

RMA: The 'Reform' that Keeps on Giving

Unravelling the Complexities of New Zealand's Evolving Environmental Legislation

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Introduction

1. *Uncertainty comes with the territory* is how it feels to be practising in resource management and environmental law over the last 5 years. In that time, the principal act governing the use and protection of land, the Resource Management Act 1991 (**RMA**), has been reformed, replaced, brought back, reformed some more, and is now being replaced once again. But after 32 years, this Government (much like the last one) has drawn "a line in the sand that the RMA cannot and will not persist."¹
2. This article aims to offer some clarity to the question of what on earth is happening to resource management law in New Zealand?

Costs too much and takes too long - the case for reform

3. An important part of understanding where the law is heading, is understanding what issues the Government is attempting to address. This Government has long considered that RMA reform is necessary (though it was a National Government that enacted it in 1991). It is clear that this government sees RMA reform as a major aspect of their goal of economic recovery.²
4. In support of reform, a 2021 report for the Infrastructure Commission found that developers spend \$1.29 billion annually getting their projects consented, and that the average time taken by authorities to make a consenting decision had increased by around 50% from 2014.³ It also found that New Zealand is at the upper end of approval costs compared to international benchmarks.
5. By comparison, the cost of an Environmental Impact Assessment in the UK and EU varies from 0.1 - 5% of total project costs, compared to 5.5% in New Zealand. Smaller projects face disproportionately higher costs, with some projects costing under \$200,000 allocating on average 15.9% of their budget to consenting. A staggering figure when compared to 0.7% for projects costing between \$100m and \$1b.
6. The Government's position is simple. For the developers who are required to engage with New Zealand's resource management system: it costs too much and takes too long.

An RMA Issue?

7. Whether these issues are a fault of the RMA, or some broader systemic fault is debatable. The authors of this article do not intend to take a side but instead work through some arguments in either direction.
8. A 2023 webinar hosted by the New Zealand Initiative discussing Resource Management Reform,⁴ stated that the RMA is a victim of the "tragedy of the anti-commons." Due to increased and broad public participation in planning decisions resulting in nothing getting done (at least not without excessive difficulty). The result is that no one is happy.

¹ Hon Chris Bishop and Simon Court "Speech Replacing Resource Management Act" (20 September 2024) Beehive <https://www.beehive.govt.nz/speech/speech-replacing-resource-management-act>

² Hon Chris Bishop and Simon Court "Speech Replacing Resource Management Act" (20 September 2024) Beehive <https://www.beehive.govt.nz/speech/speech-replacing-resource-management-act>

³ David Moore and others *The Cost of Consenting infrastructure Projects in New Zealand* (Sapere, A report for The New Zealand Infrastructure Commission / Te Waihanganga, July 2021)

⁴ The New Zealand Initiative "Webinar Recording: Resource Management Reform" (16 March 2023) NZInitiative < <https://www.nzinitiative.org.nz/reports-and-media/media/webinar-recording-resource-management-reform/>>

9. This 'tragedy' was introduced alongside other issues, such as a failure within the Act to delineate between reasonable considerations or an assumption that issues could be resolved through planning and consultation. However, many of these issues represent logical extensions of the 'tragedy of the anti-commons', and in this way the 'tragedy' is surprisingly representative of many overarching issues with the RMA.

Or Something Beyond the Legislation?

10. On the other hand, it could be argued that political and systematic failures, unrelated to the legislation itself, are the fault of New Zealand's resource management system.
11. In the Parliamentary Commissioner for the Environment's annual report, they found that it was "not hard to dig out evidence for the contention that [New Zealand's] environmental management system has failed to hold the line."⁵ The Commissioner had previously attributed a failure to deliver better environmental outcomes to three (largely political) choices:⁶
 - (a) A lack of willingness to use certain powers provided by the RMA. For example: a reluctance by local councils to issue enforcement orders or abatement notices, or a failure by some Councils to keep their District Plans up to date.
 - (b) Insufficient investment in high-quality information to support the introduction/development of regulations.
 - (c) An inability to articulate the intended methods for tackling environmental problems, and their impacts on communities.
12. There have also been broader issues at play that have affected the willingness to action these powers. Infrastructure delivery is a particularly prevalent issue that has little to do with the RMA and everything to do with how funding of local government is managed. For example, in Dunedin most, if not all, of its Second-Generation District Plan residential land rezoning was rejected in 2018 because of a lack of 3Waters infrastructure. That is an issue that could only be addressed through legislative reform outside the RMA. We saw this play out with the last government through its proposed 3Waters Reforms legislation and now the current government with its Local Water Done Well policy.

