

RM Reform Announcement Q+As

Wednesday 10 February 2021

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About the Review

1. Why does the Resource Management Act 1991 (RMA) need to be reformed?

The comprehensive review of New Zealand's resource management system, undertaken by an expert panel led by former Court of Appeal Judge Hon Tony Randerson QC and published in July 2020, makes it very clear what the future challenges are. These have been well articulated in previous reviews of the system including by the Productivity Commission, the Waitangi Tribunal, Local Government New Zealand, the Environmental Defence Society, the Property Council, Infrastructure New Zealand and the Northern EMA.

In a nutshell, the four key issues that prompted the review are:

- **Our natural environment is under pressure.** Overall, the way we use land, water and other natural resources has proven unsustainable. Our waterways are in major decline due to poor management, overuse and pollution. This affects the resilience of our ecosystems and 4,000 species of native plants and animals are now threatened. Of course, this has negative flow-on effects for our own health and wellbeing.
- **Urban areas are struggling to keep pace with population growth.** Over the past decade, our population has grown by about 650,000 and this is expected continue. We need to make sure urban development can keep up with demand. Poorly managed urban development has led to increasing homelessness, worsening traffic and congestion, more pollution, lack of transport choices and flattening productivity growth.
- **There is an urgent need to reduce carbon emissions and adapt to climate change.** The seriousness of this threat speaks for itself – with the rising sea levels and increasing droughts, floods, fires, and extreme weather events we are seeing worldwide.
- **The need to ensure Māori have an effective role in the system,** consistent with Te Tiriti o Waitangi principles.

2. What is wrong with the RMA?

There is a broad consensus that the RMA is not working as it was intended and the continual attempts to try to improve it over the last 30 years is an indication of this.

It has not sufficiently protected the environment. The RMA was not clear enough about how to apply the purpose of sustainable management of natural and physical resources.

Managing adverse effects has been too often achieved through litigation on a case-by-case basis – with insufficient overarching vision as to what needs be achieved for the natural and built environments.

The Act has not achieved good outcomes for urban areas either. Decisions made under the RMA have entrenched subjective amenity values and restricted development from occurring where it is most wanted and needed. This has contributed to inefficient urban form, housing shortages and congested roads resulting in poor environmental, social and economic outcomes. There is a perception that RMA processes are overly cumbersome,

take too long and do not give sufficient certainty for the development of major infrastructure.

Forward planning is difficult because the RMA's focus is on managing negative/adverse effects of resource use rather than providing positive direction about what our goals are for the environment (except goals of sustainable management). This under-emphasised the positive benefits of development.

The current system favours the status quo - existing uses and consents, which makes it hard to respond to environmental challenges or provide for new infrastructure developments.

In relation to resource allocations, the first-in-first-served interpretation of the RMA has led to inefficient and inequitable outcomes where resources are scarce, as it does not provide a way to compare competing resource uses and allocate resources where they are most valued.

Lack of national direction from central government is also a problem that has only recently begun to be addressed. It is hard to realise goals for the environment when there is no direction about what efforts would be required to achieve these.

3. *Who carried out the review of the resource management system?*

The review of the Resource Management system was carried out by the independent Resource Management Review Panel led by Hon Tony Randerson QC.

This was the most significant, broad ranging and inclusive review since the RMA was enacted. The review was primarily focussed on the RMA, the interface of the RMA with specific legislation, and a new role for spatial planning.

The Panel made over 140 significant recommendations. Key is the replacement of the existing RMA by two separate pieces of legislation – a Natural and Built Environments Act and a Strategic Planning Act, along with a separate law to address issues related to climate change adaptation and the managed retreat from areas threatened with inundation and other natural hazards.

The Panel also recommended greater use of national direction by the Environment Minister and a more streamlined process for council plan-making and a more efficient resource consent process.

The Panel also proposed any future system should give effect to the principles of Te Tiriti o Waitangi and provide a clearer role for mana whenua in decision-making.

The Panel's report, [New Directions for Resource Management in New Zealand](#) was published in July 2020. The report and summary documents are available on the MfE website.

Key recommendations made by Panel

4. *What are the key differences between the RMA and the new proposed Acts?*

The big changes for the future resource management system as set out by the Panel are:

- **Planning for positive outcomes, and managing adverse effects to achieve them:** Re-orientates decision-making from principally managing 'adverse effects' to seeking to achieve specified positive outcomes across natural and built environments to support

intergenerational wellbeing – all within environmental limits (but still also managing adverse effects). Outcomes are to be provided for in decisions, plans and consents.

