

RMA Replacement Bills

An overview

Ezekiel Hudspith, Partner

Overview

- Splitting the RMA
- Goals and regulated effects
- New taxonomy of planning instruments
- Spatial planning
- Regulatory relief
- Environmental limits
- Notification and submissions
- Designations 2.0
- Planning Tribunal
- Compliance and enforcement
- Ministerial intervention
- Transition process



Two Acts rather than one

- Planning Act
 - Purpose: ‘establish a framework for planning and regulating the use, development, and enjoyment of land’
 - Broadly corresponds with current district council functions under the RMA
- Natural Environment Act
 - Purpose: ‘establish a framework for the use, protection and enhancement of the natural environment’
 - Broadly corresponds with current regional council functions under the RMA

Planning Bill goals

11 Goals

- (1) All persons exercising or performing functions, duties, or powers under this Act must seek to achieve the following goals subject to **sections 12 and 45**:
 - (a) to ensure that land use does not unreasonably affect others, including by separating incompatible land uses:
 - (b) to support and enable economic growth and change by enabling the use and development of land:
 - (c) to create well-functioning urban and rural areas:
 - (d) to enable competitive urban land markets by making land available to meet current and expected demand for business and residential use and development:
 - (e) to plan and provide for infrastructure to meet current and expected demand:
 - (f) to maintain public access to and along the coastal marine area, lakes, and rivers:
 - (g) to protect from inappropriate development the identified values and characteristics of—
 - (i) areas of high natural character within the coastal environment, wetlands, and lakes and rivers and their margins:
 - (ii) outstanding natural features and landscapes:
 - (iii) sites significant historic heritage:
 - (h) to safeguard communities from the effects of natural hazards through proportionate and risk-based planning:
 - (i) to provide for Māori interests through—
 - (i) Māori participation in the development of national instruments, spatial planning, and land use plans; and
 - (ii) the identification and protection of sites of significance to Māori (including wāhi tapu, water bodies, or sites in or on the coastal marine area); and
 - (iii) enabling the development and protection of identified Māori land.
- (2) In **subsection (1)(g)**, **identified** means identified in a national instrument, plan, or proposed plan.

NEB goals

11 Goals

All persons exercising or performing functions, duties, or powers under this Act must seek to achieve the following goals subject to **sections 12 and 69**:

- (a) to enable the use and development of natural resources within environmental limits:
- (b) to safeguard the life-supporting capacity of air, water, soil, and ecosystems:
- (c) to protect human health from harm caused by the discharge of contaminants:
- (d) to achieve no net loss in indigenous biodiversity:
- (e) to manage the effects of natural hazard associated with the use or protection of natural resources through proportionate and risk-based planning:
- (f) to provide for Māori interests through—
 - (i) Māori participation in the development of national instruments, spatial planning, and natural environment plans; and
 - (ii) the identification and protection of sites of significance to Māori (including, wāhi tapu, water bodies, or sites in or on the coastal marine area); and
 - (iii) enabling the development and protection of identified Māori land.



The 'funnel'

- Clause 12 in both bills is the 'funnel provision'
- Role of national instruments is to 'particularise' the goals
- Decision makers cannot consider the goals 'directly' unless:
 - Goal not addressed/particularised
 - Uncertainty within an instrument
 - Conflict between instruments

