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Resource Management Act 1991

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Date of assent 22 July 1991
Commencement see section 1(2)

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry for the Environment.

- (8) A combined document prepared under this section must clearly identify—
- (a) the provisions of the document that are the regional policy statement, the regional plan, the regional coastal plan, or the district plan, as the case may be; and
 - (b) the objectives, policies, and methods set out or described in the document that have the effect of being provisions of the regional policy statement; and
 - (c) which local authority is responsible for observing, and enforcing the observance of, each provision of the document.
- (9) A combined document prepared under this section—
- (a) must be prepared in accordance with Schedule 1; and
 - (b) when approved by a local authority is deemed, for the purposes of this Act, to be a plan or regional policy statement separately prepared and approved by that authority for its region or district, as the case may be.
- (10) Subsection (9)(b) applies whether or not the combined document is approved by any of the other local authorities concerned.
- (11) Clauses 30 and 30A of Schedule 7 of the Local Government Act 2002 apply to the appointment and conduct of any joint committee set up for the purposes of preparing, implementing, or administering a combined document under this section.

Section 80: replaced, on 1 October 2009, by section 66 of the Resource Management (Simplifying and Streamlining) Amendment Act 2009 (2009 No 31).

Section 80(6A): inserted, on 19 April 2017, by section 65(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 80(6B): inserted, on 19 April 2017, by section 65(1) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 80(7): amended, on 19 April 2017, by section 65(2) of the Resource Legislation Amendment Act 2017 (2017 No 15).

Section 80(11): amended, on 8 August 2014, by section 78 of the Local Government Act 2002 Amendment Act 2014 (2014 No 55).

Subpart 4—Freshwater planning process

Subpart 4: replaced, on 1 July 2020, by section 22 of the Resource Management Amendment Act 2020 (2020 No 30).

80A Freshwater planning process

- (1) The purpose of this subpart is to require all freshwater planning instruments prepared by a regional council to undergo the freshwater planning process.
- (2) A **freshwater planning instrument** means—
- (a) a proposed regional plan or regional policy statement for the purpose of giving effect to any national policy statement for freshwater management:

- (b) a proposed regional plan or regional policy statement that relates to freshwater (other than for the purpose described in paragraph (a));
- (c) a change or variation to a proposed regional plan or regional policy statement if the change or variation—
 - (i) is for the purpose described in paragraph (a); or
 - (ii) otherwise relates to freshwater.
- (3) A regional council must prepare a freshwater planning instrument in accordance with this subpart and Part 4 of Schedule 1. However, if the council is satisfied that only part of the instrument relates to freshwater, the council must—
 - (a) prepare that part in accordance with this subpart and Part 4 of Schedule 1; and
 - (b) prepare the parts that do not relate to freshwater in accordance with Part 1 of Schedule 1 or, if applicable, subpart 5 of this Part.
- (4) A regional council must—
 - (a) publicly notify the freshwater planning instrument; and
 - (b) if the purpose of the freshwater planning instrument is to give effect to the National Policy Statement for Freshwater Management 2020, publicly notify the freshwater planning instrument by 31 December 2024; and
 - (c) no later than 6 months after it has publicly notified the freshwater planning instrument, submit the documents required by clause 37(1) of Schedule 1 (the **required documents**) to the Chief Freshwater Commissioner; and
 - (d) at least 20 working days before submitting the required documents, provide to the Chief Freshwater Commissioner in writing—
 - (i) its notice of intention to submit those documents; and
 - (ii) the regional council and local tangata whenua nominations for appointment to the freshwater hearings panel required by clause 59(1)(b) and (c) of Schedule 1.
- (5) The following is an outline of the rest of the freshwater planning process set out in Part 4 of Schedule 1:
 - (a) the Chief Freshwater Commissioner must convene a freshwater hearings panel to conduct the public hearing of submissions on the freshwater planning instrument:
 - (b) the freshwater hearings panel must conduct the public hearing of submissions in accordance with its powers and the procedures set out in Part 4 of Schedule 1:

