

7 November 2019

Committee Secretariat
Environment Committee
Parliament Buildings
WELLINGTON

Submission to: the Resource Management Amendment Bill

1. Introduction

Water New Zealand welcomes the opportunity to make a submission on the Resource Management Amendment Bill (**Bill**). Water New Zealand is a not-for-profit organisation that promotes and represents water management professionals and organisations. It is the country's largest water industry body, providing leadership in the water sector through advocacy, collaboration and professional development. Members include nearly 200 organisations and more than 2000 individuals drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies and scientists.

2. Context to this submission

Water New Zealand has recently made a submission on the discussion document and related material - *Action for healthy waterways*, on a national direction for freshwater. Water New Zealand generally supported the proposals. Water New Zealand notes that the new freshwater management process in the Bill is directly relevant to the Government's freshwater proposals.

3. General comments on the Bill

Water New Zealand supports the Bill's objectives of reducing complexity, increasing certainty, and restoring public participation by repealing some of the changes made to the Resource Management Act 1991 by the Resource Legislation Amendment Act 2017.

As noted above one of the objectives of the Bill is to assist in achieving the Government's freshwater reform package which Water New Zealand submitted on in support. Water New Zealand is, therefore, generally supportive of the amendments proposed by the Bill that support the Government's wider objectives for freshwater reform. Those matters supported are:

- The provisions that enable the concurrent review of multiple regional consents relating to freshwater; and

- The provision that introduces a specialised regional planning process for freshwater.

Water New Zealand seeks limited amendments to the provisions set out below to ensure that the Bill provides greater certainty of process and outcomes for all water infrastructure providers.

4. Clause by clause comments on the Bill

Clauses 24 and 26 : changes to provisions inserted by the Resource Legislation Amendment Act 2017

Submission:

A number of Water New Zealand members (namely local authorities) made submissions on the changes proposed in 2017 Amendments in relation to resource consent notification and Environment Court appeals processes.

The particular issue of concern for water infrastructure providers was the restrictions on the notification of, and appeal rights for, subdivision consent applications. The reason for the concern is because subdivisions have the potential to have adverse effects (including reverse sensitivity effects) on infrastructure providers. It is, therefore, critical that infrastructure providers have the ability to oppose inappropriate subdivision proposals including through the Environment Court appeal process.

Water New Zealand therefore supports the proposals in the Bill to repeal the provisions in relation to public notification and appeals for subdivision and residential activity consent applications (clause 24), and the restrictions on the scope of appeals against decisions on such applications (clause 26).

Decision sought:

That clauses 24 and 26 are retained.

Clause 27 : review of regional resource consent conditions

Submission:

Water New Zealand supports the proposal to enable regional authorities to concurrently review the conditions of regional resource consents (including water takes and discharge permits), where these relate to regional rules addressing: levels, flows and rates of water use; minimum standards for water quality; and ranges of water temperature or pressure of geothermal water.

The intention of the provisions is to allow regional councils to consider the effects of activities on freshwater on a catchment-wide or freshwater management unit-wide basis, when reviewing the conditions of existing consents. Water New Zealand considers that this is an important process as it will assist in providing consistency across conditions for water take and discharge consents. This in turn will ensure that all consented activities are appropriately conditioned so that they will then contribute to the overall aim of stopping degradation and starting to improve freshwater quality.

Water New Zealand notes that such a review process will require significant resources which may be a disincentive for regional council's in undertaking the process. For water infrastructure providers

that hold multiple consents – water take and discharge consents – certainty of the timing of such reviews is critical. It is noted that the current wording of section 128 does not provide any guidance on when a regional council should review consent conditions post changes to a regional plan. Water New Zealand would support more direction being provided by the Government to regional authorities as to when and how their new review powers should be exercised. This would enable water infrastructure providers to appropriately plan for reviews of the conditions of their water take and discharge consents.

Decision sought:

That clause 27 is retained.

That the Government provide guidance to regional councils on when and how the new review powers ought to be exercised.

[Clause 13 : new planning process for freshwater](#)

Submission:

As noted above Water New Zealand generally supports the proposed new specialised planning process for freshwater which requires both expert decision makers and a timely and cost effective process.

However, Water New Zealand has some concerns about how the process throughout the country, which will likely be happening all at the same time, will be resourced. There will be a significant constraints on the Chief Freshwater Commissioner (**Commissioner**) in finding suitable expert decision makers to resource the various panels. It may be, therefore, that a more practical solution would be to allow the Commissioner to appoint the same core panel for all the hearings and that this core panel is tailored to include local expertise at the local level. This would not only assist in the resourcing of the hearing panels but would also ensure consistency of decision making.

