

Extraordinary Council Meeting
Wednesday 6 November 2019 at 9.30am

AGENDA

TABLED

Northland Regional Extraordinary Council Meeting Tabled Agenda

Meeting to be held in the Council Chamber
36 Water Street, Whangārei
on Wednesday 6 November 2019, commencing at 9.30am

Recommendations contained in the council agenda are NOT council decisions. Please refer to council minutes for resolutions.

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TITLE: Receipt of tabled item: RMA Amendment Bill – council submission

ID: A1256803

From: Sally Bowron, PA/Team Admin Strategy, Governance and Engagement

Executive summary

The report was unable to be completed in time for circulation with the council agenda due to further discussion required at the council workshop on 1 November 2019. The closing date is 7 November 2019 which doesn't allow enough time for formal consideration at the next ordinary council meeting.

Recommendation

That as permitted under section 46A(7) of the Local Government Official Information and Meetings Act 1987 the following tabled report be received:

- RMA Amendment Bill – council submission

Authorised by Group Manager

Name: Jonathan Gibbard

Title: Group Manager – Strategy, Governance and Engagement

Date: 5 November 2019

TITLE: RMA amendment Bill - council submission

ID: A1256543

From: Justin Murfitt, Strategic Policy Specialist

Executive summary/Whakarāpopototanga

This item seeks council approval of a draft submission on Government proposals to amend the Resource Management Act 1991 (the Bill). The proposed amendments are intended to reduce complexity, increase certainty and restore public participation rights in consenting processes. The amendments also increase infringement fees, extend prosecution timeframes and provide greater powers for the Environmental Protection Authority to intervene in local authority prosecutions. The most substantial change however is the creation of a new freshwater planning process. A draft submission on the Bill is attached for consideration by council. Submissions to the Environment Select Committee close 7 November 2019.

Recommendation(s)

1. That the report 'RMA amendment Bill - council submission' by Justin Murfitt, Strategic Policy Specialist and dated 5 November 2019, be received.
2. That council approves the draft submission on the Bill (Attachment 1) and authorised the Chief Executive Officer to lodge the submission on behalf of council.

Background/Tuhinga

The Government has proposed amendments to the Resource Management Act 1991 (RMA) in the Resource Management Amendment Bill. The Bill has been referred to the Environment Select Committee and is open for submissions until 7 November 2019. The Bill proposes a number of changes to the RMA, a number of which reverse changes made by the previous government related to resource consenting processes and powers of the Minister to overturn local rules. Other key changes include:

- Reversing the permitted activity presumption for subdivision
- Extension to the timeframes for prosecutions by councils (from 6 to 12 months)
- Increase to the maximum infringement fees available under the RMA
- Repeal of Ministerial powers to over-turn or prohibit local planning rules
- Increased powers for the Environmental Protection Authority (EPA) to intervene in local council enforcement action
- Establishment of a new freshwater planning process.

The new freshwater planning process is a significant change and would apply a mandatory requirement for all freshwater related planning decisions to use a panel of freshwater commissioners (typically five members) – two members (including the Chair) would be appointed by the Minister and the remainder nominated by the relevant council. The role of the freshwater panel would be to hear and consider all freshwater planning related matters and make recommendations to the council. Council may accept or reject the panel's recommendations – if accepted, appeal

rights are limited to points of law. If the recommendations are rejected, the council must notify an alternative and the decision is open to appeal to the Environment Court.

Staff have written a draft submission on the Bill for consideration by council (**Attachment 1**). The draft submission indicates support for many of the changes proposed but expresses concern over both the extended enforcement powers of the EPA and the mandatory nature of the new freshwater planning process. Key points on these matters in the draft submission are summarised below:

- That the involvement of the EPA in local authority enforcement action should remain at the invitation of the local authority concerned – and if progressed further clarity should be provided on EPA assuming all subsequent costs
- Council sees some merit in being able to access a panel of freshwater planning expertise but does not consider this should be mandatory
- A number of the freshwater planning process provisions related to timeframes applied to councils will be challenging and should be extended
- The discretion for the panel to make recommendations on out of scope material should not be pursued
- Concern at the ability to delineate ‘freshwater related plan content’
- Council should not be liable for the cost of Minister appointed commissioners.

Submissions to the Environment Select Committee close Thursday 7 November.

Considerations

1. Options

No.	Option	Advantages	Disadvantages
1	Council lodges a submission on the Amendment Bill	Councils concerns are expressed and understood	No perceived disadvantages
2	Council does not lodge a submission on the Amendment Bill	Minor staff resource required	The government is not aware of council concerns

The staff's recommended option is Option 1

2. Significance and engagement

In relation to section 79 of the Local Government Act 2002, this decision is considered to be of low significance when assessed against council's significance and engagement policy because it is part of council's day to day activities. This does not mean that this matter is not of significance to tangata whenua and/or individual communities, but that council is able to make decisions relating to this matter without undertaking further consultation or engagement.