- **A more effective role for Māori and improved recognition of Te Tiriti o Waitangi:** Strengthens recognition of Te Tiriti and Māori interests, provides new roles for mana whenua in decision-making on plans, and provides for monitoring of Tiriti performance via a National Māori Advisory Board (NMAB).
- **More integrated and strategic long-term planning:** Provides for strategic planning about land use, infrastructure and environmental protection by central and local government and mana whenua.
- **Moving to equitable and efficient resource allocation within limits:** Develops a more explicit framework for recognising the allocative impacts of decision-making about land use and environmental protection, and provides tools to improve how access to resources is allocated.
- **Effective partnering of central & local government and iwi/Māori in planning and delivery:** Focuses decision-making about land use and the environment on a series of regional partnerships between central and local government and mana whenua.
- **Improved evidence, monitoring, feedback & oversight:** Strengthens system monitoring, reporting and oversight provisions to improve transparency, accountability and delivery of outcomes.

5. *What were the Panel's recommendations regarding the participation of Māori in New Zealand's resource management system?*

The Panel emphasised the importance of providing for a much more effective role for Māori throughout the resource management system. This includes recognising the concept of Te Mana o te Taiao; giving effect to the principles of Te Tiriti o Waitangi, providing for specified Tikanga Māori outcomes and promoting effective participation by mana whenua.

The Panel's recommendations will be further developed through engagement with Maori.

6. *Is the Government taking forward all of the Panel's recommendations?*

The Panel produced a comprehensive set of recommendations for reform of the resource management system, and these will form the basis of the reform package. These will be reviewed by officials as they develop the policy advice that will be considered by the Ministerial Oversight Group.

7. *What are the key elements of reform that the Government is progressing?*

The key elements of reform are the repeal and replace of the RMA with three new acts:

- National and Built Environments Act (NBA)
- Strategic Planning Act (SPA)
- Climate Change Adaption Act (CAA).

Natural and Built Environments Act

- Purpose of enhancing the quality of the built and natural environment for the wellbeing of current and future generations through achieving positive outcomes (within natural environment limits).
- Proposes a system of outcomes, limits and targets set through a national planning framework which will be incorporated into regional combined plans prepared by local and central government and mana whenua.
- Combined regional plans must be consistent with regional spatial strategies and direct which activities do and do not require approvals.

Strategic Planning Act

- The proposed Act provides for the development of long term regional spatial strategies that integrate land-use planning, environmental regulation, infrastructure provision and climate change response matters that fall under various legislative functions including the Natural and Built Environments Act, Local Government Act, Land Transport Management Act and Climate Change Response Act.
- The new Act will mandate use of spatial planning, requiring central government, local government and Māori to work together to develop long term regional spatial strategies (30 years minimum).
- Would require changes to other legislation to establish connections between regional spatial strategies and existing statutory policies and plans.

Climate Change Adaptation Act

- Focuses on the necessary steps to address the effects of climate change and natural hazards.
- Deals with the many complex legal and technical issues (e.g. liability and compensation) involved in the process of managed retreat.
- Minister for Climate Change will lead this legislation.

Process for progressing reform

8. What is the process for progressing the Bills through Parliament?

The Government is proposing to repeal and replace the Resource Management Act (1991) within this term of government.

The NBA will be progressed first. Given its significance, a special process will be put in place to advance this Bill. This will include:

- the development of an exposure draft by May 2021 (this is a draft of legislation that is not yet formally introduced into Parliament)
- the exposure draft will include the important elements of the Bill
- this will be referred to a select committee inquiry in mid-2021
- the NBA will be formally introduced into Parliament by the end of 2021 and referred to a select committee, with the intention of passing it by the end of 2022.

The SPA is expected to be introduced by end of 2021 and it is likely the CAA will be introduced in a similar timeframe. The aim is to pass both in this parliamentary term.

9. What are the Governance arrangements for these new laws?

Given the scale and pace of reform, a Ministerial Oversight Group will be delegated decision-making authority to work through the policy details needed to progress the exposure draft of the Natural and Built Environment Bill. It will also have decision-making authority on associated matters for the other Bills.

The membership of the group will include the Ministers of/for Finance (Chair), Environment (Deputy Chair), Māori Crown Relations: Te Arawhiti, Housing, Local Government, Building and Construction, Agriculture, Māori Development, Transport, Conservation, Associate Environment and Associate Arts, Culture and Heritage (Hon Kiritapu Allan), Associate Environment (Hon Phil Twyford), and Climate Change.

10. Which government agency will develop the new Bills?

The Ministry for the Environment (MfE) will be the lead agency on developing the NBA and CAA. Given the integrated nature of the SPA, there is a strong case for collective leadership of the SPA.

11. What is the legislative timeline for reform?

The Government is proposing to reform the Resource Management Act within this term of government. This is a significant legislative overhaul of a complex piece of law which directly or indirectly touches on most things New Zealanders do every day as well as managing complex and often competing rights, interests, needs and priorities. This is why care need to be taken when replacing it. The proposed timeline following the Government announcing the reform package on 10 February 2021 is:

- **April 2021:** further policy decisions for the exposure draft and consultation material are developed
- **May 2021:** Cabinet approves final exposure draft of the NBA and consultation material and presents it to House
- **May – September 2021:** exposure draft referred to special select committee inquiry
- **June – December 2021:** Cabinet considers remaining policy decisions
- **December 2021:** NBA introduced into the House and then follows standard legislative process.

