



AHM News

INTRODUCTION

Now we are in a position to look back, 2018 has been an eventful year for many aspects of New Zealand society - politics, resource management, and water have all had their share of challenges and changes. In this end-of-year newsletter we address:

- The Government's proposed reform of the Resource Management Act 1991 (RMA); and
- Water quality reform proposals.

Most importantly, we wish all our readers a very merry Christmas and a happy, safe and relaxing summer break. For ourselves, we are looking forward to BBQs, hopefully some sunshine, and happy times with family and friends!

GOVERNMENT ANNOUNCES TWO STAGE RMA REFORM

A two stage process to improve the resource management system was recently announced by Environment Minister David Parker.

Stage One constitutes a bill with a relatively narrow set of amendments expected to be introduced to the House before Christmas. The bill will aim to reverse several changes to the RMA made by the Resource Legislation Amendment Act 2017.

Stage Two will be a more comprehensive review of the resource management system. It will aim to build on current Government work priorities across urban development, climate change, freshwater, and wider projects being led by various external groups, including the Productivity Commission, Local Government New Zealand, the Environmental Defence Society, New Zealand Law Foundation, Property Council New Zealand, Infrastructure New Zealand, the Employers and Manufacturers Association, and Watercare.¹ The changes are separate from the legislation to establish an Urban Development Authority to fast-track housing and urban development projects. Stage Two is currently being scoped and further details are expected in early 2019.

Specific changes proposed in Stage One are to:

- Remove the Minister's ability under section 360D to make regulations prohibiting or removing rules in councils' plans that duplicate or overlap with other legislation;
- Remove the Minister's ability under section 360G to make regulations that prescribe activities as fast-track and prescribe the information that a fast-track application must include;



- Remove the Minister’s ability under section 360H to make regulations that preclude public notification of certain activities, or prescribe who may be considered an affected person in relation to limited notification;
- Allow applicants to suspend processing of their non-notified resource consent applications;
- Allow councils to stop the resource consent ‘statutory clock’ if a charge has not been paid;
- Increase maximum infringement fees to \$2,000 for natural persons and \$4,000 organisations;
- Extend the statutory limitation period for filing charges from 6 to 12 months;
- Extend the timeframe under section 330b to apply for a resource consent following an emergency from 20 to 60 working days;
- Amend resource consent revision provisions to:
 - clarify that a consent authority can review water and discharge permits when a relevant rule, part of a plan or plan has become operative;
 - allow a consent authority to review a regional land use resource consent when a plan rule relating to minimum or maximum standards for water quality or quantity has become operative;
 - add a requirement that notification of coastal, water or discharge permit 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.
- Change the presumption of subdivision from a permitted activity to an activity requiring resource consent unless it is expressly allowed by a rule in a district plan, or in an national environmental standard;
- Reinstate the use of financial contributions;
- Repeal preclusions to public notification and appeal rights for subdivision and residential activities;
- Repeal the requirement that appeals on resource consent decisions only relate to matters raised in a submission;
- Enable the Environment Court to hear challenges to resource consent notification decisions; and
- Clarify the status of deemed permitted activities.



Endnote 1: For example, *Better Urban Planning*, New Zealand Productivity Commission, 2017; *A 'blue skies' discussion about New Zealand's resource management system*, Local Government New Zealand, 2015; *Reform of the Resource Management System: The next generation*, report by Environmental Defence Society, New Zealand Law Foundation, Property Council New Zealand, Infrastructure New Zealand, Employers and Manufacturers Association and Watercare, 2018.

LATEST WATER QUALITY ANNOUNCEMENTS FROM THE GOVERNMENT

On 7 October 2018 Minister Parker announced the Government's approach to improving the state of our waterways. Dubbed "The Essential Freshwater Programme" it has three objectives:

1. Stopping further degradation as soon as possible, so that we see material improvements in water quality within 5 years;
2. Reversing past damage to restore our freshwater ecosystems to a healthy state within a generation; and
3. Addressing water allocation issues to achieve efficient and fair allocation of freshwater abstraction and nutrient discharges, having regard to all interests including Māori.