Reforming the RMA

13. Regardless of whether you support, oppose or are ambivalent to change; the Government is reforming the RMA (again), and is tackling it in three-phases.

Phase 1: Out with the new and in with the old

14. **Phase 1** was simple: repeal the Natural and Built Environments Act (**NBEA**) and Spatial Planning Act. This was achieved on 23 December 2023 after progressing through the house under urgency.
15. The repeal meant the RMA retook its place within New Zealand's legislation. However, due to the NBEA's long transition period, the repeal occurred long before the NBEA had become fully functional.⁷ In reality, the repeal had little to no practical effect.
16. The Minister for RMA Reform, Hon Chris Bishop, described the repealed Acts as "well-intentioned but badly designed [that] would not have delivered what was promised".⁸ Could those Acts have survived with some targeted amendments? Possibly. However, the ink had only just dried on their coming into force and so it made practical sense (at least from a political perspective) to restart.

⁵ Parliamentary Commissioner for the Environment *Annual Report for the year ended 30 June 2024* (Parliamentary Commissioner for the Environment, 15 October 2024) at 3

⁶ Parliamentary Commissioner for the Environment "Rethinking the RMA: the need for enduring reform" (23 January 2024) PCE.Parliament < <https://pce.parliament.nz/our-work/news/rethinking-the-rma-the-need-for-enduring-reform/>

⁷ The Ministry for the Environment had advised it would take ten years for the NBEA to become fully functional.

⁸ Hon Chris Bishop and Simon Court "Speech Replacing Resource Management Act" (20 September 2024) Beehive <https://www.beehive.govt.nz/speech/speech-replacing-resource-management-act>

Phase 2: Targeted amendments to the RMA, designed to make a difference

17. **Phase 2** is comprised of:

- (a) Fast-track Approvals Bill (**FTA Bill**) – which purports to rebuild the economy by ‘fast-tracking’ consents for housing, infrastructure, and resource extraction of regional or national significance.
- (b) The Resource Management (Extended Duration of Coastal Permits for Marine Farms) Amendment Act – which came into force on 2 September 2024 and extended the current duration of all coastal permits (authorising aquaculture activities) by 20 years, but not beyond 2050.
- (c) RMA Bill 1 (The Resource Management (Freshwater and Other Matters) Amendment Bill) – which seeks to rewind much of the *Essential Freshwater Package* through targeted amendments that will benefit primary production and the agriculture sectors.
- (d) RMA Bill 2 (The Resource Management Act Amendment Bill) – that is expected to be introduced into the house later this year and promises to introduce changes that will smoothen the transition introduced in phase 3.
- (e) A National Direction Package – which is expected to be introduced alongside RMA Bill 2 and will include the amendment of 14 current national direction instruments and the introduction of seven new national direction instruments.⁹

Fast-Track Approvals Bill

- 18. Building on the previous government’s RMA fast-track regime, the FTA Bill is designed to provide a streamlined approvals process for projects of regional and national significance. Notably the FTA Bill creates a streamlined process for consents required by the RMA, Conservation Act 1987, Wildlife Act 1953, Public Works Act 1981, among other related statutes. You can find our commentary on the main changes from the FTA Bill compared with previous regimes at this link: [Fast-track Approvals Bill 2024 – The Spicy Bits](#).
- 19. More recently, the Government has announced that 149 of the 342 projects that applied have been included in the Bill. The Government stressed that exclusion from the list does not reflect on the quality or future success of any of the 193 projects not listed. Those projects (and others) will still have an opportunity to apply to the Ministers to be referred to an expert panel for consenting.
- 20. The FTA Bill is currently with the Environment Select Committee and is expected to go before Parliament for its second reading in November and passed into law before the end of the year.