12. What areas of policy will not be included in the exposure draft of NBA legislation?

Details such as consenting processes, designations, proposals of national significance, Environment Court workings, water conservation, allocation methods, compliance, monitoring and enforcement and transitional arrangements will continue to be developed in parallel to the select committee inquiry.

13. What will the proposed new planning system look like?

Under SPA, central government will work with local government and mana whenua to create a long-term **spatial strategy** for each region. These strategies will integrate land use planning, environmental regulation, infrastructure provision and climate change response. These strategies will integrate across the NBA and other key legislation covering climate change, transport and local government.

Under the NBA, central government's new proposed **National Planning Framework** will provide a set of mandatory national policies and standards on specified aspects of the new system including environmental/biophysical limits, outcomes and targets.

Local government in each of New Zealand's regions will be required to work together with iwi to provide a single 'combined plan' (this will cover all current RMA policy statements and plans and the coastal marine area) that will be consistent with the NPF and spatial strategy. These are provisionally being called **Natural and Built Environments Plans**. The number of resource management plans in New Zealand will be reduced from over 100 to about 14.

14. *What is the difference between the Purpose and Principles in Part 2 of the RMA and the new NBA?*

The new legislation will focus on identifying and promoting positive outcomes for people, the natural environment and our urban spaces, and setting goals for achieving these outcomes, rather than focusing, as the RMA has, on preventing individual adverse effects. It will also set out a series of biophysical limits to protect and recognise the concept of Te Mana o Te Taiao - the fundamental significance of the natural environment and the importance of prioritising its health and wellbeing.

The NBA would also require people exercising functions and powers under the NBA to 'give effect to' the principles of Te Tiriti o Waitangi. This is a significant change, strengthening the RMA Te Tiriti clause and signalling to decision makers that Te Tiriti is a critical consideration within the resource management system. The Government will engage with Māori entities on this.

The purpose and supporting provisions of the NBA set out the essential premise of the legislation, drive the outcomes it will achieve, and guide the National Planning Framework and, in turn, local government plans. Getting this part right is essential to making sure that the legislation enables development within environmental/biophysical limits as intended. We will therefore continue to revise these ideas with input from New Zealanders as the reform progresses.

15. *What is the Strategic Planning Act?*

The Strategic Planning Act (SPA) provides a strategic and long-term approach to how we plan for using land and the coastal marine area. Long-term spatial strategies in each region will be developed to identify areas that will be suitable for development, areas that need to be protected or improved, areas that will need new infrastructure and other social needs such as hospitals and schools, areas that are vulnerable to climate change effects and natural hazards such as earthquakes.

The regional strategies will enable more efficient land and development markets to improve housing supply, affordability and choice, and climate change mitigation and adaptation.

Opportunities for getting involved

16. *How will the Government engage with stakeholders and the New Zealand public over the reforms?*

The Government understands that engagement with Māori and stakeholders is important to ensure a workable and enduring new system.

The Review Panel engaged extensively as they developed their proposals for reform. This included local government and stakeholders from industry, primary production, environmental, and Māori organisations.

The primary method of engagement for stakeholders and the general public in the next stage of the reform will be through select committee processes.

17. *How will the Government engage with local government*

Local government has crucial expertise relevant to reform and will be partners in implementing the new system. It is therefore essential to engage with local government throughout the reform process. A group of local government CEs is already working with

central government on the reforms. MfE will continue engagement with local government experts and Local Government New Zealand (LGNZ).

18. *How will the Government engage with iwi/Māori over the reforms?*

The Government is working with a collective of several Māori entities on policy development to help develop the exposure draft of legislation for the NBA.

Any Māori iwi or entity will also be able to engage with the select committee inquiry and then the actual select committee when it later considers the NBA Bill.

Officials will keep Treaty partners up to date through existing MfE and cross-agency communication channels.

19. *How will you manage the Treaty Settlements that are connected to the RMA and what is the timeline for engagement?*

The RMA interfaces with over 60 pieces of Treaty of Waitangi settlement legislation. When setting the scope for the Panel's Review, Cabinet noted that Treaty settlements that include provision for iwi engagement in aspects of the resource management system will be carried over into a new system [CAB-19-MIN-0337 refers].

Engagement with Māori will be important to help ensure reform both avoids unintended consequences for, and upholds the integrity of natural resource arrangements agreed by Māori and the Crown, or the subject of current Treaty settlement negotiations; as well as:

- rights recognised under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019
- natural resource arrangements agreed by Māori and local government under existing provisions of the RMA, such as the transfer of powers under section 33 or Mana Whakahono ā Rohe entered into under section 58O.

