



For the Ministry for the Environment

Environment Select Committee Submission

Resource Management Amendment Bill 2019

Prepared by the New Zealand Planning Institute

7<sup>th</sup> November 2019

## **1 Introduction**

- 1.1 This is the New Zealand Planning Institute (NZPI) submission to the proposed changes to the Resource Management Act (RMA) 1991, the Resource Legislation Amendment Act (RLAA) 2017 and consequential amendments to a number of other Acts through the Resource Management Amendment Bill 2019 (the Bill).
- 1.2 NZPI welcomes the opportunity to provide this preliminary response on the Bill. Given the significance and practical implications of a number of the Bill's provisions, however, NZPI intends to conduct a qualitative and quantitative survey of its members and will report and present those further findings when making its oral submissions to the Select Committee. Given the complexity and implications of the Bill's provisions – particularly those relating to freshwater management – NZPI considered it timely and appropriate to survey member views after the current submission period had ended.

## **2 Executive Summary**

- 2.1 NZPI broadly supports the direction of the Bill. The Regulatory Impact Statement acknowledges the change in government direction and priorities regarding public participation and the role of local decision-making in the RMA. NZPI welcomes this and notes this reflects concerns raised in its 2016 submission to the Resource Legislation Amendment Bill (RLAB) 2015.
- 2.2 NZPI supports Initiatives that can address the urgent issue of declining freshwater quality. NZPI notes that a major part of the Bill relates to mechanisms and processes that are intended to work in conjunction with National Guidance provisions required by the National Policy Statement on Freshwater Management (NPSFWM). NZPI have significant concerns with the workability of the NPSFWM which were summarised in related submissions. While NZPI recognises the urgency of the problem, NZPI holds grave concerns that the proposals contained in this Bill, together with the related NPSFWM are uncertain, problematic to implement, and risk incurring considerable cost without commensurate benefit.

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

- 3.1 NZPI supports the repealing of the ability for Ministers to make regulations to prohibit or overturn rules in a plan. NZPI opposed these provisions in 2015 because they eroded local decision making and a local authority's ability to determine what effects are managed or the way in which that management is undertaken. NZPI supports the proposal to repeal these provisions.

### **4 Removing restrictions on public notification for subdivision and residential activity resource consents**

- 4.1 NZPI opposes the proposal to remove RLAA (2017) restrictions on public notification. NZPI did submit against the current provisions when they were introduced in 2015 bill. However, NZPI understands that after more than two years implementing the new provisions, they are now well understood and practice is generally well settled within territorial authorities and the wider professional resource management community.
- 4.2 NZPI is advised that the resource consent process has become significantly more simple and efficient. Auckland Council advises that between 3-4 hours per application on average is saved under the current RMA provisions as compared to liberalising related notification provisions as proposed.
- 4.3 Reversing these provisions would create disturbance to established planning practice bedded in two years after the last change, and resource consent assessments and reporting could become more risk averse and lengthy due to increased discretion and challenge, adding unnecessary time and cost to the process.
- 4.4 The second, and more long term, phase of RMA reform is, in part, tasked with assessing the effectiveness and efficiency of the resource management system as a whole and is a more appropriate place to re-evaluate the notification system in a holistic manner.

### **5 Removing restrictions on appeals on residential and subdivision applications and on the scope of appeals**

- 5.1 NZPI supports the proposal to remove the restrictions on appeals as the resource management system will benefit without significant increase in cost.

- 5.2 NZPI is not supportive of removing the restrictions on appeals if the existing restrictions on public notification are not retained. This is because of the very significant cumulative resource, cost and risk burdens that would be incurred if both the amendments to public notification and appeals were made.
- 5.3 While NZPI recognises and supports the whole ethos of public participation in resource management and decision-making, it is important that where activities such as residential activity are provided for in a district plan, it is during the establishment of the plan and adoption of permitted land use zones for land that public input is most required, and that the subsequent process of consenting land uses should not through unlimited notification and participation rights become an opportunity to relitigate the purpose and intent of the land use zoning itself.

## **6 Repealing regulation-making power for additional fast-track activities**

- 6.1 NZPI supports repealing the ability for Ministers to make regulations for additional fast-track activities. NZPI opposed these provisions in 2016 because they eroded local decision making.

