NZKGI
NEW ZEALAND KIWIFRUIT GROWERS

7 November 2019

Committee Secretariat
Environment Committee
Parliament Buildings
Wellington

Via email to: npsurbandevelopment@mfe.govt.nz; en@parliament.govt.nz;

Dear Sir/Madam

Re: Resource Management Amendment Bill Submission

Please find attached a submission on the proposed Resource Management Amendment Bill.

Please do not hesitate to contact me if you require any further information on this submission.

Yours sincerely

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TO:	New Zealand Parliament
SUBMISSION ON:	Resource Management Amendment Bill (RMAB)
NAME:	NZ Kiwifruit Growers Inc (NZKGI)
ADDRESS:	PO Box 4246, Mount Maunganui South 3149

1. Background to NZKGI

NZKGI was formed in 1993 to give kiwifruit growers their own organisation to develop a secure and stable kiwifruit industry. NZKGI represents 2,800 kiwifruit growers and gives growers their own voice in industry and government decision making. NZKGI works to advocate, protect and enhance the commercial and political interests of New Zealand kiwifruit growers.

2. The kiwifruit industry in New Zealand

The kiwifruit industry is a major contributor to regional New Zealand returning $1.8b directly to rural communities in 2018/19. There are 2800 growers with 14,000ha of orchards with 7700ha green and 6300ha gold. The industry has 10,000 permanent employees and up to 25,000 jobs during the peak season. Approximately 80% of New Zealand's kiwifruit crop is grown in the Bay of Plenty.

3. Horticulture submission

The industry generally supports the HorticultureNZ submission

4. Subpart 4 – Freshwater Planning Process

The new subpart 4 (freshwater planning process) in the RMAB specifically targets freshwater quality and policy in regional plans (i.e. setting water quality objectives and targets for rivers, streams and lakes, but not coastal environments). This is giving effect to the proposed 2020 National Policy Statement Freshwater Management (NPSFM) amendments which will require all regional councils to have notified plan changes by 31 December 2023 for water quality objective setting for freshwater bodies in their region.

The industry submits that this amendment repeals the collaborative approach to freshwater quality objective setting under the current RMA and NPSFM. The industry is concerned that Councils could choose to set freshwater objectives for all streams, rivers and lakes within their region without consideration or consultation with stakeholders. For example – there could be no discussion on economic impacts or scientific data that is specific to different industries. While the industry supports a reduced plan change timeframe, this should not be at the expense of a robust democratic consultation process.

Further to this, the industry submits that the significant time reduction will likely compromise water quality and the public consultation process in the regions. An example of this being:

There are nine catchments within the Bay of Plenty region with BOPRC current workplan allowing for nine plan changes to be operative by 2030. Initiating individual plan changes relative to individual catchments would have allowed BOPRC to spend time on the most at

risk catchments getting the data and process right and continually improving the process as more catchments were addressed. Reducing the timeframe to meet the requirements of the NPSFM by five years will mean it is unlikely that BOPRC will be able to provide for all nine plan changes. This is likely to mean:

i. Water quality levels in some catchments will not be monitored or improved

ii. A shortened public consultation period which may compromise outcomes

iii. Councils will require additional resources to support monitoring, research and extra staff for planning, consents and community engagement and this is likely to impact on rate payers

iv. Council led community projects could be reduced because of resourcing limitations

v. Community led catchment consultation may no longer be achieved within the timeframe

The industry has real concerns for Councils capacity to deliver this work and proposes to allow Councils the necessary time (as stated under the operative NPSFM) to set plan changes, in conjunction with the community, as intended by 2030.

Hearing Process

The industry understands that after notifying the public about a proposed freshwater plan change, all documents from a regional council must be sent to the 'Chief Freshwater Commissioner' (CFC), which would be a newly formed role. The CFC must then convene a freshwater hearings panel to undertake public hearings on the proposed plan change. A minimum of five panel members are required, however under certain circumstances this could be less or more as approved by the CFC. After the public hearings, the panel will provide recommendations to the regional council in a report, which has to be delivered within two years after the public notification plan change date. The regional council then has the discretion to accept or reject any recommendation, however justification needs to be provided.