- (c) after the public hearing of submissions is concluded, the freshwater hearings panel must make recommendations to the regional council on the freshwater planning instrument:
- (d) the regional council may accept or reject any recommendation. However,—
 - (i) the regional council must provide reasons for rejecting a recommendation; and
 - (ii) a person who made a submission on the freshwater planning instrument may make an appeal in accordance with subpart 2 of Part 4 of Schedule 1.
- (6) For the purpose of this subpart the following provisions of Schedule 1 apply:
 - (a) clauses 1(3), 1A, 1B, 2(1), 3 to 3C, 4A, 5, 6, 7(1) and (2), 8, 8A, and 8D; and
 - (b) clauses 16, 16A, 16B, 17, 20, and 20A; and
 - (c) if a request is made by a person under clause 21(1) in relation to a freshwater planning instrument, Part 2 of Schedule 1 applies to the request.
- (7) This section does not affect the Minister’s ability to call in a matter that the Minister considers is or is part of a proposal of national significance under section 142.
- (8) In subsection (2), a proposed regional plan does not include a proposed regional coastal plan or a change or variation to that plan.
- (9) Section 37(1)(a) does not apply to any time period specified in this subpart or Part 4 of Schedule 1.
- (10) In subsection (4), **publicly notify**, in relation to a freshwater planning instrument, means to publicly notify the instrument in accordance with clause 5 of Schedule 1.
- (11) Subsection (5) is by way of explanation only and does not limit or affect the other provisions of this Act.

Section 80A: replaced, on 1 July 2020, by section 22 of the Resource Management Amendment Act 2020 (2020 No 30).

Subpart 5—Streamlined planning process

Subpart 5: inserted, on 19 April 2017, by section 66 of the Resource Legislation Amendment Act 2017 (2017 No 15).

80B Purpose, scope, application of Schedule 1, and definitions

- (1) This subpart and Part 5 of Schedule 1 provide a process, through a direction of the responsible Minister, for the preparation of a planning instrument in order to achieve an expeditious planning process that is proportionate to the complexity and significance of the planning issues being considered.
- (2) Under this subpart, Schedule 1 applies as follows:

- (b) must make copies of the material available for purchase in accordance with section 36 at the offices of the local authority; and
 - (c) may make copies of the material available in any other way that the chief executive of the local authority considers appropriate in the circumstances (for example, on an Internet website maintained by or on behalf of the local authority); and
 - (d) must give public notice stating that—
 - (i) the material is incorporated in the plan or proposed plan; and
 - (ii) the material is available for inspection during working hours free of charge and the place at which it can be inspected; and
 - (iii) copies of the material can be purchased and the place at which they can be purchased; and
 - (iv) if copies of the material are available under paragraph (c), details of how and where it may be obtained or accessed.
- (2) The material referred to in subclause (1) is—
- (a) material incorporated by reference in a plan or proposed plan:
 - (b) any amendment to, or replacement of, that material that is incorporated in the plan or proposed plan or the material referred to in paragraph (a) with the amendments or replacement material incorporated:
 - (c) if the material referred to in paragraph (a) or paragraph (b) is not in an official New Zealand language, as well as the material itself, an accurate translation in an official New Zealand language of the material.

Schedule 1 clause 35: inserted, on 10 August 2005, by section 129(1) of the Resource Management Amendment Act 2005 (2005 No 87).

Part 4

Freshwater planning process

Schedule 1 Part 4: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

36 Interpretation

In this Part,—

hearings means any hearing or part of a hearing of submissions on a freshwater planning instrument conducted by a freshwater hearings panel

relevant regional council means the regional council responsible for a freshwater planning instrument.

Schedule 1 clause 36: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Subpart 1—Freshwater planning process

Schedule 1 Subpart 1 heading: inserted, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Commencement of freshwater planning process

Heading: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

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

- (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:
 - (a) the freshwater planning instrument that was publicly notified;
 - (b) any variation made to the freshwater planning instrument under clause 16A;
 - (c) the regional council's evaluation report prepared under section 32;
 - (d) the submissions on the freshwater planning instrument received by the closing date for submissions;
 - (e) the regional council's summary of the decisions requested by submitters;
 - (f) any further submissions on the freshwater planning instrument received by the closing date for further submissions;
 - (g) any submissions received after the closing date for submissions or further submissions;
 - (h) any information about when the submissions described in paragraph (g) were received;
 - (i) the planning documents that are recognised by an iwi authority and lodged with the regional council;
 - (j) any documentation relevant to any obligations arising under any relevant iwi participation legislation, joint management agreement, or Mana Whakahono a Rohe;
 - (k) any other relevant information.
- (2) A regional council must, at least 20 working days before it submits the documents under subclause (1), provide the Chief Freshwater Commissioner in writing with—
 - (a) a notice of its intention to submit those documents to the Chief Freshwater Commissioner; and
 - (b) nominations for appointments to the freshwater hearings panel that are required by clause 59(1)(b) and (c).

Schedule 1 clause 37: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

38 Chief Freshwater Commissioner must convene freshwater hearings panel

As soon as practicable after receiving the documents described in clause 37(1), the Chief Freshwater Commissioner must, in accordance with clause 59, convene a freshwater hearings panel for the freshwater planning instrument to which those documents relate.

