

## **NEW DIRECTIONS FOR RESOURCE MANAGEMENT IN NEW ZEALAND**

A Government-ordered review released on 29 July 2020 has called to replace New Zealand's outdated, linchpin rulebook for the environment with two new ones – and also create legislation to deal with climate change impacts.

The top-level behind it has separately called for a shake-up of New Zealand's councils, arguing having 78 of them is "difficult to justify".

This review was conducted by the independent Resource Management Review Panel chaired by retired Court of Appeal Judge, Hon Tony Randerson, QC.

When the RMA was introduced in 1991 it contained a number of valuable principles which it is important to retain. One of these was the principle of sustainability to ensure the needs of future generations are taken into account. However, in the ensuing period of nearly 30 years, the RMA has been subjected to numerous amendments designed to improve its effectiveness but which have instead resulted in a doubling of its original length and an unduly complex patchwork of provisions.

Rather than attempt to amend the RMA, the Panel has concluded that the Act should be repealed and replaced with new legislation which we propose be named the Natural and Built Environments Act (NBEA). This would have a substantially different approach from the RMA but would also incorporate some of the key principles of the previous legislation which remain appropriate. The aim of the NBEA would be to establish more enduring solutions and bring to an end the series of ad hoc interventions that have been an undesirable feature of legislative change to date.

Figure 9.1: Distribution of the number of working days to grant new resource consents, 2018/19

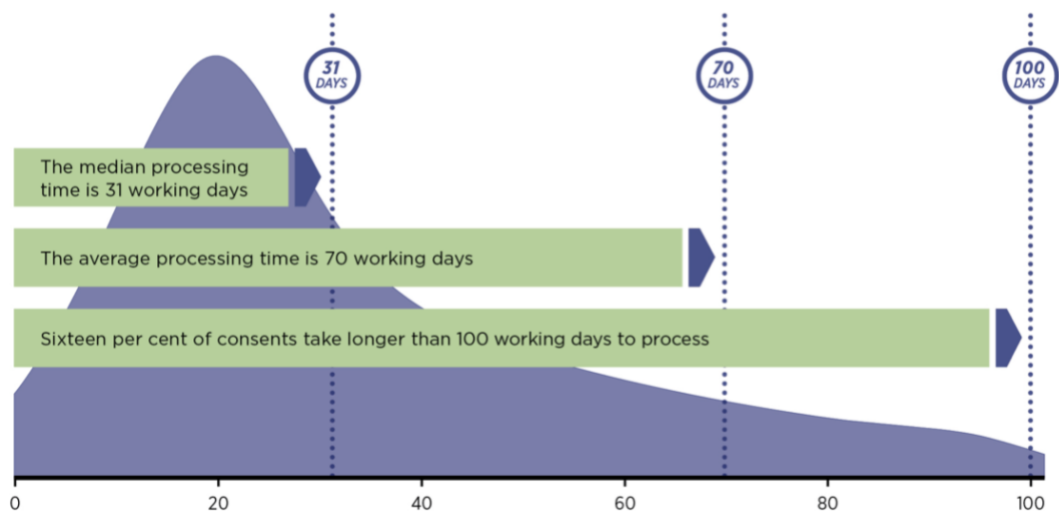
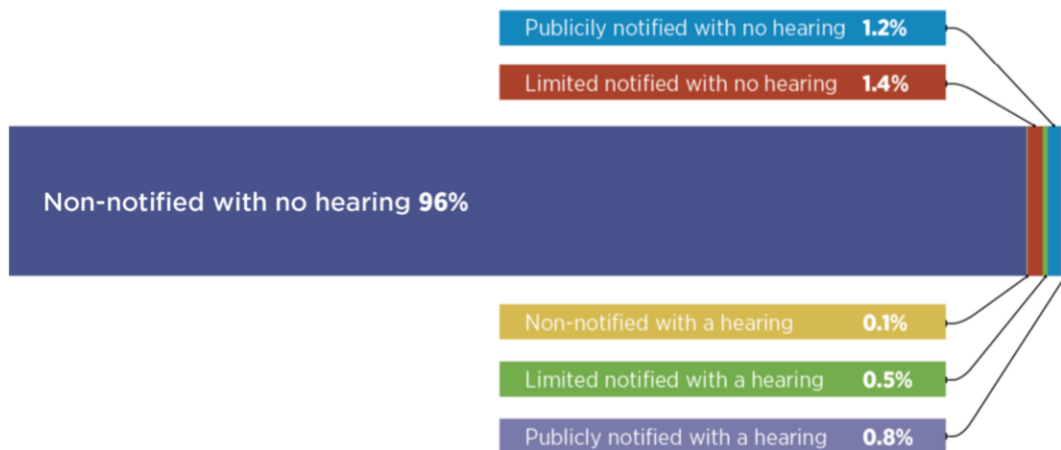


Figure 9.2: Percentage of consents granted in 2018/19 by the type of notification and if hearing was held<sup>300</sup>



The independent review, commissioned by Environment Minister David Parker, explored what to do about the regulatory system built around the 30-year-old Resource Management Act (RMA).

