RMA Reform
Beyond the headlines

April 2025

Last week, the government announced its much-anticipated plans for repealing and replacing the Resource Management Act 1991 (RMA). The announcement has been referred to as 'Phase 3' of the government's resource management system reform: In Phase 1 it repealed the Labour government's RMA replacement legislation; and in Phase 2 it is introducing bite-sized changes to the existing regime that will apply before the new legislation takes effect, as well as establishing the fast-track consenting process.

Headlines have highlighted the government's focus on private property rights as the 'guiding principle' of the new regime, the scope of the resource management system being significantly narrowed and simplified, and the overall objective of creating a more permissive regime.

In this article we delve deeper into the recommendations on RMA reform from the Expert Advisory Group (**EAG**), identify where they have and have not been accepted by Cabinet, and what we can expect from the replacement legislation. We also analyse the implications for developers, infrastructure providers and councils.

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01 Setting the scene - a new architecture

The RMA has faced plenty of criticism in recent years. In our opinion, some of this criticism is better directed at the implementation of the RMA both at a national level and in certain parts of the country than at the legislation itself. Nonetheless, we currently have a system that has created a (sometimes justified) risk aversion by local authorities, leading to slow and costly consenting, and policy development processes that can span years and consume huge amounts of local authority resources.

The regime arguably over-regulates some aspects of development, while at the same time under-protects some of the country's most valuable natural resources, leading to a deterioration of many environmental indicators.

Resource management issues are difficult. They grapple with:

- frictions between different land uses,
- protection of natural finite resources,
- the need to enable growth and development for the wellbeing of communities and the economy now and in the future, and
- the need to provide for Māori interests and uphold Te Tiriti o Waitangi.

These competing issues will not go away with the repeal of the RMA. But can we do better?

Most RMA users agree that a reset is required. In our opinion, there is benefit in taking a birds-eye-view of the resource management system and deciding again what we do and do not want to regulate. The EAG has taken a 'first principles' approach to its recommendations, which should enable such an approach.

At a high level, the RMA's functions are proposed to be split into two new pieces of legislation:

- The Natural Environment Act (NEA) will manage the "use, protection and enhancement" of the natural environment: land, water, air, soil, minerals, energy, plants (excluding pest species) and animals and their habitats.
- The Planning Act will regulate the "use, development and enjoyment of land". It will be positively geared to the benefits of development and manage a far narrower scope of effects than the RMA, limited to 'neighbourhood frictions' for example the effects of noise, light and vibration of a development on the property next door.

Each Act would have a single national direction. The combined effect of the new regime is that development will be permitted as of right, except where it has adverse effects on either the natural environment or on a neighbour. The materiality threshold for consideration of those effects will be raised from the status quo, but the threshold itself is something Cabinet has said will be made under delegation. This threshold will be a critical aspect of the regime and will be challenging (approaching impossible) to set at a level that receives universal support.

02 Natural Environment Act

The NEA proposes to better manage our most important natural resources

The RMA has been criticised for failing to set clear environmental limits for natural resources, leading to environmental degradation. The current system operates on a first in, first served basis, regardless of the scarcity of a resource or the benefits of one use of a resource relative to another potential use. This has led to inequities, inefficient use of resources, and a limited ability to respond to environmental pressures.

The EAG has recommended that the NEA should require limits for environmental indicators, with a system of both national limits (set by the government) and regional limits (set by regional councils). Cabinet has agreed in principle, but said that the institutional arrangements for limit-setting should be developed separately and over a longer time period.

Our view

We see the most significant change proposed under the NEA is a recommendation that local authorities be provided with greater tools (and greater responsibilities) to manage scarce resources when these limits are close to being reached. The EAG has suggested various methods could be used such as market, merits, collaboration, or a standards-based approach. Local authorities would be required to charge for the use of natural resources to both recover the cost of operating the system, and to manage the use of a resource back within environmental limits where required.