Schedule 1 clause 38: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Hearing of submissions on freshwater planning instrument

Heading: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

39 Functions of freshwater hearings panel

The functions of every freshwater hearings panel are—

- (a) to conduct a hearing of submissions on a freshwater planning instrument referred to it by the Chief Freshwater Commissioner; and
- (b) to make recommendations, after the hearing of submissions is concluded, to the relevant regional council; and
- (c) to hear any objections made in accordance with clause 40(2).

Schedule 1 clause 39: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

40 Powers of freshwater hearings panel

(1) A freshwater hearings panel has the same duties and powers as a local authority under the following provisions to the extent applicable:

- (a) section 39 (which provides for how hearings are to be conducted), except section 39(2)(c) and (d):
- (b) section 39C (which sets out the effect of a lack of accreditation):
- (c) section 40 (which provides for the persons who may be heard at a hearing):
- (d) section 41 (which provides for the application of certain provisions of the Commissions of Inquiry Act 1908):
- (e) section 41A (which relates to the control of hearings):
- (f) section 41B (which provides for the giving of directions as to the time for providing evidence in relation to a hearing):
- (g) section 41C (which sets out the directions and requests that may be given before or at a hearing), except section 41C(4):
- (h) section 41D (which provides for submissions to be struck out before or at a hearing):
- (i) section 42 (which provides for the protection of sensitive information):

- (j) section 42A (which provides for the ability to commission hearing reports).
- (2) If a freshwater hearings panel exercises a power under section 41D,—
 - (a) a person whose submission is struck out has a right of objection under section 357 as if the references in that section to an authority were a reference to a freshwater hearings panel; and
 - (b) sections 357C, 357D, and 358 apply to the freshwater hearings panel as the body to which an objection is made under section 357.
- (3) A freshwater hearings panel may decide to accept or reject any late submission.
- (4) A freshwater hearings panel may recommend to a relevant regional council that a variation be made to a freshwater planning instrument.

Schedule 1 clause 40: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

41 Pre-hearing meetings

- (1) The chairperson of a freshwater hearings panel may convene a pre-hearing meeting for the purpose of—
 - (a) clarifying a matter or an issue; or
 - (b) facilitating resolution of a matter or an issue; or
 - (c) dealing with any matter of an administrative or a procedural nature.
- (2) The chairperson may invite to the meeting—
 - (a) any person who made a submission on the freshwater planning instrument;
 - (b) the relevant regional council;
 - (c) any person who the chairperson considers has relevant expertise.
- (3) The chairperson must appoint a person to chair the pre-hearing meeting.
- (4) The chairperson of the pre-hearing meeting must provide the freshwater hearings panel with a report that—
 - (a) sets out any clarification or resolution of a matter or an issue agreed between the persons who attended the meeting; and
 - (b) sets out any outstanding matter or issue between them; and
 - (c) addresses any matter or issue identified by the chairperson to the freshwater hearings panel.

Schedule 1 clause 41: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

42 Council's role during 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) Despite subclause (1), the freshwater hearings panel may excuse the relevant regional council from attending or remaining at any particular hearing.
- (3) A failure by a relevant regional council or a freshwater hearings panel to comply with this clause does not invalidate the hearing or the hearings session.
- (4) To avoid doubt, this clause does not limit or prevent the relevant regional council from—
 - (a) making a submission on the freshwater planning instrument:
 - (b) being heard on that submission.
- (5) A regional council must comply with any requirement by the freshwater hearings panel to provide a hearing report in accordance with section 42A.

Schedule 1 clause 42: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

43 Conference of experts

- (1) A freshwater hearings panel may, at any time during a hearing, direct that a conference of experts be held for the purpose of—
 - (a) clarifying a matter or an issue relating to the freshwater planning instrument; or
 - (b) facilitating resolution of a matter or an issue relating to the freshwater planning instrument.
- (2) Without limiting the panel's discretion under subclause (1), the panel may authorise a representative of the relevant regional council with appropriate expertise to attend the conference.
- (3) The persons attending the conference must provide the freshwater hearings panel with a report of the outcomes of the conference.
- (4) If a conference requires a facilitator, the panel must appoint an independent facilitator.
- (5) The facilitator of a conference must, after the conference, prepare a report on the conference and provide it in writing or electronically to—
 - (a) the freshwater hearings panel; and
 - (b) the persons who attended the conference.
- (6) A facilitator must act under subclause (5) only if the freshwater hearings panel requires him or her to do so.
- (7) A report prepared under subclause (5) must not, without a person's consent, include any material that the person communicated or made available at the conference on a without prejudice basis.

