

Resource Management Legislation Changes:

Top 10 things to know

The legislation to replace the Resource Management Act has been released, with the Natural and Built Environments Bill and the Spatial Planning Bill introduced to Parliament yesterday.

Here are 10 things we think you need to know about the legislation.

1 It's all about the outcomes and limits

Environmental outcomes, limits and targets are key to the NBE Bill. They set clear expectations on development and environmental performance. While the Bill maintains there is no hierarchy between outcomes, based on the current wording it is inevitable that "protection" of the natural environment is favoured.

Environmental limits set bottom lines for the natural environment. The Government has responded to submissions seeking a "way through" environmental limits in certain circumstances. This will be by way of narrow, time-limited exemptions that NBE Committees will need to justify to the Minister, which could for example allow for large infrastructure projects to transgress environmental limits under strict supervision.

A new regime has been established for places of national importance, which include significant biodiversity areas, cultural heritage places, highly vulnerable biodiversity areas, and critical habitats. The exemptions allowing development through places of national importance are so strict that these areas are essentially off limits.

2 / Precautionary approach is central

The NBE Bill includes a new set of principles to guide decision-making. These include favouring a cautious approach where the information available is uncertain or inadequate. This will provide fodder for project opponents, and could be a potential hurdle for development.

3 / The death knell of first-in first served

There are new principles for allocating scarce resources: sustainability, efficiency and equity. These will apply generally to resource allocation including freshwater allocation. A plan must include rules relating to allocation and must have regard to the allocation principles when doing so. The Government has also announced a Freshwater Working Group will report on how freshwater should be allocated by 31 October 2024. An allocation statement will then be produced that feeds into regional plans. We do not expect to see first-in first-served survive. Most water permits will have a maximum 10 year duration.

4 / New and improved consenting and designation provisions

The consenting and designation provisions include a number of significant changes from the RMA. These include:

- Reducing consent categories from six to four with non-complying and restricted discretionary activities jettisoned.
- The permitted activity category has been broadened in scope with the potential that some permitted activities will require a "Permitted Activity Notice" which could include cost recovery of compliance, monitoring and enforcement and/or third party approval or certification.
- Consent authorities will have expanded powers to review consent conditions and cancel consents, in particular if considered necessary to ensure compliance with limits or targets.
- The permitted baseline has been all but removed and replaced by a requirement for consent authorities to have regard to the likely state of the future environment as specified in the NBE plan, RSS and NPF.
- In an attempt to thwart NIMBYism, consent authorities are also required to disregard effects on scenic views from private properties and effects of social housing.
- Three alternative consenting pathways are provided. This includes an updated version of the COVID-19 fast-track consenting process. Proposals of national significance and direct referral have also been retained.
- The designation provisions attempt to differentiate route protection requirements compared to a design and build scenario.
- Lapse dates for designations have been increased to 10 years.
- Alternatives assessments will not be required if the infrastructure has been spatially identified in a Regional Spatial Strategy. However, regional planning committees will be required to have regard to whether adequate consideration has been given to opportunities for co-location of infrastructure.

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Notification overhauled (but not in a good way)

The rules on notification have undergone a significant change. Controlled activities must be non-notified and discretionary activities must be publicly notified unless there is a contrary rule in the National Planning Framework or a NBE Plan. However, the public and limited notification tests have undergone significant change. Gone is the threshold of effects being “minor”. The replacement tests are loose and on the face of it unhelpful. This is ripe for litigation, and does not seem to assist the streamlining goal. Challenges to notification decisions will be considered by the Environment Court, rather than judicial review to the High Court.

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A strengthened role for Māori

The NBE requires all persons exercising powers and performing functions and duties under the Act to give effect to the principles of Te Tiriti o Waitangi. In addition, persons exercising functions under the NBE must recognise and provide for the responsibility and mana of each iwi and hapu to protect and sustain the health and well-being of te taiao in accordance with kawa, tikanga and matauranga in their rohe. The Bill also establishes a National Māori Entity to provide independent monitoring of decisions under the NBE or the SPA. Also of note are provisions that enable consent authorities to recover costs on behalf of relevant Māori parties for engagement in consenting processes.

A more aggressive compliance and enforcement framework

The Bill proposes a significantly more aggressive position in relation to compliance and enforcement. The range of new measures proposed include monetary benefit orders, a power to revoke or suspend a resource consent, enforceable undertakings, adverse publicity orders, provisions for financial assurance, and the imposition of a new civil liability regime of pecuniary penalties. Insurance against fines will be unlawful. This is a step change in the approach to environmental offending.

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New partnering opportunities for developers

The Spatial Planning Bill contains a new framework for long-term strategic spatial planning. Spatial plans will include:

- Areas appropriate for urban development, rural use, resource extraction, and environmental protection;
- Site-based and network infrastructure; and
- Development opportunities in the common marine and coastal.

Regional Spatial Strategies will also need to have regard to the Government’s response to the New Zealand Infrastructure Strategy, another positive sign for infrastructure. Regional planning committees may be assisted in taking forward regional spatial plans by forming implementation agreements with third parties. This is a step forward in terms of providing opportunities for kick-starting new brownfields and greenfields development at scale.

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A stricter polluter pays approach to contaminated land

There is a new regime proposed to deal with contaminated land. The new regime relies on the 'polluter pays' principle and requires a significant degree of self-reporting. Landowners of potentially contaminated land will be wary of this new regime and the financial obligations they could be saddled with.

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It won't happen overnight, but it will happen

Transition to the NBE system will take a considerable amount of time with the RMA being the dominant system in each region until the new NBE plan has been completed. The Minister for the Environment is required to notify the proposed NPF within six months of Royal assent.

Next Steps:

The next step is for both Bills to be referred to the Environment Select Committee, giving the public an opportunity to comment on the legislation. Both National and ACT have already announced they do not support the legislation. This is likely to be an election issue, and means we can expect 12 months of political commentary on the new framework.

Submissions on the Bills are expected to close early in the New Year. Please get in touch with our experts if you would like to discuss the Bills or are interested in preparing a submission.