This is a significant recommendation and could lead to difficult questions around the ownership of resources (particularly water) which historically no one has owned. Cabinet has decided that the NEA should enable use of these tools, but they will be 'switched on' at a later date through secondary legislation. It has also said that the interests of existing consent holders of these scarce resources "will be considered through delegated decisions to enable transition to new allocation methods within a reasonable timeframe (eg 10 years)." It is unclear exactly what this means but it may be referring to seeing out the consent terms of existing consents.

The EAG has also recommended legislating national goals for environmental indicators, which would sit within the NEA's single national direction. Many of the recommended goals are derived from sections 5 and 6 of the RMA, but with greater clarity on what is sought to be achieved. For example, rather than a list of matters that must be "recognised and provided for" (section 6 RMA) and a separate list of matters that must be given "particular regard" (section 7 RMA), the EAG has recommended more tangible goals such as "indigenous biodiversity net gain." This is a positive step that we think will make the legislation more user-friendly and may go some way to help avoid conflict between principles. However, in our opinion the practicalities of reconciling conflicts between separate national directions under the NEA and the Planning Act are going to be difficult given the Act's different purposes.

The recommended indigenous biodiversity goal also illustrates a greater focus on offsetting, by indicating that development may sometimes result in a loss of indigenous vegetation, provided that overall there is net biodiversity gain. It recognises that not all goals are required to be achieved in all places or at all times. We consider this a sensible move. We have seen examples where wetlands with very low (or no) ecological value are required to be retained (with significant implications on the development potential of a site when removing them) and putting money into restoring and maintaining a neighbouring wetland with far greater biodiversity values would result in better environmental outcomes.

Cabinet has agreed in principle to the EAG's recommendation for national goals, but said that it would like more advice on the value provided by legislated goals and decision-making principles. Given this is a key aspect of recommendations on the NEA this is an area to watch closely as further decisions are made.

03 The Planning Act

The Planning Act aims to rationalise and streamline consenting

The proposed Planning Act takes a back-to-basics approach to planning by significantly stripping back the potential "effects" that can be considered in an application under the RMA, and removing layers of policy documents that applicants must consider (Part 2 of the RMA, national policy statements, national environment standards, regional policy statements, regional plans and district plans).

The key features of the EAG's recommended new Planning Act are:

- A significant culling of the number of policy documents and a high degree of standardisation across the country. It is proposed that there will be one combined plan for each region, presented as one national e-plan for the country. Each territorial authority will have a chapter containing a single district plan. The e-plan will also include the natural environment plans prepared by regional councils under the NEA.

- Policy will still be formulated through objectives, policies and rules, but with a greater focus on nationally set default settings through national standards and nationally standardised zones. Local authorities would choose which zones to apply in their region and where, with only a limited ability to apply a bespoke zone to account for a region-specific exception. Any bespoke zoning would need to be justified and is subject to greater oversight and rights of challenge.

- One National Policy Direction will sit under the Planning Act. This will provide guidance on how conflicts between various uses will be reconciled. There will be no additional layer of regional policy statements sitting between national direction and the natural environment plan.

- A greater focus on regional spatial planning.

    - Each region will be required to have a spatial plan setting out major constraints (eg natural hazards and significant natural areas), future urban areas, and current and future infrastructure corridors. Our largest cities in particular will benefit from this. It should make infrastructure planning and consenting far easier - for example the EAG has recommended that infrastructure that is identified on spatial plans should be provided with a streamlined designation process. The release of future urban areas for development without a plan change would also be provided for. The opportunity here is to develop clear, enduring blueprints for how growth across our regions and cities will occur, which can be bought into by all councils, infrastructure providers and developers - removing the risk of inconsistent and short-term funding decisions being made. This plan will be a critical planning document and will take some time to formulate as there will be competing interests seeking priority.