Two major new pieces of interrelated legislation:

- the repeal of the Resource Management Act 1991 (RMA) and its replacement with new legislation we have suggested be named the Natural and Built Environments Act (NBEA). This would have a substantially different approach but would incorporate some of the key principles of the RMA that remain appropriate
- new legislation which we have called a Strategic Planning Act (SPA).
- Managed Retreat and Climate Change Adaptation Act (CCAA).

The NBEA would be the most direct replacement for the RMA, while the SPA would have the purpose of setting long term strategic goals and facilitating the integration of functions from across the resource management system (including the Local Government Act 2002, Land Transport Management Act 2003 and Climate Change Response Act 2002). If enacted the CCAA will establish an adaptation fund to enable central and local government to support necessary steps to address the effects of climate change.

The combined effect of the SPA and the NBEA would be to significantly overhaul how local authorities are expected to approach planning for natural and built environments, with a focus on closer links between land and resource planning, and associated funding and investment.

The Panel proposes a new purpose for the NBEA: enhancing the quality of the environment to support the wellbeing of present and future generations. That purpose will be achieved by promoting positive outcomes for both natural and built environments, ensuring that the use, development and protection of resources only occurs within prescribed environmental limits and that the adverse effects of activities on the environment are avoided, remedied or mitigated.

The Panel recommends that regional and district plans should be combined and replaced with a single plan for each region (Combined Plans). In effect, there will be a single unitary plan (similar to the Auckland Unitary Plan (AUP)) for every region which will reduce the number of planning documents to 14, from the more than 100 that exist now.

Also, the Combined Plans could potentially release pressure through the integration of regional council and territorial authority functions. The upfront costs associated with the development of Combined Plans will be significant.

The Panel proposes that the NBEA should focus on outcomes for the built environment, as well as the natural environment, by including provisions to ensure that there is sufficient development capacity for housing and business land.

The Panel also proposes that the NBEA should contain a more explicit focus on climate change issues. The Panel's recommendations focus on using the NBEA to reduce greenhouse gas emissions rather than merely managing the natural hazards that result from climate change. The CCAA and NBEA together support the aim of a managed transition to a low carbon economy and are in line with recent developments in other New Zealand climate change legislation.

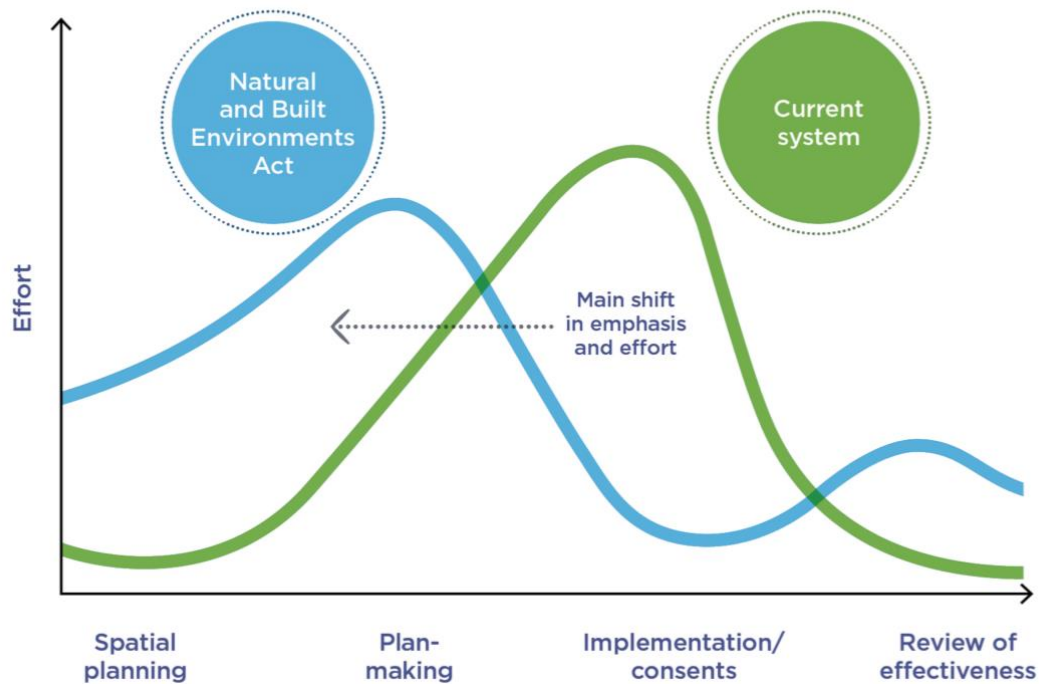
The Panel also proposes streamlining another arguably problematic area of the RMA: the plan preparation and change process. In particular, the Panel proposes that the Joint Committees (as discussed above) should have the authority to prepare and notify the Combined Plan. It also recommends a process similar to that used for preparing the AUP.