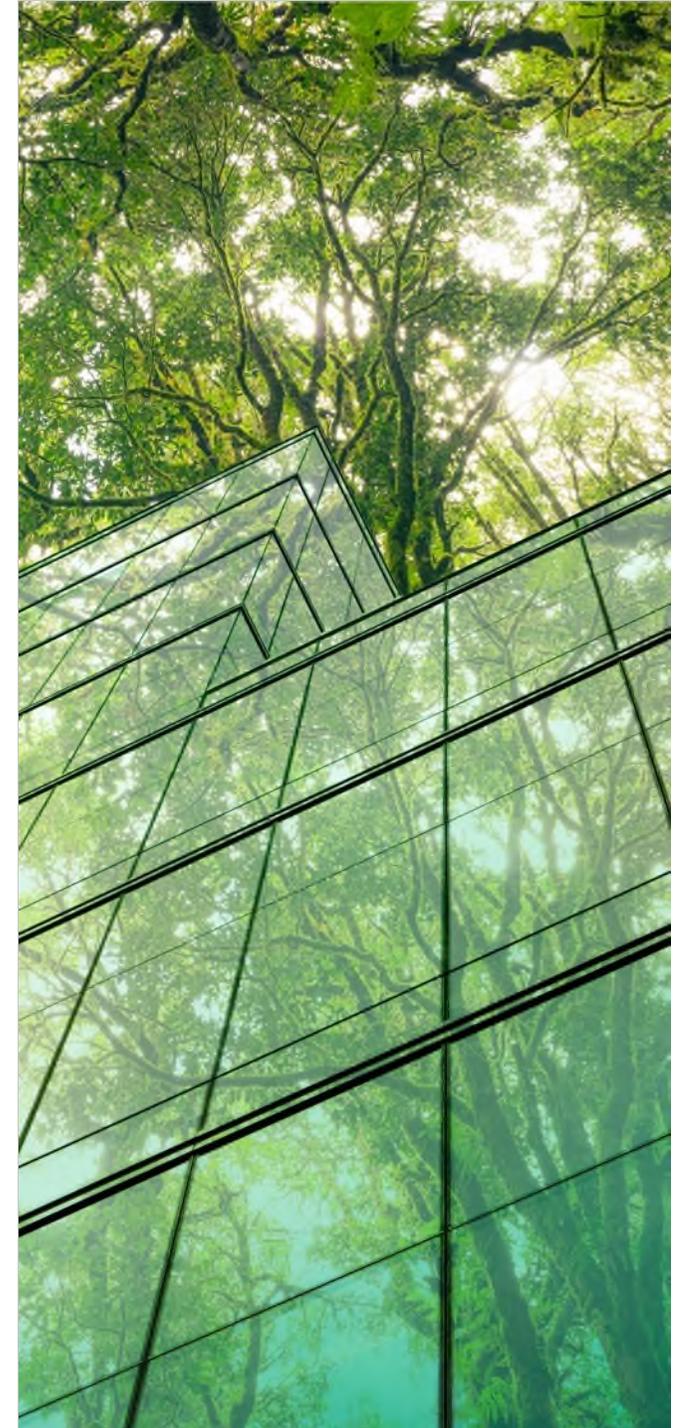


A narrower spectrum of regulated effects

- Planning Bill generally requires decision-makers to disregard:
 - Internal/external layout of buildings
 - Visual amenity
 - Views from private property
 - Effects on landscape (unless ONL)
- Bills not intended to duplicate regulation by the other, or other legislation
- Less than minor effects to be disregarded (unless → cumulative effects)

A new taxonomy of planning instruments

- ‘National Instruments’:
 - National Policy Direction (high level policies) – particularises the ‘goals’ of each Bill and how they are achieved
 - National Standards (policies, standards, rules) – used to implement the NPD and provide regulatory consistency
- Regional Combined Plan:
 - Regional Spatial Plans (PB) – set the strategic direction for a 30-year timeframe and provides for use and development within environmental limits
 - Natural Environment Plans (NEB) and Land Use Plans (PB)





More on Spatial Planning

- Purpose:
 - Set strategic direction for development and public investment – 30 years
 - Enable integration of strategic decision making under PA and NEA
- Integration:
 - RSP implements national instruments
 - RSP needs to be consistent with environmental limits, show their spatial implications
 - Regional land transport plan (LTMA) must be consistent with RSP
 - Land use plan, natural environment plan and long term plans (LGA) must implement RSP
- Determined by joint councils, with IHP recommendation process

A new regime for 'regulatory relief'

- Applies to land use controls related to 'specified topics', being:
 - Significant Heritage (PB)
 - Outstanding landscapes and features (PB)
 - High natural character re coast and water (PB)
 - Sites of significance to Māori (both PB and NEB)
 - Significant natural areas (NEB)
 - Terrestrial indigenous biodiversity (NEB)
- Councils are required to grant relief if rules related to these topics 'significantly impact' the reasonable use of land





Environmental limits

- Broadly resemble national bottom lines under the RMA (e.g. NPS-FM)
- Limits will be either:
 - Human health limits – set in national standards
 - Ecosystem health limits – set in NEA plans
- National standards set methodologies to determine ecosystem health limits, and ‘minimum acceptable levels’
- NEA permits cannot authorise (new) breach of a limit – but exceptions pathway for infrastructure

Notification and submissions

- Public notification:
 - PB: more than minor effects on 'built environment'
 - NEB: significant effects on 'natural resources or people'
 - But public notification is not required if all affected persons identified
- Targeted notification (affected persons):
 - Threshold increased to 'more than minor'
 - In NEB can identify persons based on 'management unit'
- Standing to submit (if application publicly notified):
 - Qualifying resident – live or operate in the district or region; or
 - Affected person status