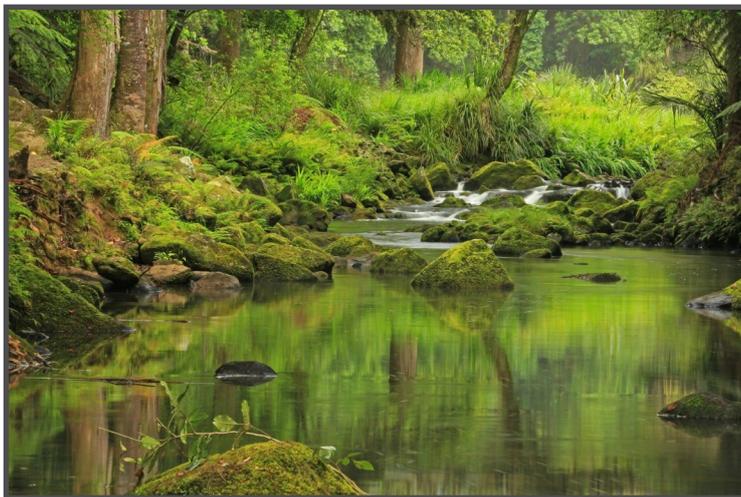
A cross-government taskforce has been established with senior officials representing a range of entities² to help deliver on these objectives. While the Minister's speech was predominantly aspirational, some details of specific measures were also provided:

1. Amendments will be undertaken to the RMA within the next 12 months to review consents to more quickly implement water quality and quantity limits; and to strengthen enforcement tools for improving environmental compliance.
2. Targeted action and investment in at-risk catchments will be undertaken, including accelerating the implementation of Good Farming Practice Principles and identifying options for tree planting through the One Billion Trees programme.
3. A new National Policy Statement for Freshwater Management will be in place by 2020, to ensure all aspects of ecosystem health are managed, and address risks, for example by providing greater direction on how to set limits on resource use, and better protection of wetlands and estuaries.
4. A new National Environmental Standard for Freshwater Management will be in place by 2020, to regulate activities that put water quality at risk, such as intensive winter grazing, hill country cropping and feedlots.

Public consultation on the new national direction will begin next year. The Government will be working with a range of vested interests in establishing its water plan, including environmental groups, Māori, farming leaders, scientists and regional council experts.

The Government's plan also sets out a new approach to the Māori/Crown relationship. Minister Parker spoke of the need to achieve fairness between developed and underdeveloped land, the latter of which is disproportionately owned by Māori. For the first time, the Government is expressly stating that fairness to Māori requires enabling the future development of underdeveloped land that needs water and nutrient discharge permits.

To address Māori desires for access to and use of freshwater resources, three options have



been considered by the Government:

1. Imposition of a royalty/charge on the use of freshwater (payable to the Crown for on-distribution), and distribution of under-used water permits (or discharge capacity) which are able to be relinquished;
2. Development of a mechanism to more equitably share the resources over time through a 'regulatory' route: in scarce catchments this proposal could require the generation of 'headroom' between the total allocated quantum of 'use rights' and the sustainable limit in order to give Māori (and other new users) the opportunity to obtain a share of those use rights; and
3. Allow disputes regarding Māori rights and interest in water to unfold through the courts and Waitangi Tribunal.

The Government is pursuing option 2, the 'regulatory route', because in its view this focuses the debate on solutions that meet Māori concerns rather than opening up a contest about 'ownership'. The Government sees that Option 2 also allows for meaningful development of Māori land, and is likely to provide more certainty than an exploration of rights in the Courts. Option 2 does not preclude Option 1 also being pursued at a later date.

Endnote 2: Ministry for the Environment, Ministry for Primary Industries, Treasury, Māori Crown Relations: Te Arawhiti, Te Puni Kokiri, Department of Internal Affairs, Department of Conservation, Ministry for Business Innovation and Employment, and Regional Councils.

CHRISTMAS CLOSE DOWN

Our office will close at 12:00pm on Friday 21 December 2018 and reopen at 8:30am on Monday 7 January 2019.

For any urgent matters that arise during the close down period, please call Vicki Morrison-Shaw on 0275 720 883 or Nicole Buxeda on 021 101 1697.

We wish you all a safe and happy holiday and we look forward to working with you again in 2019, from all the team at Atkins Holm Majurey.



Questions, comments and further information

If you have any questions, comments or would like any further information on any of the matters in this newsletter, please contact the authors:

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