The Panel has also recommended clarifying the notification process by removing the 'no more than minor' effects threshold and replacing existing provisions with a combination of presumptions and plan provisions specifying when notification is to occur and in what form.

Key recommendations – Consents and approvals	
1	Current resource consent types should remain: land use and subdivision consents, and water, discharge and coastal permits.
2	The current list of activities should remain, except for the non-complying category which should be removed.
3	The current rules on notification of consent applications should be substantially changed by removing the ‘no more than minor’ effects threshold and replacing existing provisions with a combination of presumptions and plan provisions specifying when notification is to occur and in what form.
4	Information requirements should be proportionate to the nature, scale and complexity of the issue.
5	The matters to be considered on an application for resource consent should be amended in various respects including shifting the focus to identified outcomes and removing the ‘subject to Part 2’ reference and the permitted baseline test.
6	The direct referral process should be modified. Where the relevant consent authority declines to consent to the referral the Environment Court should be permitted to approve direct referrals on stated criteria.
7	An alternative dispute resolution process should be established for controlled or restricted discretionary activities in prescribed circumstances. Parties to the process should still be able to exercise rights of appeal but only by leave of the Environment Court.
8	An ‘open portal’ for consent applications should be established to coordinate agency responses and encourage the bundling of applications.
9	Proposals of national significance should remain but with a simplified process involving Ministerial referral to the Environment Court in accordance with prescribed criteria.

The Panel has also recommended a new separate piece of legislation which we have called the Strategic Planning Act. The purpose of the Strategic Planning Act would be to set long-term strategic goals and facilitate the integration of legislative functions across the resource management system. These would include functions exercised under the NBEA, the LGA, the LTMA and the CCRA to enable land and resource planning to be better integrated with the provision of infrastructure as well as associated funding and investment. The Panel’s consultation found strong support for greater use of spatial planning to identify areas suitable for development as well as areas or features it is important to protect. Spatial strategies developed at regional level, encompassing land and the coastal marine area, would play a critical part in delivering the outcomes intended for the resource management system.

Figure 14.1: Change in focus and effort under the Natural and Built Environments Act



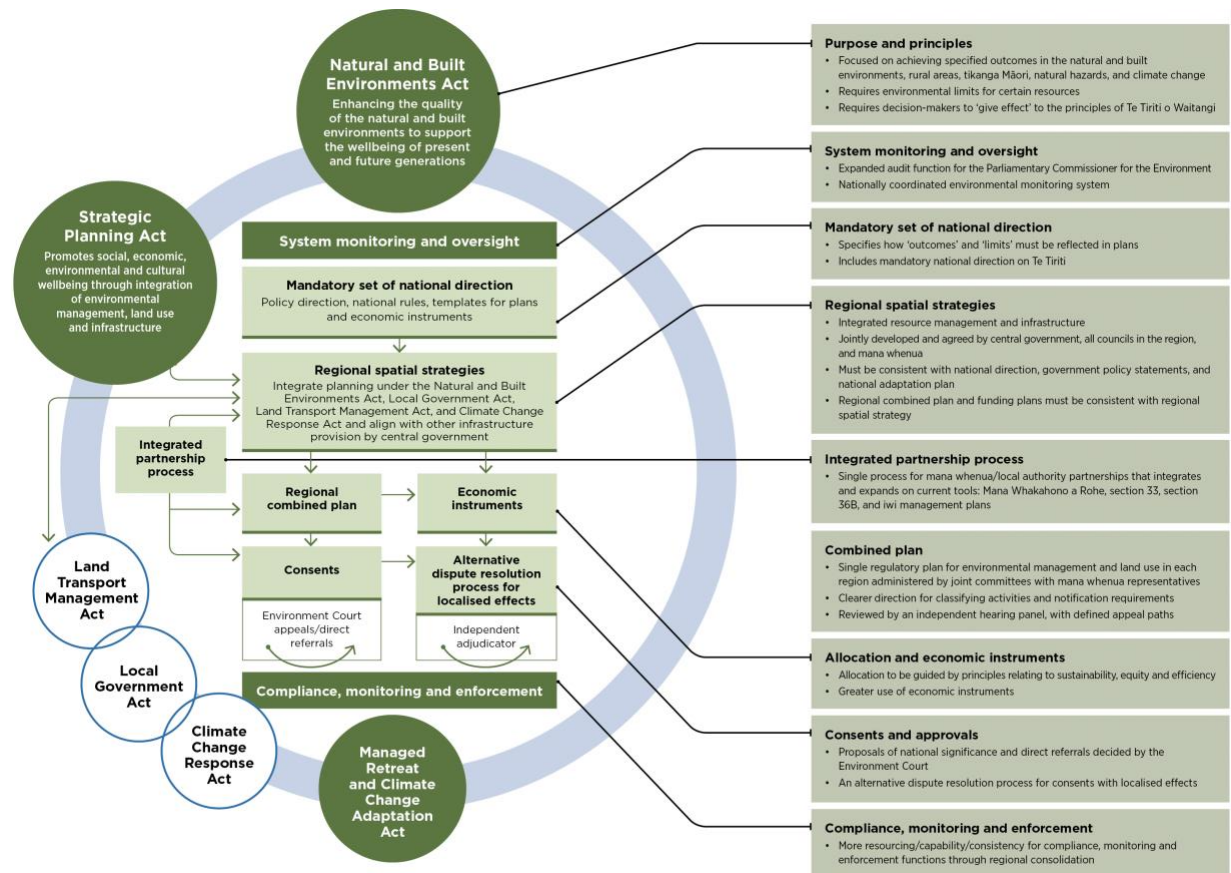
The preparation and approval of spatial strategies under this new legislation would be the responsibility of a joint committee comprising representatives of central and local government as well as mana whenua.