    - In terms of challenges, we expect that conflicts between landowners and required future infrastructure corridors will be an issue for local authorities to manage, particularly where projects are not yet funded and home-owners are left in somewhere of a no-man's land. In addition, there is going to need to be some flexibility in spatial plans to respond to proposals from infrastructure providers (for example energy providers) who don't have the level of long-term certainty that other providers like roading authorities may have. Ultimately, however, our view is that this form of long-term planning is overdue for New Zealand, and particularly important for our large, growing cities (Auckland being the leading example).

- Consenting classes will be rationalised, with greater use of permitted activities and a narrower scope for using prohibited activities.

- Consenting pathways will also be reduced, with the removal of the Environment Court referral and Board of Inquiry processes.

These recommendations have largely been accepted by Cabinet, but for a small number where they have sought further information or where final decisions will be made under delegation.

Of course, any major shift from one regime to another requires transitional provisions. While the EAG's intent to enable a faster transition to the new system is admirable, some teething issues are inevitable - particularly if the EAG's recommendation that existing RMA regional and district plans are "deemed" to be plans under the new regime is accepted.

A Narrowed Scope of "Effects"

Those familiar with the RMA will be aware that there has been a proliferation over the years of the scope of potential adverse effects that the regime attempts to manage. This has resulted from a very wide definition of "effects" in the RMA. We have seen debates about the internal layouts of buildings; a broad range of economic effects including whether there is demand for a development and whether a developer has the means to fund the infrastructure it relies on; and many subjective "effects" including architectural style and colour.

The replacement legislation will significantly narrow the scope of effects and increase the threshold for management. The EAG has recommend focussing on the economic concept of externalities - essentially only material effects that fall on an uninvolved third party will be relevant. It has recommended that an effect must be "minor or more than minor" to be relevant. Currently, the RMA only discounts effects that are de minimis and requires 'less than minor' effects to be considered, so this is a slight raising of the materiality threshold. Cabinet has said this threshold decision should be made under delegation but agrees it should be raised, so we could see the materiality bar raised even higher.

For example, the impacts of a development on the sunlight hours of its neighbour will be a relevant effect (provided it exceeds the materiality threshold). But internally felt effects such as the adequacy of lighting for residents moving from a communal car park to their house, whether an apartment has a balcony or not, and the impact of a development on streetscape (including things like fence height and consistency with the character of a neighbourhood) will be excluded. Landscape effects will not be considered under the new regime, except to the extent an area is identified as an Outstanding Natural Landscape which would be addressed under the NEA.

In an effort to reduce duplication, historic heritage, notable trees and archaeological sites are also recommended to be excluded from the Planning Act and dealt with solely by Heritage NZ under the Heritage New Zealand Pouhere Taonga Act 2014.

Interestingly, the EAG has recommended retaining consideration of greenhouse gas emissions under the new regime. While GHG emissions are dealt with through the Emissions Trading Scheme and targets under the Climate Change Response Act 2002, they found that land-use planning should complement emissions pricing. This recommendation wasn't specifically considered by Cabinet.

The EAG has also recommended that Māori cultural effects continue to be recognised and managed under both the Planning Act and the NEA (essentially sections 6(e) and 7(a) of the RMA, or similar, would be carried over to the new regime). Cabinet's decision on this recommendation is unclear and they have said that further work is required on the issue. We elaborate on Māori cultural interests in a subsequent section of this article, but in short, we expect this to be one of the more contentious issues in the replacement regime.

Finally, the EAG's view is that considering the effects of a development on infrastructure capacity is a misuse of the RMA. However, it has said that until adequate funding mechanisms are provided to ensure infrastructure capacity is ahead of growth, then local authorities should retain the ability to take these effects into account. In our view this is probably correct, as local authorities need the ability (whether through the resource management regime or through another tool) to prevent development where it simply cannot be serviced. It will be interesting to see whether this remains in the Planning Act once the new infrastructure funding and financing tools that the government has foreshadowed take shape.

