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RMA Reform Rollercoaster

The coalition Government has announced a new two-Act framework to replace the Resource Management Act 1991 (RMA). The announcement follows its repeal of the previous Labour-led Government's planning reform and the introduction of the Fast-track Approvals Act in 2024

Three-Phase RMA Reform

RMA reform was a hallmark of the National Party's election manifesto. This announcement comes as 'Phase Three' in the Government's three-phase reform plan of resource management and infrastructure. This was set out in the coalition agreement between National and the ACT Party as follows:

1. Repeal the Natural and Built Environment Act 2023 (**NBEA**) and the Spatial Planning Act 2023 (**SPA**).
2. Amend the RMA, making it easier to consent new infrastructure including renewable energy, housing, aquaculture and other primary industries.
3. Replace the RMA with resource management laws based around the enjoyment of property rights.

Proposed 'Dual Act' Framework

The new regime will consist of two Acts:

- The 'Planning Act' (**PA**): to regulate the use, development and enjoyment of land.
- The 'Natural Environment Act' (**NEA**): to regulate the use, protection and enhancement of the natural environment.

While there are similarities with the previous Government's NBEA and SPA, the new planning laws are expected to allow for a more liberal planning system and to have a stronger focus on property rights.

Chris Bishop (Minister for RMA Reform) and Simon Court (Parliamentary Under-Secretary for RMA Reform) say the proposed legislation "will protect landowners against regulatory takings" and provide for recourse if "unjustified restrictions" are found to have been imposed on their land.

Features of the New System

This framework reflects findings from the Expert Advisory Group (**EAG**) earlier this year. The EAG's blueprint to replace the RMA provided 21 key recommendations and identified current system failings. In response to the EAG's blueprint, cabinet have made a range of decisions on the recommendations from the EAG. These have been summarised below.

Recommendations to be progressed

- New legislation to be developed in two separate Acts: the 'Planning Act' and the 'Natural Environment Act'.
- The scope of effects management is proposed to be significantly narrowed. This means that there will be no assessment in areas of a proposal where the effects are solely borne by the applicant. There will also be no overlap with matters adequately covered in other legislation.
- The reduction in scope of effects management also includes the removal of several protections and overlays that the RMA currently provides for. The regime proposes that historic heritage, notable trees and archaeological sites are dealt with wholly by Heritage NZ and under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**). The Government sees there being significant overlap in the management of these areas and believes that

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the proposed framework should therefore be more enabling of urban development.

- The legislation is based on the enjoyment of property rights. It is intended to enable land use unless there is a significant adverse effect on the natural environment or the ability of others to enjoy their own land. These adverse effects will be clearly defined by the regime.
- Each Act will require one National Policy Direction (**NPD**) designed to resolve conflict between environmental protection and direction. Where this cannot be achieved the NPD will reconcile these differences through subsequent processes. The NPD's will form the backbone of national standards under each Act to ensure nationwide consistency.
- Each Act will include spatial planning requirements. These Spatial Plans will replace the current Regional Policy Statements (**RPS**) and will have mandatory and optional matters to be addressed.
- The Spatial Plans will enable development within environmental constraints. This is intended to streamline land use with appropriate infrastructure planning.
- Joint plans will be created under each Act to ensure standardisation and avoid duplications. Plan chapters will be prepared by local authorities, combined for each region and presented as a national e-plan. Regional Councils will prepare chapters under the NEA and District Councils will prepare chapters under the PA. All plans will be available on a common platform and there will be an increased focus on the collection of environmental reporting data.
- Nationally Standardised Zones (**NSZs**) will be created under the PA. District Councils will then select appropriate zones to be included in district plans. Bespoke zones can be considered and created on a case-by-case basis. There will also be a specific zone assigned to Māori land with substantial flexibility.

Recommendations to be progressed in part

- Each Act will contain national goals that inform how planning and monitoring is undertaken. Goals under the PA will be based around infrastructure and urban and rural development. Goals under the NEA will be based around the protection of important natural values.
- The NEA will require national standards for developing and implementing planning provisions such as outstanding natural features and landscapes (**ONFs** and **ONLs**) and significant natural areas (**SNAs**). These have been coined "place-based environmental protection tools" by the EAG. The national standards which prescribe these tools will form a 'menu' of zones and overlays to be selected and applied by Regionally Councils as is appropriate to the local context. Similar to the NSZs, bespoke controls can also be considered and created by Regional Councils on a case-by-case basis.
- Regulatory plans created under each act will be initially notified and considered by an independent hearings panel (**IHP**) at a regional level but determined by individual councils. This is intended to support a faster transition and minimise disruption.
- The threshold of adverse effects will be higher than what the RMA currently permits. There will also be a reduced number of consent activity classes; controlled and non-complying activities will be removed and there will be a greater focus on restricted-discretionary activities.
- Reverse sensitivity will be dealt with in two ways. Parties that 'come to the nuisance' will be unable to complain about it and the reasonable expansion of existing activities will be permitted where sites are 'owned or zoned'.

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- There will be a departure from the RMA's 'first in, first served' approach to resource allocation. Instead, councils will charge for the use of natural resources and when a resource nears it's determined limit or is overallocated an approach will be agreed upon to improve allocation.
- A new Planning Tribunal will be established as a standalone entity which will hold a variety of administrative-review and dispute-resolution functions. Although the Government claims this Tribunal will speed up the decision-making process, they have declined to impose timeframes on decision making that Councils are currently subject to under the RMA. The Tribunal will act as a "circuit breaker" for disputes between Council and applicants on matters such as objections to requests for further information, affected parties and interpretation of consent conditions. It will also handle challenges to notification decisions that are currently dealt with by the High Court via Judicial Review. It has not yet been determined whether this tribunal would sit adjunct to the Environment Court or operate as a lower-level division, however, the appeal pathway to the Environment Court will remain open.
- A national compliance and enforcement regulator will be established. This will not be included in the Acts but introduced in parallel and progressed on a longer timeline.
- The Acts will include a section on the Treaty of Waitangi. Further work is required to determine how this will be incorporated however, the EAG has suggested carrying forward a section that is equivalent to section 8 of the RMA. Key Iwi and Māori groups will be consulted in this process.

Recommendations not to be progressed

- The EAG recommended that the extent of the Coastal Marine Area (**CMA**) be reduced to the area of interest for regional communities (being three nautical miles), with the Environmental Protection Authority responsible for planning and consenting beyond that. Cabinet disagreed with this recommendation and determined that the existing geographical extent of the RM system be retained including the coastal marine area (being 12 nautical miles).

The shortcomings and piecemeal approach of the RMA are no secret. Ask anyone who works in the RMA space, and they will tell you that navigating this system is a constant headache. However, the Government will need to proceed carefully in balancing their agenda of increased infrastructure development against managing land use compatibility and adverse effects. Although this is not a new challenge, doing so through a property-rights lens is.

Given the ups and downs of reform and uncertainty New Zealanders have experienced in the past few years, it will be interesting to see where this RMA rollercoaster takes us next. The Government intends to introduce the two new Acts into the House by the end of 2025. However, they have a mammoth task ahead getting the framework in place before the end of this term. If the reform endures beyond the current term of Government, this might not be the last stop on the ride.

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