

Government's 'gone-by-Christmas approach' repeals new planning laws, but the future of RMA remains uncertain

The Government has followed through with repealing the Natural and Built Environment Act (NBEA) and Spatial Planning Act (SPA) under urgency. The Resource Management Act 1991 (RMA) remains 'live' in the meantime, while a second phase of reform is progressed to amend it, as well as replace the National Policy Statement for Freshwater 2020.

Initial changes

Under urgency, and without any regulatory impact statement being prepared, Government has passed a tranche of systematic repeals. For the NBEA, some elements already in force will be retained for a period of time, pending the second stage of reform. This includes the fast-tracking consenting process, which is a new consenting route available for specified eligible activities, including communication networks, energy, housing, and transport. The next phase of reform includes plans to legislate a new fast track consenting regime alongside other changes to the RMA. In the meantime, the NBEA fast track process remains open for applicants to make referral applications for significant projects to the Environmental Protection Authority, although the criteria are modified to align with existing RMA planning instruments and frameworks. Provisions are also retained to ensure that persons exercising powers under the fast track process continue to give effect to a Treaty settlement. Additionally, the Spatial Planning Board is retained, however its roles and functionalities will *'still be worked through in due course'* according to Minister Bishop's speech to the House on the repeals. The [Spatial Planning Board](#) is an

independent, interdepartmental executive board responsible for providing advice to Ministers on spatial planning. Its purpose was to lead development of the SPA (now repealed).

The New Zealand Law Society has expressed its [concern](#) over the use of urgency to repeal legislation and the suspension of requirements to prepare regulatory impact statements, citing: *"legislation may have been subject to informal or confidential consultation, this does not allow the public or officials to meaningfully engage"*.

The future of the RMA

The Government has announced its plan for the second phase of reforms to the RMA, which will focus on making amendments, which are claimed to achieve:

- Easier consenting for infrastructure:
- Allowing farmers to farm,
- Building more houses.
- Enabling aquaculture and other primary industries.

The details for these key areas are however not yet revealed. The third phase of a reform purports to be a more fundamental repeal of the RMA and introduction of replacement legislation based upon 'the enjoyment of property rights'. Minister Bishop signaled that *"at some point, in due course, we will have to consider the future of local government reform as well, and, of course, it sits alongside our reforms in infrastructure funding and financing"*. It seems parties on both sides agree the RMA is fundamentally broken, but can't agree on what a replacement looks like. Hon Rachel Brooking in her speech in reply to Minister Bishop, stated: *"we heard, time and time again, that, fundamentally, the RMA broken. This is to do with it being so focused on effects, and the whole regime being driven down to that consenting decision-making process. That is expensive"*.

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Te Tiriti o Waitangi

Government has confirmed that Treaty settlements will be protected throughout the current and future repeal process. However, an amendment to the Urban Development Act 2020 replaces the previous requirement to 'give effect to' Te Tiriti principles, with replacement 'take into account' obligation.

National Policy Statement for Freshwater Management (NPS-FM 2020)

The NPS-FM 2020 will be replaced and reviewed in this term of Government, through the normal RMA processes for introducing national direction (including public, industry, and iwi consultation). For a number of years, regional councils have been working towards the NPS-FM statutory deadline to notify new freshwater planning instruments by the end of 2024. This statutory deadline has however been extended until the 31st of December 2027 in order to provide an additional three years for Councils to complete this work, in light of the impending replacement national direction.

Government has announced its intent to make changes to the application of the hierarchy of obligations contained in the Te Mana o te Wai provisions of the NPS-FM... to clarify that consent applicants do not have to demonstrate how their individual activity adheres to the hierarchy, and to disapply the hierarchy from council consent decisions.

The current hierarchy of obligations in Te Mana o te Wai prioritises:

- first, the health and well-being of water bodies and freshwater ecosystems;
- second, the health needs of people (such as drinking water);
- third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

However, an [open letter](#) addressed to the Prime Minister from 50 freshwater scientists urges the Government to retain the NPSFM and Te Mana o te Wai, stating: *"We call on you to listen to the wider community - not only the minority of voices who have asked you to undo the progress the country has made towards cleaner drinking water and healthier waterways"*.

Want to know more?

If you have any questions about the changes please contact our specialist [Environment, Planning and Natural Resources team](#).