While the industry does support a reasonable time period to process plan changes, the industry has the following concerns relating to the establishment of the panel:

- Capacity constraints to consider the large number of submissions received for each plan change as well as hearing from submitters/technical experts and reading technical reports
- 80A (5) of the RMAB does not set out a timeframe for when the CFC needs to convene a freshwater panel hearing to consider public hearing of submissions but refers to 'as soon as practicable'. If the intention of the amendments is to reduce timeframes for the plan change process, then the amendments should have clear timeframes in place.
- It is not clear if hearings will be held in regions. It is industry view that hearings should be held in the region impacted by the plan change. If not, then there will expense incurred not only for Councils but also submitters who are required under RMAB to attend hearing

5. Subpart 2 – Appeals

Clause 54 under Schedule one states that a person can appeal to the Environment Court if that person was the original submitter and if the Council rejected a recommendation from the hearing panel that resulted in a provision being included or excluded in the plan change. Clause 55 under Schedule one states that a person who was the original submitter can only appeal to the High Court on a point of law.

The industry is concerned that the proposed appeal process allows the hearing panel a significant amount of decision-making powers. The industry submits that this does not promote a democratic process.

6. Subpart 12A – Enforcement Functions of Environmental Protection Authority (EPA)

Under the current operative framework, the EPA has no enforcement powers in relation to the RMA. The addition of Subpart 12 of the RMAB provides the EPA with greater powers such as:

- Authorises enforcement officers who will be trained EPA staff members with warrant abilities that support the RMAB
- Ability to apply to the Environment Court for declarations
- Commence investigation and enforcement actions where no local authority is involved
- Can assist councils in investigation and enforcement actions already under way
- Where necessary, the EPA can intervene, and take over the investigation and enforcement functions of councils in relation to specific cases, with procedures to be followed in such cases
- Apply to the court to recover just and reasonable costs of investigations and prosecutions from convicted offenders
- Gather information from councils to exercise enforcement actions.
- Report on the performance of its enforcement functions in its annual report, including the outcomes of enforcement actions it has taken (where it would not prejudice the maintenance of the law).

The industry is concerned that the proposed amendments would allow the EPA to conduct their own investigations, independent of local authorities. This would mean that the EPA would need to hire a significant number of officers in order to undertake investigations would require additional funding from the Ministry of the Environment. The additional funding would likely mean from taxpayer dollars which could result in an increase of rates. Councils already provide environmental monitoring and enforcement and it is unclear why the EPA should have the same function.

The main area of concern to the industry is the connection to the proposed National Environment Standard (NES):

- Schedule 1 of the NES states that growers in 'high risk catchments' will have a two-year period to show how they are improving water quality. This may be in the form of nutrient leaching budgets, farm environmental plans and resource consents where

appropriate. Should a grower be unable to modify their practices in time, the EPA could take action and prosecute an individual

- Subpart 3 of the NES states Farm Environmental Plans (FEP) are proposed for all horticulture and agriculture and this would mean the EPA could request and potentially investigate orchards using their warrant powers to confirm whether they are following a FEP

- Any growers undertaking activities near wetlands (which have greater controls in the 2020 NPSFM and NES) could be subjected to investigations or 'checks', particularly if the wetland is recognised as culturally or environmentally significant for the region.

EPA monitoring of wetlands is in contradiction with Subpart 3 (9) (a) of the proposed NPSFM which states that every Regional Council must develop and undertake a monitoring plan to monitor the condition of its region's natural inland wetlands by reference to, at a minimum, their extent, vegetation, hydrology, and nutrients (in water, soil, or both).

The industry submits that by providing EPA with monitoring and enforcement powers is duplication of Council functions. The funding that will be provided to EPA should be channelled to Councils so they can perform this function as intended.

7. Additional sections

Purpose of the RMA

The proposed 2020 NPSFM sets out Te Mana o Te Wai, which prioritises the health of a water body first, essential human needs second (drinking water) and then all other aspects following (development, economic, etc). This is not in-line with Part 2 (purpose and principles) of the RMA and subsequently if a resource consent was sought (assuming the 2020 NPSFM was active in its current form) both the NPSFM hierarchy and Part 2 of the RMA would likely have to be considered together by the consent authority, making the decision progress more difficult. The RMAB has no amendments to any of these sections and it is anticipated these will be integrated into the stage two RMA reform planned for 2020. The industry does not agree with this approach and submits that the amendment of the purpose of the RMA should have been considered prior to the NPSFM. It seems a 'backward' way of introducing a law.

8. Other comments

The industry welcomes the opportunity to speak at Select Committee to discuss the submission further.