RMA Bill 1

- 21. RMA Bill 1 seeks to unwind parts of the *Essential Freshwater Package* introduced by the Government as well as various changes to National Policy Statements (**NPS**) and the process for changing national directions. These changes look to:
 - (a) Remove the consenting requirement for intensive winter grazing.
 - (b) Exempt low slope land from the Stock Exclusion Regulations (Although the Regulations will still apply to dairy operations).
 - (c) Remove the tripartite priorities contained in the National Policy Statement on Freshwater Management which place the health of the water before human needs and cultural or economic needs.

⁹ Note: here a national direction instrument refers to either a National Policy Statement (NPS) or a National Environmental Standard (NES) following s 46A(2) RMA.

- (d) Push out the requirement for Council's to notify Significant Natural Areas (SNAs) for a further 3 years.
 - (e) Streamline the process for amending National Policy Statements in future so that they can be changed more readily. This sets up the regulatory framework for the National Direction Package introduced alongside RMA Bill 2.
22. The Primary Production Select Committee has reported back on RM Bill 1 and largely recommended it be passed in its entirety. It will receive its second reading soon and is expected to become law before the end of the year.

RMA Bill 2 and National Direction Package

23. This Bill is expected to be more substantive than RMA Bill 1 and will be introduced alongside a National Direction Package. Although drafts of either the Bill or the National Directions are yet to be released, the Government has grouped their announcement into four distinct packages:
- (a) Infrastructure and Energy - This includes the Electrify NZ reform that will make it easier to (re)consent renewable energy projects, as well as the introduction of an NPS for Infrastructure.
 - (b) Housing - This includes changes to the NPS on Urban Development and the NPS for Highly Productive Land, alongside a new national direction to enable granny flats and papakāinga housing.
 - (c) Farming and Primary Sector - This includes amendments to the NPS for Highly Productive Land (**NPS-HPL**) that specifically permits the use of highly productive land for indoor primary production, greenhouses, and the construction of specified infrastructure. You can find our commentary on the main changes to the NPS-HPL at this link: [Changes to the National Policy Statement for Highly Productive Land 2022](#)
 - (d) Emergencies and National Hazards - This includes the introduction of a new national direction for natural hazards. It will look to reduce the risk of natural hazards to people, property, and infrastructure.
24. RMA Bill 2 and the National Direction Package are expected to be introduced to be Parliament by the end of the year and passed into law by mid-2025.

Phase 3: Replacement Legislation

25. **Phase 3** relates to the Government's intention to replace the RMA with two separate Acts, one managing environmental effects and another relating to urban development and infrastructure.
26. These new Acts have been framed as a cheaper, more user-friendly, alternative to the RMA that proposes to implement a series of changes to the current system which include:
- (a) A narrower scope for the resource management system.
 - (b) Fewer regulatory plans (i.e. One combined regulatory plan per region).
 - (c) Fewer required resource consents.¹⁰
 - (d) The introduction of a Planning Tribunal or other low-cost disputes process.

¹⁰ Through the introduction of National Standards and a shift in focus towards compliance monitoring and enforcement.

- (e) The introduction of a double-bottom line that will require the provision of both “essential human needs such as housing, food production, drinking water and sanitation within environmental limits.”¹¹
 - (f) The use of spatial planning and a standardised planning framework that appears similar to the ultimate intention of the National Planning Standards.¹²
27. The speeches announcing these changes have also focused on a commitment to the enjoyment of property rights and a principle that justification is required for regulation over the use of property. Exactly what this means is yet to be clarified, however it may refer to a framework that addresses the complaints laid at the introduction of Significant Natural Areas which allowed regulatory bodies to set aside property rights by significantly restricting the usability of land without providing adequate financial compensation.
28. Finally, the Government has established an Expert Advisory Group for these Acts which is due to report back before Christmas. The Group has been asked to provide a “workable and practical plan that officials can quickly turn into new legislation.”¹³