## **7 Other resource management processes and enforcement provisions**

- 7.1 NZPI will report to the Select Cttee its findings from a member research survey into other detailed aspects of the Bill, including provisions:
- Enabling applicants to have processing of non-notified resource consent applications suspended. Enabling councils to return applications if suspension times are exceeded.
  - Enabling consent authorities to suspend processing resource consent applications until fixed administrative charges are paid
  - Extending time period to lodge retrospective resource consent applications for emergency works
  - Enabling review of conditions of multiple resource consents concurrently.
  - Increasing maximum infringement fees under the RMA
  - Extending statutory limitation period to file charges for prosecutions under the RMA
  - Enabling the Environmental Protection Authority to take enforcement action under the RMA

- Protecting special advisors to Environment Court
- Clarification of process for making national environmental standards

## 8 Improving freshwater management

8.1 While recognising and supporting the urgent need to reverse the decline of NZ's freshwater resources, NZPI has significant concerns with the workability, operability, practicality and chance of success of many of the interventions proposed in the "Action for Healthy Waterways" central government initiative of which provisions in this Bill form a significant part. For example, NZPI has submitted as set out in the bullets below, in respect of the proposed NPSFWM (which this Bill is intended to implement), along with NZPI submission summaries:

- **Inconsistency with the purpose of the RMA** (NZPI submits that as drafted the main objective of the NPSFWM conflicts with the purpose of the RMA and is therefore ultra-vires.)
- **Absence of guidance and support for TLA actions to restore degraded resources** (NZPI submits the NPSFWM requires actions from councils that are likely to incur considerable unbudgeted costs to resolve issues caused by third parties.)
- **Lack of coordination with other related national guidance** (NZPI submits that NPSFWM proposals will need to be weighed against national directions set out in other NPS's – including NPS Urban Development [NPSUD] and NPS Highly Productive Land [NPSHPL] – but their separateness precludes integrated guidance.)
- **Absence of consideration of implementation capacity requirements** (NZPI submits the additional compliance, monitoring and enforcement duties, and changing policy priorities, imposed by NPSFWM proposals, will require significant new capacity and capability requirements within councils.)

8.2 NZPI notes the cautious support given for the Bill freshwater provisions in the Regulatory Impact Assessment prepared by Treasury. This states at pg 15:

This legislative amendment proposes to mandate a separate RMA planning process for changes to regional policy statements and regional plans relating to freshwater. Full public consultation has not been undertaken, and wide consultation with iwi has also not occurred. This is considered a key risk of the proposal.

- 8.3 The RIS frequently cites the Stage 2 RMA Review Process as one which will be able to more broadly and comprehensively examine the issue, and to - in unfettered way – explore options to address it. However there is clear pressure to get something workable going as quickly as possible. Speed is clearly of the essence. Requiring Regional Councils to change their plans in relation to freshwater to give effect to the guidance set out in the NPSFWM expeditiously is the objective of the provisions in the Bill. Speed has also characterised the preparation of the Bill itself, and the lack of consultation in its drafting is noted in the RIS, and that this comes with risks. The RIS advises that the Select Committee process itself will be the first real test of Bill proposals and provisions relating to freshwater plan preparation.
- 8.4 NZPI - reflecting the day to day activities and concerns of its membership - many of whom will be at the coal face of implementing the freshwater proposals under consideration - is focussed on workability, practicality and efficiency. The RIS itself does not explore the practical realities of implementing the provisions in the Bill and of giving effect to the NPSFWM. And because it does not do that, most likely because there has not been time to do that, insufficient analysis and investigation has been applied. NZPI suggests that two or three case studies need to be chosen. Case studies of freshwater catchments or sub-catchments where it is generally accepted there are major and apparently worsening water quality issues. And then step by step road-test the “Healthy Waterways” provisions (including the Bill provisions), considering who wins and who loses at each stage and how those wins and losses are compensated for or addressed, considering who does what and what skills are needed, and demonstrate that at the end of the road there are benefits to freshwater quality, and evaluate and account for the costs along the way.
- 8.5 NZPI submits that unless practical regulatory assessment akin to this is carried out to guide and design these interventions, the Select Committee decision-making process risks being uninformed.

## **9 Submissions and Hearing**

- 9.1 NZPI wishes to appear before the Environment Select Committee to discuss this submission, and to present its further practical research findings.

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