To ensure this, the Crown will engage with affected Post-Settlement Governance Entities to discuss how their settlement arrangements will be carried over into a new system.

20. *Local government is being asked to form joint committees for plans and strategies, does this suggest reform of local government is imminent?*

Reform of local government was outside of the terms of reference of the resource management review and is not covered in the Panel's recommendations. There are no plans for institutional changes to local government in the reform of the resource management system.

21. *How will the Climate Change Adaptation Act (CCA) work? Will there be a fund for climate change adaptation as the Panel suggested?*

Climate change is a priority within these reforms. The CCA will address the complex legal and technical issues associated with managed retreat, where it is required for climate change adaptation or reducing risks from associated natural hazards.

All of the Panel's recommendations for the CCA are being further developed by officials and will come to Cabinet via Minister Shaw as Minister of Climate Change. Local government input will be critical to making sure this legislation is workable, and there will be a chance for further engagement on this in due course.

Housing

22. *How will reform help with housing affordability, supply and choice?*

Secure, healthy and affordable housing is at the heart of the wellbeing of New Zealand families. But we know that this is no longer a reality for many New Zealanders. Urban areas hold 86 percent of our population and 99 percent of our population growth occurs there, especially in major cities like Auckland. Instead of allowing cities to respond to population growth sustainably, poor quality and restrictive planning has contributed to a lack of certainty and unaffordable housing.

While the housing problems are a complex mix of demand, costs, financing, capacity and supply, the reforms will contribute to addressing some of these issues. It will do this by requiring central and local government to plan for housing and urban development. This includes planning better so that infrastructure is provided for at the right place and at the right time. This includes better coordination of infrastructure with land use, development and urban growth.

Regional spatial strategies developed under the SPA will bring central and local government together with iwi to identify long term strategic outcomes for regions. Ensuring sufficient supply of development capacity for housing will be a key outcome for regional spatial plans. This will facilitate more efficient land and development markets to improve housing supply, affordability and choice. It will do this by ensuring a long term pipeline of supply by identifying areas for development, no go areas, and future infrastructure corridors to provide for growth. This is a long-term system change that is being put in place to help us be more strategic with our development in the future so we can provide for the wellbeing of all New Zealanders.

Implementation

23. *Why will it take three years to complete the reforms?*

At over 800 pages, the RMA is one of the most complex pieces of law in New Zealand. It directly or indirectly touches on most things New Zealanders do every day as well as managing complex and often competing rights, interests, needs and priorities. This is why care need to be taken when replacing it. Because of the impacts on people's rights and interests, all of this has been undertaken with sufficient opportunity for the public to have their say.

The RM reform comprises three Acts; the Natural and Built Environments Act, the Strategic Planning Act and Climate Change Adaptation Act. The Government will need to prepare regulations and other forms of national direction to guide local government and other decision makers on the implementation of the new legislation.

The original RMA took nearly five years to prepare (with the development of national direction continuing even today), while other reforms such as those associated with the 3-Waters Reforms has been underway since 2017.

24. *What will an effective and efficient system look like? Will there be fewer resource consents?*

One of the purposes of the Panel's review was to reduce the complexity of the existing resource management system under the RMA, so this is top of mind as we develop a replacement system. The new system aims to streamline decision-making so that it is more strategic and easier to navigate for end users, such as people applying for resource consent.

25. *How will the new resource management system be implemented?*

Work is already underway on developing implementation plans to enable an efficient transition to the new resource management system. This includes such things as developing and testing combined plans to serve as models for local authorities, consolidating existing national direction into a single integrated format in preparation for being incorporated into the National Planning Framework, and support to the increase the capacity and capability throughout the system (including for iwi and local authorities).

26. *How long will the new resource management system take to implement?*

Once the new laws have passed through Parliament we will be transitioning to the new system. We expect the process for system reform is expected to take a number of years.

27. *What happens to the current system under the RMA in the meantime?*

It is likely there will be transitional provisions to ensure that the planning standards, other national direction, and the RMA as a whole remains in effect until their replacements are developed. These provisions will provide clarity on what needs to be transitioned, when this needs to occur, and the mechanisms for doing so.

For the moment we encourage councils to continue with business-as-usual, with an emphasis on gathering evidence/data on the performance of their plans and establishing implementation practices that could be carried over into a future system.

As the process for system reform is likely to span a number of years, there are risks of poor outcomes in the interim if councils do not continue to implement national direction requirements and other requirements under the RMA.

It is important to ensure that the current system keeps operating, and that councils continue to implement key pieces of national direction such as the NPS. MfE will be working with councils to ensure that no resources are wasted on processes and plans that are not timely or relevant to the new system.