Designations – pathways

- ‘Normal’ process – infrastructure and ‘core infrastructure’
- Spatial plan *process*
 - Invitation to apply
 - Eligibility criteria
 - Recommendation by IHP
- Land use plan process
- Indicative identification in spatial plan



Designations – other changes

- Information requirements
- Statutory ‘tests’:
 - ‘Strategic need’
 - Relevance of goals
 - Consideration of effects
- Scope of designation conditions
- Construction project plans
- Designation and CCP can be more lenient than national standards





Planning Tribunal

- Bills establish a new Planning Tribunal
- Division of the Environment Court
- Will be first port of call for:
 - Procedural local authority decisions
 - Disputes related to condition interpretation
 - Striking out conditions that are outside new system's scope
 - Further information requests
 - Notification decisions
 - Regulatory relief

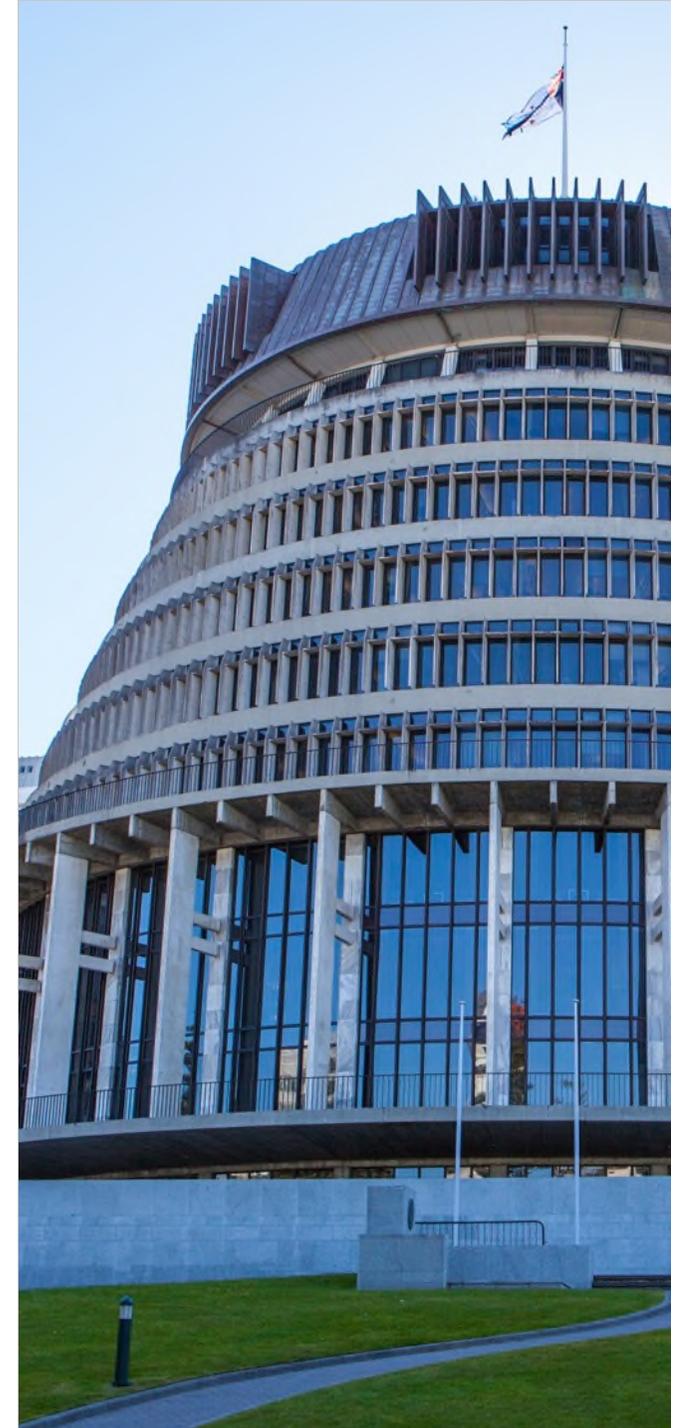


Compliance and enforcement

- Largely retains the RMA system (as per RM(COSC) Amendment Act)
- Addition of NBEA tools:
 - Adverse publicity orders
 - Monetary benefit orders
 - Pecuniary penalty orders
 - Enforceable undertakings
 - Emergency works
 - Liability of principal for acts of agents