3. Policy, risk management and legislative compliance

The decision is consistent with policy and legislative requirements and does not present significant risk to council being a submission on a government proposal.

Given the timeframes involved in lodging a submission staff have not sought community views and nor engaged specifically to identify impact on Māori. Financial implications and implementation issues have been considered and are highlighted within the submission.

Attachments/Ngā tapirihanga

Attachment 1: NRC submission RMA Amendment Bill Oct 2019 [↓](#) 

Authorised by Group Manager

Name: Jonathan Gibbard

Title: Group Manager - Strategy, Governance and Engagement

Date: 05 November 2019



Submission

To: Ministry for the Environment
By: Northland Regional Council
On: Resource Management Amendment Bill

1. Introduction

- 1.1. Northland Regional Council (NRC) is grateful for the opportunity to comment on the Resource Management Amendment Bill. NRC's submission is made in the interest of promoting the sustainable management of Northland's natural and physical resources and the social, economic, and cultural wellbeing of its people and communities. Council welcomes the intent of the Bill to reduce complexity, increase certainty, restore public participation rights and to clarify existing resource consenting, compliance and enforcement processes.
- 1.2. NRC's submission is focused on parts of the Bill that relate to our functions under the RMA (the Act).

2. Extending timeframes to file charges for prosecutions

- 2.1. NRC supports the extension of the timeframe to lay prosecutions from 6 months to 12 months (clause 62). A period of 12 months is far more realistic given the need for robust investigations for complex cases.

Relief sought: Retain amendments as proposed

3. Enabling the Environmental Protection Authority to take over enforcement under the RMA

- 3.1. Clause 66 of the Bill provides enforcement functions to the EPA, including assisting a local authority with enforcement action or taking over an enforcement action. NRC supports the provision for EPA assistance but has reservations about the ability for the EPA to intervene without local authority support. Intervention should be by way of agreement between the local authority and the EPA. Alternatively, the Bill should provide the ability for a local authority to object to EPA intervention by recourse to the Minister for the Environment. Council is also of the view that following intervention by the EPA it should bear some of associated costs.

Relief sought: EPA intervention in an enforcement action of a local authority should be by way of agreement with the local authority. Alternatively, the Bill should amend the Act by limiting and specifying circumstances where an intervention may occur without agreement of a local authority. In addition, the Bill should provide local authorities with the ability to object to intervention by the EPA and specify that any ongoing costs following intervention fall to the EPA.

4. Increasing maximum RMA infringement fees

4.1. Council supports increasing RMA infringement fees as specified in clause 70, section 360(1)(bb) and (bc) on the basis that it will likely improve compliance. Increasing the maximum to \$4000 and differentiating between natural persons and other parties as proposed in the Bill is more likely to act as a deterrent in our view.

Relief sought: Retain amendments as proposed

5. Reducing powers for Minister to overturn local plan rules

5.1. NRC supports repealing sections 360D and 360E (clause 71), which currently enable the issuing of national regulations to prohibit or remove rules that duplicate, overlap with, or deal with subject matter already included in other legislation. We support the amendment because sections 360D and 360E could erode local decision making and council discretion over how effects are be managed.

Relief sought: Retain amendment as proposed

6. Freshwater planning process

6.1. Council has reservations about some of the proposed amendments in the Bill relating to the Freshwater Planning Process (clauses 13 and 72).

6.2. The requirement to provide all relevant documents (including all submissions, summary of decisions requested and further submissions received and documentation relating to Mana Whakahono a Rohe arrangements) to the Chief Freshwater Commissioner within 6 months of notifying a freshwater planning instrument will be challenging. This may also compromise the ability for councils to provide additional time for communities and tangata whenua during the period between notification and close of submissions given the importance and complexity likely in freshwater planning content. In NRC's experience a 12 month timeframe would be more realistic.

Relief sought: Extend the time for providing the submissions and other information to 12 months (in clause 72, section 37(1) of the Bill)

6.3. NRC disagrees with the powers provided to the Minister and the Chief Freshwater Commissioner to appoint or otherwise control the make-up of freshwater hearing panels (clause 72, section 58(1)). This amendment restricts regional councils to only being able to nominate other hearing commissioners, the implications of which are identified below.

- 6.4. It is unclear if the Chief Freshwater Commissioner can accept or decline hearing commissioners nominated by regional councils. The term nominations used in the Bill appears deliberate and therefore we assume the Chief Commissioner can reject local nominations although the Bill is silent on any grounds for rejection. Having hearing commissioners nominated by the regional council is an important element of the regional democratic process, enables for robust local engagement and ensures planning decisions are underpinned by the regional context. If regional council nominations can be rejected, local democracy could be diluted. NRC is also concerned about the potential for a council to robustly engage with people during pre-notification engagement and plan preparation processes and the subsequent planning decisions being compromised by a panel that may be influenced by the Minister or not having been part of the prior engagement process.