Conclusion

29. The reach of “legislative ambition is a matter of political preference.”¹⁴ The Government has expressed the belief that the original drafters of the RMA erred by placing environmental protection and development together. It is yet to be seen whether splitting those principles in two will have the desired effect or whether the Government is correct in its view that “Resource management will work better [by having] less to do.”¹⁵
30. The Government has expressed the opinion that the RMA evolved in a way that differs from its original intent,¹⁶ and that the NBEA and Spatial Planning Acts were well intentioned but would not have delivered what was promised.¹⁷
31. Whether the Government’s replacement legislation will last longer than its predecessor remains to be seen. However, enduring reform is likely to require bipartisan support to withstand the tendency of successive governments to tweak legislation over time and a loss of sight of the legislation’s original purpose. Perhaps the RMA was a victim of over-amendment and losing touch with what it was designed to do and its ability to carry out those functions.

Get in touch

32. Our Resource Management experts are keeping up to date with the latest changes in regulation as they unfold. If you would like to discuss any matters in this article, or any surrounding issues, don’t hesitate to get in touch.

¹¹ Hon Chris Bishop and Simon Court “Speech Replacing Resource Management Act” (20 September 2024) Beehive <https://www.beehive.govt.nz/speech/speech-replacing-resource-management-act>

¹² Which has been in force since 2019.

¹³ Hon Chris Bishop and Simon Court “Speech Replacing Resource Management Act” (20 September 2024) Beehive <https://www.beehive.govt.nz/speech/speech-replacing-resource-management-act>

¹⁴ Parliamentary Commissioner for the Environment “Rethinking the RMA: the need for enduring reform” (23 January 2024) PCE.Parliament < <https://pce.parliament.nz/our-work/news/rethinking-the-rma-the-need-for-enduring-reform/>>

¹⁵ Hon Chris Bishop and Simon Court “Speech Replacing Resource Management Act” (20 September 2024) Beehive <https://www.beehive.govt.nz/speech/speech-replacing-resource-management-act>

¹⁶ Hon Chris Bishop “Speech to the New Zealand Planning Institute” (Speech to the New Zealand Planning Institute, Hamilton, 22 March 2024)

¹⁷ Hon Chris Bishop and Simon Court “Speech Replacing Resource Management Act” (20 September 2024) Beehive <<https://www.beehive.govt.nz/speech/speech-replacing-resource-management-act>>

N.B., Last minute changes announced on 22 October

33. As an example of the ever-changing environmental regulatory landscape, today the Government has announced an amendment to RMA Bill 1 that would **retrospectively** restrict Councils from notifying a freshwater planning instrument from 22 October 2024 until the earlier of;
 - (a) the date on which a new national policy statement for fresh- water management (replacing the National Policy Statement for Freshwater Management 2020) is published under section 54: or
 - (b) 31 December 2025.
34. This comes right on the heels of the Otago Regional Council’s full council meeting on 23 October preparing to notify its Land and Water Regional Plan (**LWRP**). The LWRP was to be notified earlier this year until it was pushed back until the end of this month.
35. If enacted, the amendment would apply from 22 October 2024. So even if Otago Regional Council resolves to notify the LWRP at its meeting tomorrow, those parts of the LWRP which relate to a “freshwater planning instrument” will cease to have legal effect. Those parts of the LWRP which are not a “freshwater planning instrument” would continue to have effect.
36. If the LWRP is notified, then it looks like we may be in for another round of confusion as demonstrated by the 2022 High Court Decision *Otago Regional Council v Royal Forest and Bird*¹⁸ which declared that the Regional Policy Statement for Otago (2021) was not entirely a freshwater planning instrument. The ORC was then required to split its Regional Policy Statement in two, identifying freshwater and non-freshwater provisions and leading to considerable delay in the hearing of submissions.

¹⁸ [2022] NZHC 1777.