This shift in the scope of effects is perhaps the most tangible change that will be noticed most immediately by developers and local authorities. There is no doubt that the broad scope of relevant effects has hugely increased the cost and time of doing development, and trimming that back will add to the efficiency of the system as a whole. Disposing of urban design and (most) landscape assessments is a significant shift, however, and we expect is a change that will be noticeable over time in our neighbourhoods, particularly in more densely populated cities like Auckland. We hope that it will not lead to poor urban design outcomes and less liveable cities, but that the market will direct developers to continue to build good quality homes and spaces that people want to live in (as many developers are currently doing well at the moment).

Process and Dispute Resolution

The EAG has recommended a relatively significant shake up to the disputes resolution process which involves:

Establishing a new Planning Tribunal to offer quick, low-cost dispute resolution of simpler questions. For example, disputes over local authority notification decisions and requests for further information, and to determine the meaning of consent conditions. This is a sensible recommendation that will make the system more accessible to users of the legislation, as well as freeing up valuable Environment Court time. Cabinet has agreed to this in principle, subject to further advice from the Ministry of Justice and the Ministry for the Environment.

The Environment Court would retain its appellate functions in evaluating applications for resource consents and designations, and appeals on regulatory plans. The right of appeal to the High Court is proposed to be removed however, with appeals from the Environment Court going directly to the Court of Appeal.

A National Compliance and Enforcement Regulator is proposed to be established with a regional presence to strengthen and ensure consistency in compliance performance across the country.

Most changes that have been recently proposed in RMA amendments (and which were consistent with the previous government's changes to the compliance regime) are recommended to remain, such as increasing financial penalties, providing local authorities with the ability to recover costs from rule breaking and prohibiting insurance for fines. We agree that a stronger compliance regime will be critical to the effective operation of the new legislation, and prosecution under the RMA can be incredibly costly and time consuming, particularly for smaller councils, so we expect this will be welcomed by local authorities. Cabinet has agreed with this recommendation but said that it will occur in parallel and on a longer timeframe to the reform.

Permitted activities will be able to include conditions requiring payment of a fee and provision of notice to the relevant council that an activity is commencing. This would enable monitoring and management of all resource use within the allocation cap or quantum to ensure that environmental limits are not breached. Again, we think this will be a sensible tool particularly with greater use of permitted activities.

04 Te Tiriti o Waitangi & Māori rights and interests

The EAG was required to consider whether section 8 of the RMA (requiring the principles of the Treaty of Waitangi to be taken into account) should be part of the new resource management regime. The EAG recommended (by majority) that the new legislation should retain section 8, but with principles to assist in applying the clause. They provided examples such as seeking to involve Māori as early as possible in resource management decision making, protecting the ancestral relationships Māori have with natural resources in their rohe, and ensuring decision-makers have appropriate knowledge, skills and experience of Māori issues or access to it.

The EAG's majority recommendation was based on an acknowledgement that not all iwi have reached Treaty settlement agreements yet, and that Māori interests go beyond those matters recognised in existing Treaty settlements. The recommendation would leave consideration of Māori cultural effects within the planning regime as it currently is.

Cabinet has not accepted this recommendation. Cabinet has directed the RMA Reform Minister to report back before the new legislation is introduced, seeking agreement to a clause that recognises existing Treaty of Waitangi settlements that have been entered into, but ruling out a general Treaty principles clause as expressed in section 8 of the RMA. In effect, this means that unless they are captured by a settlement agreement, there would be no consideration of the Treaty of Waitangi in planning decisions. This is a drastic shift from the status quo and one that, in our opinion, sets Māori relations in the country back significantly. As noted above, Cabinet's position is less clear on the inclusion of cultural effects in planning decisions.

We expect that the expression of Te Tiriti of Waitangi and the consideration of Māori cultural effects in the new legislation will be one of the more controversial aspects of the reform, and may ultimately determine whether the legislation can be passed with support of all major political parties.

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