The retention of merits appeals to the Environment Court where a regional council rejects a recommendation of a freshwater hearing panel is supported with point-of-law appeals to the High Court where a recommendation is accepted.

Decision sought:

That clause 13 is retained but the Committee consider whether the wording of the clause would allow the Commissioner to appoint the same core members to the various hearing panels that would need to be held to hear and recommend on all the regional plans that will be required by the new NPSFM.

[Schedule 1 amendments – insertion of new subpart Part 4](#)

Submission:

As currently proposed in the Bill, there is no requirement for regional councils to consult with water, wastewater and stormwater providers in preparing regional freshwater plans or plan changes for

notification. Water supply, wastewater and stormwater providers (including asset managers) are also currently not required to participate in those processes following notification. Under the current proposal, these providers must choose to make a formal submission on a proposed freshwater plan or plan change in order to participate in the subsequent hearing process.

Due to the importance of the water services sector to maintaining public health and well-being and for economic reasons Water New Zealand considers that consultation with the sector ought to be a mandatory requirement.

In terms of consultation during the development of freshwater plans or plan changes it is recommended that an amendment to the Bill is made to set out the information a regional council must provide to the Commissioner following public notification of a freshwater plan or plan change.

In addition, to better enable water, wastewater and stormwater providers to participate in the hearing of submissions – if they wish – on a notified freshwater plan or plan change, we also recommend the Bill is amended to enable the relevant providers (including asset managers) to attend the hearings of a freshwater plan or plan change that relates to their operations

There are two amendments proposed below as follows:

- An additional sub-clause (to subpart 1, clause 37 of the new freshwater planning process) would require a regional council to provide documentation to the Commissioner;
- An amendment to new clause 41.

Decision sought:

That **clauses 37 of Part 4 of Schedule 1** be amended as follows (shown in underline):

37 Regional council must submit freshwater planning documents and give nominations to Chief Freshwater Commissioners

- (1) A regional council must, no later than 6 months after it has publicly notified a freshwater planning instrument, submit the following documents to the Chief Freshwater Commissioner:

...

- (k) for each municipal water, wastewater and stormwater service provider with (or that managers) water, wastewater and stormwater infrastructure in the region, documentation showing the consultation undertaken with, and advice received from, those providers in preparing of the proposed freshwater planning instrument for public notification.

41 Council must and municipal water, wastewater and stormwater services provider(s), including asset managers, can attend hearings

- (1) The relevant regional council must attend the hearings to assist a freshwater hearings panel in 1 or more of the following ways:
- (a) to clarify or discuss matters in the freshwater planning instrument;
 - (b) to give evidence;
 - (c) to speak to submissions or address issues raised by them;

- (d) to provide any other relevant information as requested by the panel.
- (2) The relevant municipal water wastewater and stormwater services provider(s), including asset managers, may attend the hearings to assist a freshwater hearings panel in 1 or more of the following ways:
 - (a) to clarify or discuss matters in the freshwater planning instrument;
 - (b) to give evidence;
 - (c) to provide information on the proposed implementation of the instrument;
 - (d) to provide any other relevant information requested by the panel.
- ~~(2)~~(3) Despite subclauses (1) and (2), the freshwater hearings panel may excuse the relevant regional council or municipal water, wastewater and stormwater services provider(s), or asset managers, from attending or remaining at any particular hearing.
- ~~(3)~~(4) A failure by a relevant regional council, municipal water, wastewater and stormwater services provider(s), or asset managers, or a freshwater hearings panel to comply with this clause does not invalidate the hearing or the hearings session.
- ~~(4)~~(5) To avoid doubt, this clause does not limit or prevent the relevant regional council municipal water, wastewater and stormwater services provider(s), or asset managers, from—
 - (a) making a submission on the freshwater planning instrument:
 - (b) being heard on that submission.

[Clause 66 and new Part 12A to Schedule 1](#)

Submission:

Water New Zealand generally supports the proposed amendment that provides for new enforcement functions for the EPA. In theory this proposal should ensure that there is adequate enforcement and consistency of enforcement at a national level. However, it is essential that this amendment is accompanied by very early guidance from either the Ministry or the EPA so that the current enforcement agencies (local authorities) are clear about how this enforcement function will work in practice. Without a coordinated and clearly guided approach the danger is the intent of this amendment is lost and effective enforcement may be worsened.

Decision sought:

That the Government ensure that appropriate and early guidance is provided to ensure this new proposal will work well in practice.

5. Request to be heard

Water New Zealand would welcome the opportunity to address the Committee in relation to this submission.

CONTACT:

Jim Graham
Principal Advisor Water Quality
jim.graham@waternz.org.nz
027 2313 445