Relief sought: Amend the Bill so a “freshwater planning process” is optional and regional councils can choose the number of ‘freshwater commissioners’ on the hearing panel depending on the need for independent expertise.

- 6.5. NRC opposes the provision for a freshwater hearing panel to make recommendations on “any other matters relating to the freshwater planning instrument identified by the panel or any other person during the hearing.” (clause 72, section 48(2)). NRC also opposes the related provision that a “regional council may accept recommendations of the freshwater hearings panel that are beyond the scope of the submissions made on the freshwater planning instrument.” (clause 72, section 51(3)). The provisions appear contrary to natural justice and Schedule 1 RMA. NRC strongly opposes the provisions, especially if as proposed recourse to appeal rights are limited where the commissioner’s recommendations are accepted by council.

Relief sought: The scope of the panel’s recommendations remains within matters raised in submissions for reasons of natural justice. Or alternatively, if this provision is retained, councils are given the same powers as those conferred on freshwater hearing panels.

- 6.6. NRC opposes the requirement for a regional council to, no later than 20 working days after it is provided with the report by a freshwater hearing panel, publicly notify an “alternative solution for each rejected recommendation.” (clause 72, section 51(4)). The requirement is an unreasonable timeframe, particularly because a panel may have up to two years to reach its recommendations and that councils decision making timeframes tend to operate on a monthly cycle.

Relief sought: Extend the timeframe by which council must notify its decisions and alternative solution to allow a more reasonable timeframe (e.g., two months).

- 6.7. As noted in NRC’s submission on ‘Action for healthy water ways’, the council is very concerned about the proposed mandatory timeframes for preparing and making decisions on plans to give effect to a National Policy Statement for Freshwater Management 2010 (i.e., notification by 31 December 2023 and final decisions by 31 December 2025). The tight timeframes may compromise council’s ability to obtain necessary information, including by meaningful engagement with communities.

6.8. In particular, NRC is concerned that a plan-making timeframe is embedded in the Bill, as Government is currently still considering the content and associated implementation timeframes of the Draft NPS-FM that is unlikely to be in force by mid-2020. This does not appear to be good practice and in our view decisions on timeframes in the Bill and new NPS-FM should be made concurrently.

6.9. A related concern is that demands on the freshwater panel will be significant and are likely to coincide across New Zealand, meaning councils will likely seek access to the panel at or about the same time.

Relief sought: Defer decisions on timeframes for notification of freshwater planning instruments to coincide with decisions on the Draft National Policy Statement for Freshwater Management, and allow a more reasonable timeframe to ensure meaningful consultation/engagement can occur in relation to implementing the NPS-FM.

6.10. NRC strongly opposes the requirement that regional councils fund all costs incurred by the freshwater hearings panel including the costs of those members appointed by the Minister and at rate set by the Minister (clause 72, section 61). Government should foot the bill for members of a freshwater hearing panel that are appointed by the Minister. Such members will not be appointed by regional and unitary councils. The concern around costs could be compounded where a council is undertaking a whole of plan review and must therefore hold separate hearings (and assemble separate hearing panels) for 'freshwater' content and non-freshwater content. It is also likely that some form of secretariat would be needed to provide technical and administrative support for freshwater hearing panels. Government should contribute to associated costs especially if the rate of reimbursement is set by the Chief Freshwater Commissioner with no ability for council to challenge or influence this.

Relief sought: Specify that the Minister is responsible for the costs of ministerially appointed commissioners and providing funding for administrative support for the 'freshwater' panel.

6.11. The Bill states that a "freshwater planning process" must be used for a proposed regional plan or regional policy statement, including change or variation to, that relates to freshwater. Most activities relate to freshwater in some way. The requirement will be difficult to interpret, especially where a council is undertaking a whole of plan review. It is unclear how the mandatory freshwater planning process would work in this instance and what the role of the freshwater panel would be in relation to the 'non-water', but slightly related, plan content. As noted above, it may be that another hearing panel will be needed for non-'water related' content adding to costs for councils.

Relief sought: Provide further clarity on what is meant by "relates to freshwater" and what elements constitute freshwater related content and how the process deals with a whole of plan situation (clause 13, section 80A).

7. Conclusion

- 7.1. NRC recognises the benefit of having access to a panel of suitably qualified experts to assist in planning decisions relating to freshwater management, but do not see the need for it to be made mandatory.
- 7.2. The problem definition/intervention logic for a mandatory “freshwater planning process” is not clear, nor has a satisfactory justification to interfere in local decision making been made. NRC considers that a compulsory “freshwater planning process” is not needed. Council is strongly of the view that the process should be optional rather than mandatory and provided on the basis of assisting councils rather than imposing decision-makers (and potentially increased costs) into regional plan making processes.

Signed on behalf of Northland Regional Council

Malcolm Nicolson (Chief Executive Officer)

Dated: November 2019