. The Minister for the Environment aims to reduce complexity and increase certainty through progressing changes to the RMA, by advancing targeted, well understood policy issues that need to be addressed.
- 8.2. The changes are proposed in four broad categories:
- Rollback of certain changes introduced in the 2017 Amendment Act;
 - New provisions to enable certain powers or provide clarity;
 - Policy proposals which are not yet finalised; and
 - Policy proposals that are still in development.

Rollback provisions

- 8.3. The rollback provisions include the restoration of appropriate opportunities for meaningful public participation in resource consent processes (aspects of sections 95A, 358, 120 and 360H), and restrictions on the scope of appeals (section 120(1B)), and removal of Ministerial powers to make regulations that either prohibit or remove rules in council plans that duplicate other provisions (repeal of sections 360D, 360E, 360G and 360H).
- 8.4. The rollback will also repeal a number of urban development focused provisions, such as the removal of regulation-making power for additional fast-track activities (section 360G) and reversing the change to the subdivision presumption (section 11), and reinstating the use of financial contributions (various sections, for example sections 108, 108AA, 110, 111, 409, 411).

New provisions

- 8.5. New provisions include enabling applicants to have the processing of non-notified resource consent applications suspended (sections 91A-C), enabling councils to suspend the processing of resource consent applications until fixed administrative charges are paid (new section), enabling longer time periods to lodge retrospective resource consents for emergency works (section 330B), clarifying the legal status of deemed permitted activities (Part 3).
- 8.6. New provisions will also include to strengthen enforcement tools for improving environmental compliance (sections 360 and 338). This includes an increase in fine limits to \$2000 and \$4000, and statutory limitation period for filing from 6 to 12 months. The Environment Court will also have new powers to review councils' resource consent notification decisions (new sections), and clarification will also be made on who can be appointed as alternate Environment Judges (sections 249 and 250).

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- 8.7. A further important change will be to enable Councils to review conditions of multiple resource consents (section 128). These proposed amendments will:
- explicitly provide regional councils with the ability to review the effects of multiple consents on the maximum or minimum flows/rates or standards for quality stated in a regional rule, in order to give effect to new limits in a plan by existing users;
 - enable a regional council to review the conditions of consents once the relevant rule containing flow rates or water quality standards is operative so that the limit is applied in a more timely way;
 - broaden the type of regional resource consents that can be reviewed in relation to new rules set in regional plans for flow rates or water quality standards to also include regional land use consents so that where discharge permits and land use are bundled together these can both be reviewed.

Policy proposals not yet finalised

- 8.8. The Minister has also stated his intention to include further changes to the Act, but these policy proposals are not yet finalised. This includes enabling the Environmental Protection Authority (EPA) to take enforcement action under the RMA, through establishing an RMA enforcement unit that will be able to take action directly; enabling the regulation of high-risk land use activities; protecting special advisors to the Environment Court, so that they have protection from legal proceedings under section 261 of the RMA.

Policy proposals that are still in development

- 8.9. The Minister has signalled his intention to include further changes to the **National Policy Statement for Freshwater Management (NPSFM)**. Council staff have had some early stage discussions with Ministry for the Environment officials on proposals to hasten the implementation of the NPSFM, and provide further tools to improve freshwater quality. However, the essential freshwater policy programme proposals are yet to be released.

Phase 2 reforms

- 8.10. The scope of the phase 2 reform is wide, and includes consideration of the RMA, as well as the spatial planning elements of the Local Government Act and Land Transport Management Act. The Minister also intends to include the role of the RMA in taking into account climate change effects, and to specifically consider the RMA's role in urban tree protection (particularly in relation to maintaining and protecting indigenous biodiversity in an urban setting).
- 8.11. The Minister has created a Resource Management Review Panel to assist him with this work and make recommendations on reforming the RMA. On 24 July 2019 the Minister appointed retired Court of Appeal Judge Tony Randerson QC to chair the Review Panel. Other members of the panel will be appointed in coming months.
- 8.12. The Minister also released a draft terms of reference for the Resource Management Review Panel on the same date, and has invited feedback on the terms of reference, and is also seeking views on the scope of the review. A copy of the terms of reference is attached as appendix 1.

9. COMMENT

- 9.1. Officers suggest that Council be broadly supportive of the proposals included in phase 1 reforms where the functions relate to regional councils (for example, improved compliance powers and review of consenting conditions) and neutral on the changes to the provisions affecting Territorial Authorities. We will watch with interest the further policy development

and announcements on the essential freshwater package, as this is likely to have the most immediate impact on our work.

- 9.2. The phase 2 reforms are both broad in scope and ambitious. While it has been long recognised that the RMA requires some fundamental review, we do not anticipate that central Government will advance any substantive change to the RMA within this Government's term of office.
- 9.3. The terms of reference is detailed, but does not clearly detail the fundamental issues that the Government wants to identify (or achieve) as a result of the review. This could benefit from greater clarity, rather than more detail.

10. CONSULTATION

- 10.1. No consultation was required in the development of this paper.

11. TIMELINE / NEXT STEPS

- 11.1. The Minister for the Environment has invited feedback on the draft terms of reference for phase 2 of the reforms. It is suggested that the Council provides feedback on the draft Terms of Reference through the Chair, with appropriate support from Council staff.
- 11.2. Council staff will maintain a watching brief on the progress of phase 1 of the reforms and will ensure that Council are kept abreast of developments at the appropriate time.

12. SIGNIFICANCE

- 12.1. This is not a significant decision according to the Council's Policy on Significance and Engagement.

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ANNEXES

- A Resource Management Review Panel Terms of Reference