Schedule 1 clause 43: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

44 Alternative dispute resolution

- (1) A freshwater hearings panel may, at any time during a hearing, refer to mediation or any other alternative dispute resolution process the persons listed in subclause (2) if—
 - (a) the panel considers that it is—
 - (i) appropriate to do so; and
 - (ii) likely to resolve issues between the parties that relate to the freshwater planning instrument; and
 - (b) each person has consented (other than the relevant regional council, which must participate if referred by the panel).
- (2) The persons are—
 - (a) 1 or more submitters; and
 - (b) the relevant regional council; and
 - (c) any other person that the freshwater hearings panel considers appropriate.
- (3) The freshwater hearings panel must appoint the mediator or person facilitating the mediation or other dispute resolution process (the **mediator**).
- (4) The mediator must report the outcome to the freshwater hearings panel.
- (5) The outcome reported under subclause (4) must not include any material without the consent of the relevant person, if the material was communicated or made available by the person at the mediation or other process on a without prejudice basis.

Schedule 1 clause 44: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Notification of report and preparation of proposed policy statement, plan, or change

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

45 Freshwater hearings panel may commission reports

- (1) A freshwater hearings panel may, at any time before or during a hearing, require the relevant regional council, or commission a consultant or any other person, to prepare a report on—
 - (a) 1 or more submissions; or
 - (b) any matter arising from a hearing; or

- (c) any other matter that the panel considers necessary for the purpose of the panel making its recommendations.
- (2) The report does not need to repeat information included in any submission.
- (3) Instead, the report may—
 - (a) adopt all of the information; or
 - (b) adopt any part of the information by referring to the part adopted.
- (4) The freshwater hearings panel—
 - (a) may consider the report at the hearing or when making its recommendations, or both; and
 - (b) must require the relevant regional council to make the report available for inspection on its Internet site and at its offices.
- (5) The freshwater hearings panel may request and receive, from the person who prepared the report, any information and advice that is relevant and reasonably necessary for the panel to make its recommendations under clause 49.

Schedule 1 clause 45: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

46 Freshwater hearings panel may appoint special advisor and friend of submitter

- (1) The chairperson of a freshwater hearings panel may appoint as a special advisor a person who is able to assist the panel in any hearing.
- (2) A special advisor is not a member of the panel but may assist the panel in any way that the panel thinks fit.
- (3) The chairperson of a freshwater hearings panel—
 - (a) may appoint a friend of submitter for the purpose of providing support to the submitter in relation to the hearings; but
 - (b) must consult the relevant regional council before making an appointment.

Schedule 1 clause 46: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Extensions of time

Heading: inserted, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

47 Chief Freshwater Commissioner may extend time frame

- (1) A regional council or the chairperson of a freshwater hearings panel may request the Chief Freshwater Commissioner for an extension of a time frame specified in clauses 37, 40, 51, and 52 in relation to a freshwater planning instrument.

- (2) The person applying must state why the extension is sought, the proposed time frame, and how the person intends to meet the proposed time frame.
- (3) The Chief Freshwater Commissioner may—
 - (a) decline the request; or
 - (b) fully accept the request (including the proposed time frame); or
 - (c) partially accept the request and determine a different time frame.
- (4) The Chief Freshwater Commissioner may grant a regional council or a freshwater hearings panel an extension more than once (in relation to the same or a different provision specified in subclause (1)).
- (5) However, the total period of any extension (regardless of who applied for it) must not exceed 12 months in relation to a freshwater planning instrument.

Schedule 1 clause 47: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Other procedural matters

Heading: inserted, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

48 Procedures of freshwater hearings panel

- (1) Every freshwater hearings panel must—
 - (a) regulate its own proceedings in a manner that is appropriate and fair in the circumstances; and
 - (b) keep a full record of proceedings.
- (2) At a hearing, a freshwater hearings panel may—
 - (a) permit a party to question another party or witness:
 - (b) prohibit cross-examination:
 - (c) permit cross-examination at the request of a party but only if the panel is satisfied that it is in the interests of justice:
 - (d) regulate the conduct of any cross-examination.

Schedule 1 clause 48: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Process for recommendations of freshwater hearings panel

Heading: inserted, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

49 Freshwater hearings panel must make recommendations to regional council on freshwater planning instrument

- (1) A freshwater hearings panel must make recommendations on the freshwater planning instrument.
- (2) The freshwater hearings panel—

- (a) is not limited in making recommendations only within the scope of submissions made on the freshwater planning instrument; and
- (b) may make recommendations on any other matters relating to the freshwater planning instrument identified by the panel or any other person during the hearing.