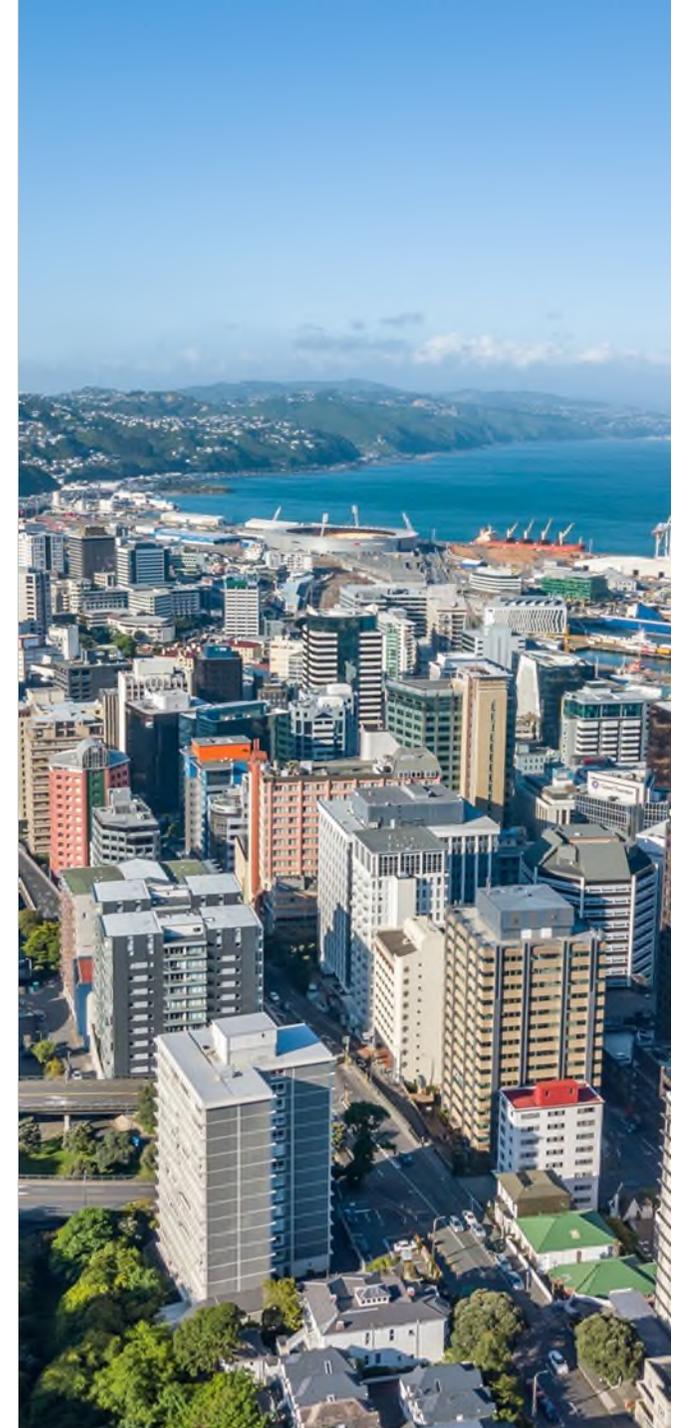
Minister's new intervention powers

- The Planning Bill grants the Minister powers to:
 - Investigate the exercise of functions by local authorities, or any omission to do so
 - Make recommendations in relation to the investigation findings.
- Recommendations may include directions to:
 - Appoint person(s) to carry out functions in the local authority's stead
 - Prepare a plan change or variation
 - Carry out a review of the plan
 - Take some other action the Minister considers necessary



Transition to the new system

- Transition period (from 1 month after Royal Assent):
 - Consenting and enforcement continue under the RMA (with tweaks)
 - RMA plan processes mostly still frozen
 - NPD and some NS to be *issued* 9 months after Royal Assent
 - RSP notified 15 months after Royal Assent
 - NEA plans and Land Use Plans *notified* 9 months after RSP *decided*
- Specified Transition Date
 - By Order in Council – targeting 2029 for this
 - RMA repealed and NEA/PA fully commence
- RMA consents
 - Extended through the transition (24 months post-STD, so around 2031)
 - Transferred into the system, deemed to be PA consents or NEA permits



DENTONS

Questions?



Ezekiel Hudspith

Partner

+64 4 498 0849

ezekiel.hudspith@dentons.com