Recommendations must be provided in reports

- (3) The freshwater hearings panel must provide its recommendations to the relevant regional council in 1 or more written reports.
- (4) Each report must include—
 - (a) the panel’s recommendations on the provisions of the freshwater planning instrument covered by the report, and identify any recommendations that are out of scope of the submissions made in respect of those provisions; and
 - (b) the panel’s recommendations on the provisions and matters raised in submissions made in respect of the provisions covered by the report; and
 - (c) the panel’s reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—
 - (i) the provisions of the freshwater planning instrument to which they relate; or
 - (ii) the matters to which they relate.
- (5) Each report may also include—
 - (a) matters relating to any consequential alterations necessary to the freshwater planning instrument arising from submissions; and
 - (b) any other matter that the panel considers relevant to the freshwater planning instrument that arises from submissions or otherwise.
- (6) To avoid doubt, a panel is not required to make recommendations in a report that address each submission individually.

Schedule 1 clause 49: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Public submissions

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

50 Matters that affect recommendations

A freshwater hearings panel, in formulating its recommendations, must—

- (a) have regard to—
 - (i) any reports prepared under section 42A and clauses 41, 43, 45, and 46; and

- (ii) any reports produced as a result of mediation or other alternative dispute resolution directed by the panel; and
 - (iii) any technical or other reports commissioned by the panel; and
 - (iv) any advice or other assistance provided by a special advisor appointed under clause 46; and
- (b) take account of any alternative dispute resolution outcomes reported under clause 44; and
- (c) include in its recommendations a further evaluation of the freshwater planning instrument undertaken in accordance with section 32AA; and
- (d) be sure that if the relevant regional council were to accept the panel's recommendations, the following would be complied with:
- (i) sections 43B, 59 to 68, 69 to 70B, 85A, and 85B(2); and
 - (ii) any other provision of any enactment (including this Act) that applies to the council's preparation of the plan.

Schedule 1 clause 50: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

51 Deadline for recommendations

A freshwater hearings panel must provide its report under clause 49 to the relevant regional council no later than the date that is 40 working days before the expiry of 2 years after the date on which the freshwater planning instrument was publicly notified by the relevant regional council.

Schedule 1 clause 51: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Regional council's response to recommendations

Heading: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

52 Relevant regional council to consider recommendations and notify decisions on them

- (1) The relevant regional council must—
- (a) decide whether to accept or reject each recommendation of the freshwater hearings panel; and
 - (b) for each rejected recommendation that is within the scope of submissions, decide an alternative solution, which—
 - (i) may or may not include elements of both the freshwater planning instrument as notified and the freshwater hearings panel's recommendation in respect of that part of the freshwater planning instrument; but
 - (ii) must be within the scope of the submissions; and

- (c) for each rejected recommendation that is outside the scope of submissions, decide an alternative solution, which may be within or outside the scope of submissions; and
 - (d) include an assessment of each alternative solution to a rejected recommendation in the further evaluation report required under section 32AA.
- (2) The regional council must make decisions under subclause (1) in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.
- (3) When making decisions under subclause (1), the relevant regional council—
 - (a) is not, subject to subclause (2), required to consult any person or consider submissions or other evidence from any person; and
 - (b) must not consider any submission or other evidence unless it was made available to the freshwater hearings panel before the panel made the recommendation that is the subject of the relevant regional council's decision.
- (4) To avoid doubt, the relevant regional council may accept recommendations of the freshwater hearings panel that are beyond the scope of the submissions made on the freshwater planning instrument.
- (5) The relevant regional council must, no later than 40 working days after it is provided with the report, publicly notify its decisions under subclause (1) in a way that sets out the following information:
 - (a) each recommendation of the freshwater hearings panel that it accepts;
 - (b) each recommendation of the freshwater hearings panel that it rejects and the reasons for doing so;
 - (c) the alternative solution for each rejected recommendation.
- (6) After the regional council publicly notifies its decisions, it must comply with clause 11 as if the decisions were notified under clause 10(4)(b).
- (7) On and from the date the decisions are publicly notified, the freshwater planning instrument is amended in accordance with the decisions.
- (8) A regional council must publicly notify the availability of the report of the freshwater hearings panel, the council's decisions, and where the report and the decisions may be viewed or accessed.

Schedule 1 clause 52: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

53 Variations to freshwater planning instrument

- (1) If at any time after complying with clause 37(1), a relevant regional council considers that a variation to the freshwater planning instrument is needed, the council must—
 - (a) notify the Chief Freshwater Commissioner in writing of the need for the variation; and

- (b) provide any additional information requested by the Chief Freshwater Commissioner for the purpose of subclause (3).
- (2) A regional council must also comply with subclause (1)(a) and (b) if it considers that a variation to a freshwater instrument recommended by the freshwater hearings panel is needed (*see* clause 40(4)).
- (3) The Chief Freshwater Commissioner must, after consulting the relevant freshwater hearings panel, determine whether to accept or reject the variation.
- (4) In making a determination, the Chief Freshwater Commissioner must consider—
 - (a) whether the variation is needed to correct a significant defect in the freshwater planning instrument; and
 - (b) whether the variation is needed for the effective functioning of the freshwater planning instrument; and
 - (c) the impact that accepting the variation would have on the decision date of the freshwater planning instrument.
- (5) The Chief Freshwater Commissioner must advise the relevant regional council in writing of the outcome of the determination.
- (6) Clauses 16A and 16B apply, with any necessary modifications, to the variation. However, a variation that is initiated before the regional council complies with clause 37(1) must be merged into the freshwater planning instrument in accordance with clause 16B before the council complies with that clause.

Schedule 1 clause 53: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Subpart 2—Appeals

Schedule 1 Subpart 2 heading: inserted, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

54 Appeal rights

- (1) The appeal rights available in respect of a freshwater planning instrument are as provided in clauses 55 and 56.
- (2) To avoid doubt, no further appeal lies to the Supreme Court (by leave or otherwise).

Schedule 1 clause 54: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Decision

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

55 Right of appeal in relation to rejected recommendation

- (1) A person who made a submission on a freshwater planning instrument may appeal to the Environment Court in respect of a provision or matter relating to the freshwater planning instrument—
 - (a) that the person addressed in the submission; and
 - (b) in relation to which the relevant regional council rejected a recommendation of the freshwater hearings panel and decided an alternative solution which resulted in—
 - (i) a provision or matter being included in the freshwater planning instrument; or
 - (ii) a provision or matter being excluded from the freshwater planning instrument.
- (2) If a regional council decides to reject a recommendation of the freshwater hearings panel that is outside the scope of submissions, a person who made a submission may appeal to the Environment Court in respect of that decision or the alternative solution proposed by the council.
- (3) The Environment Court must treat an appeal under this clause as if it were a hearing under clause 15(1) or (2).
- (4) Except as provided in this clause, the following provisions apply with all necessary modifications:
 - (a) Parts 11 and 11A but not section 308; and
 - (b) clauses 14(4) and (5) and 15(1) and (2) of this schedule.

Schedule 1 clause 55: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

56 Right of appeal in relation to accepted recommendation

- (1) A person who made a submission on a freshwater planning instrument may appeal to the High Court in respect of a provision or matter relating to the freshwater planning instrument—
 - (a) that the person addressed in the submission; and
 - (b) in relation to which the relevant regional council accepted a recommendation of the freshwater hearings panel which resulted in—
 - (i) a provision or matter being included in a freshwater planning instrument; or
 - (ii) a provision or matter being excluded from a freshwater planning instrument.

- (2) If a regional council decides to accept a recommendation of the freshwater hearings panel that is outside the scope of submissions, a person who made a submission may appeal to the High Court in respect of that decision.
- (3) An appeal under this clause may be on a question of law only.
- (4) Except as otherwise provided in this clause, sections 299(2), 300 to 308, and Part 11A apply with all necessary modifications.

Schedule 1 clause 56: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

57 Judicial review

- (1) Nothing in this Part limits or affects any right of judicial review a person may have in respect of any matter to which this Part applies except as provided in clause 55(4) (which applies section 296, that section being in Part 11).
- (2) However, a person must not both apply for judicial review of a decision made under this Part and appeal to the High Court under clause 56 in respect of the decision unless the person lodges the applications for judicial review and appeal together.
- (3) If applications for judicial review and appeal are lodged together, the High Court must try to hear the judicial review and appeal proceedings together, but need not if the court considers it impracticable to do so in the circumstances of the particular case.

Schedule 1 clause 57: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Transitional arrangement

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Subpart 3—Freshwater hearings panels

Schedule 1 Subpart 3 heading: inserted, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

58 Chief Freshwater Commissioner's powers and functions in relation to freshwater hearings panels

- (1) The Chief Freshwater Commissioner has the following powers and functions:
 - (a) to decide when freshwater hearings panels are to be convened:
 - (b) to determine, after considering the documents submitted by a regional council under clause 37(1) in relation to a freshwater planning instrument, the appropriate size and composition of a freshwater hearings panel in accordance with clause 59:
 - (c) to consider nominations for appointment to a freshwater hearings panel made under clause 59(1)(b) and (c):

- (d) to appoint members of a freshwater hearings panel in accordance with clause 59:
- (e) to appoint the chairperson of a freshwater hearings panel.
- (2) The Chief Freshwater Commissioner may direct that a freshwater hearings panel be split into 2 panels if the Commissioner considers it appropriate in the circumstances.

Schedule 1 clause 58: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Rights of appeal under collaborative planning process

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

59 Composition of freshwater hearings panel

- (1) Each freshwater hearings panel must comprise 5 members as follows:
 - (a) 2 freshwater commissioners; and
 - (b) 2 persons who—
 - (i) are nominated by the relevant regional council; and
 - (ii) may or may not be elected regional council members; and
 - (c) 1 person with an understanding of tikanga Māori and mātauranga Māori who—
 - (i) is nominated by local tangata whenua; or
 - (ii) if no nomination is made, is appointed by the Chief Freshwater Commissioner.
- (2) However, the number of members on a freshwater hearings panel—
 - (a) may exceed 5 if the Chief Freshwater Commissioner considers there are special circumstances in the region to which the freshwater planning instrument applies; or
 - (b) may be fewer than 5 (but no fewer than 3) if the Chief Freshwater Commissioner considers that the scale and complexity of the freshwater planning instrument does not warrant the appointment of 5 members.
- (3) When appointing fewer than 5 members to a freshwater hearings panel, the Chief Freshwater Commissioner must ensure that the panel includes—
 - (a) 1 person described in subclause (1)(b); and
 - (b) 1 person described in subclause (1)(c); and
 - (c) 1 freshwater commissioner.
- (4) When appointing more than 5 members to a freshwater hearings panel, the Chief Freshwater Commissioner must ensure that the panel includes the 5 members referred to in subclause (1)(a) to (c).

- (5) The Chief Freshwater Commissioner must convene each freshwater hearings panel in a manner that is consistent with any relevant iwi participation legislation, Mana Whakahono a Rohe, or joint management agreement.
- (6) When convening a freshwater hearings panel, the Chief Freshwater Commissioner must consider the need for the panel to collectively have knowledge of and expertise in relation to—
- (a) judicial processes and cross-examination; and
 - (b) freshwater quality, quantity, and ecology; and
 - (c) this Act; and
 - (d) tikanga Māori and mātauranga Māori; and
 - (e) Te Mana o te Wai; and
 - (f) water use in the local community; and
 - (g) subject areas likely to be relevant to the work of the panel.
- (7) A freshwater hearings panel member must be accredited under section 39A unless the Chief Freshwater Commissioner is satisfied there are special circumstances in relation to the freshwater hearings panel to which the commissioner is appointed.

Schedule 1 clause 59: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

60 Appointment of chairperson of freshwater hearings panel

- (1) The Chief Freshwater Commissioner must appoint the chairperson of a freshwater hearings panel.
- (2) Before appointing a chairperson, the Chief Freshwater Commissioner must consider the desirability of the chairperson having knowledge and expertise in relation to judicial processes and cross-examination.
- (3) The chairperson must be a freshwater commissioner and may be the Chief Freshwater Commissioner.
- (4) In the event of an equality of votes, the chairperson has a casting vote.

Schedule 1 clause 60: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

61 Liability of members of freshwater hearings panel

A member of a freshwater hearings panel is not liable for anything the member does, or omits to do, in good faith in performing the functions and duties or exercising the powers of a panel.

Schedule 1 clause 61: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

62 Other duties of Chief Freshwater Commissioner in relation to panel members

- (1) The Chief Freshwater Commissioner may,—
 - (a) at any time, for just cause, remove a member from a freshwater hearings panel; and
 - (b) appoint new members to the freshwater hearings panel in accordance with clause 59.
- (2) The Chief Freshwater Commissioner must notify members of their appointment to a freshwater hearings panel and when their appointment commences.
- (3) When removing a member from a freshwater hearings panel, the Chief Freshwater Commissioner must tell the member in writing of the date on which the removal takes effect and the reasons for the removal.
- (4) A member is not entitled to any compensation or other payment or benefit relating to the person ceasing, for any reason, to be a member of the panel.
- (5) In subclause (1), **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of the collective duties of the freshwater hearings panel or the individual duties of members of the panel.

Schedule 1 clause 62: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Approval of proposed policy statement or plan

[Repealed]

Heading: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

63 Funding of freshwater hearings panel and related activities

- (1) The relevant regional council is responsible for all costs incurred by a freshwater hearings panel and for the activities related to the performance or exercise of the panel's functions and powers under this Part.
- (2) Subclause (1) applies from the date that members are appointed to the freshwater hearings panel.
- (3) Without limiting subclause (1), the relevant regional council is responsible for—
 - (a) the remuneration and expenses of the members of the freshwater hearings panel; and
 - (b) the administrative costs of each hearing session, including venue hire and public notices; and
 - (c) the remuneration of any expert, mediator or other dispute resolution facilitator, or other person whose services are engaged by the panel under this Part; and
 - (d) the allowances payable to any witness called by the panel; and

- (e) the costs of any special advisor or friend of submitter appointed by the panel; and
 - (f) providing administrative and secretarial support services to the panel as required.
- (4) For the purposes of subclause (1), each member of the freshwater hearings panel, other than members of a regional council, must be paid—
- (a) remuneration by way of salary, fees, or allowances at a rate determined by the Minister; and
 - (b) actual and reasonable travelling and other expenses incurred in carrying out his or her office in accordance with the Fees and Travelling Allowances Act 1951, and that Act applies as if the members were members of a statutory Board within the meaning of that Act.
- (5) Members of a regional council who are appointed to a freshwater hearings panel must be paid at a rate determined by the relevant council.

Schedule 1 clause 63: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Review panels

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

64 Continued existence of freshwater hearings panel

A freshwater hearings panel exists until it has completed the performance and exercise of its functions and powers under this Part in relation to the hearing of submissions, including any related appeals that are filed in any court.

Schedule 1 clause 64: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Subpart 4—Freshwater commissioners

Schedule 1 Subpart 4 heading: inserted, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

65 Minister may appoint freshwater commissioners

- (1) The Minister may appoint freshwater commissioners.
- (2) The Minister must appoint freshwater commissioners who—
 - (a) are accredited under section 39A; and
 - (b) collectively have knowledge of and expertise in relation to—
 - (i) judicial processes and cross-examination; and
 - (ii) freshwater quality, quantity, and ecology; and
 - (iii) this Act; and

(iv) tikanga Māori and mātauranga Māori.

- (3) The Minister must appoint as Chief Freshwater Commissioner a freshwater commissioner who is an Environment Court Judge or retired Environment Court Judge.

Schedule 1 clause 65: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

66 How freshwater commissioners appointed

- (1) The Minister must give a person appointed as a freshwater commissioner a written notice of appointment.
- (2) The notice of appointment must—
- (a) state the date on which the appointment takes effect; and
 - (b) state the term of the appointment; and
 - (c) specify that the costs of the freshwater commissioner—
 - (i) that are for purposes specific to a freshwater hearings panel will be met by the relevant regional council; and
 - (ii) that are for other purposes directed by the Chief Freshwater Commissioner will be met by the Crown.

Schedule 1 clause 66: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Terms and liabilities

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

67 When freshwater commissioner's appointment ceases

- (1) A person appointed as a freshwater commissioner will remain in that office until the earliest of the following:
- (a) the person's term of appointment ends;
 - (b) the person dies;
 - (c) the person resigns by giving 20 working days' written notice to the Minister.
- (2) The Minister may, at any time for just cause, by written notice, terminate the appointment of a freshwater commissioner.
- (3) The Minister may, at any time for just cause, remove a freshwater commissioner by written notice to that person (with a copy to the Chief Freshwater Commissioner).
- (4) The notice must state—

- (a) the date on which the removal takes effect, which must not be earlier than the date on which the notice is received by the freshwater commissioner; and
 - (b) the reasons for the removal.
- (5) A freshwater commissioner is not entitled to any compensation or other payment or benefit relating to the person ceasing, for any reason, to hold office as a freshwater commissioner or the Chief Freshwater Commissioner.
- (6) In subclause (2), **just cause** includes misconduct, inability to perform the functions of office, neglect of duty, and breach of the collective duties of the freshwater hearings panel or the individual duties of members of the panel.

Schedule 1 clause 67: replaced, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

68 Liability of members of panel

[Repealed]

Schedule 1 clause 68: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Functions and powers

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

69 Functions of panel

[Repealed]

Schedule 1 clause 69: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

70 Powers of panel

[Repealed]

Schedule 1 clause 70: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Procedural matters

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

71 Procedures of panel

[Repealed]

Schedule 1 clause 71: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Evidentiary matters

[Repealed]

Heading: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

72 Reports

[Repealed]

Schedule 1 clause 72: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

73 Conference of experts

[Repealed]

Schedule 1 clause 73: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

74 Information provided to review panel

[Repealed]

Schedule 1 clause 74: repealed, on 1 July 2020, by section 103(3) of the Resource Management Amendment Act 2020 (2020 No 30).

Part 5

Streamlined planning process

Schedule 1 Part 5: inserted, on 19 April 2017, by section 119 of the Resource Legislation Amendment Act 2017 (2017 No 15).

75 Contents of application for directions

An application to a Minister for a direction under section 80C to use the streamlined planning process must—

- (a) be in writing; and
- (b) set out the following matters:
 - (i) a description of the planning issue (including any requirement, designation, or heritage order) for which a planning instrument is required, with an explanation as to how the proposal meets any of the criteria set out in section 80C(2); and
 - (ii) an explanation of why use of the streamlined planning process is appropriate as an alternative to using the process under Part 1 of this schedule; and
 - (iii) a description of the process that the local authority wishes to use and the time frames that it proposes for the steps in that process, having regard to the relevant criteria under section 80C(2); and
 - (iv) the persons that the local authority considers are likely to be affected by the proposed planning instrument; and