This new approach to result in stronger coordination between these parties in developing long-term strategic planning for both the natural and built environments, with closer links between land and resource planning and associated funding and investment.

One criticism of the purpose of the RMA has been its focus on managing the adverse effects of activities on the environment rather than promoting more positive outcomes. The Panel proposes a new purpose for the NBEA: enhancing the quality of the environment to support the wellbeing of present and future generations. That purpose will be achieved by promoting positive outcomes for both the natural and built environments, ensuring that use, development and protection of resources only occurs within prescribed environmental limits and that the adverse effects of activities on the environment are avoided, remedied or mitigated.

Cabinet has indicated that a broad, open process of public consultation will follow its consideration of the proposals. Wide engagement with

New Zealanders and stakeholders is anticipated for the introduction of any new legislation.



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After a public consultation process, the Resource Management Review Panel has released a 531-page report on its recommendations for reforming our resource management system. After much foreshadowing in recent weeks, the Panel has recommended repeal of the RMA and replacement with two new pieces of legislation:

- A **Natural and Built Environments Act**, which would draw on many of the principles of the RMA in terms of sustainable management of land, water and air; and
- A **Strategic Planning Act** which would promote the strategic integration of legislative functions across the whole of the resource management system, primarily via a spatial planning approach, with stronger national and regional coordination of development.

The Panel has also recommended the development of a new piece of legislation called the **Managed Retreat and Climate Change Adaptation Act** which would deal specifically with the complexities of managing the effects of climate change.

The Panel's view is that the RMA has failed to adequately address issues causing significant pressure on the natural environment such as climate change, biodiversity, and wider environmental decline, and failed to provide for the housing and infrastructure needed for growing populations in urban areas. The Panel also criticises the RMA for failing to adequately respond to rapid changes in rural land use and continued intensification.

A key emphasis of the recommendations is the need to promote greater national and regional coordination in our resource management system, providing more certainty for councils and developers. The Panel proposes that spatial plans would be used to coordinate long-term decision-making for infrastructure and land use planning, something which it says is currently fragmented between the RMA, Local Government Act, and Land Transport Management Act.

The Panel envisages a resource management system focused on outcomes, both to protect and enhance the natural environment, and facilitate development. This would be moving away from what the Panel says is the current focus on managing the effects of resource use. The proposed Natural and Built Environments Act would specify outcomes in relation to quality of natural and built environments, rural areas, tikanga Māori, historic heritage, natural hazards and climate change. Mandatory national direction would provide guidance on how these matters must be reflected in plans, including through the use of targets. Environmental limits and minimum standards would be established for certain resources.

To address local government integration and to reduce complexity, the Panel proposes 14 combined regional plans to consolidate the more than 100 various plans and policy statements of territorial and unitary authorities and regional councils. This appears to be a unitary authority-type approach rolled out for all regions. The Panel's broader commentary on local government structure also signals further reform of the sector is required, and suggests that 78 local authorities is simply too many.

While the RMA is not without its problems, the reality is that many of the issues the RMA seeks to address are complex which necessarily give rise to tensions between (for example) providing for urban development, addressing climate change, and protecting the environment. The Panel's proposal seeks to simplify processes in a way that better enables growth within environmental limits, which should be welcomed. However, greater national and regional coordination will demand strong and clear policy direction, significant local government resourcing,



and a move away from managing issues at a local or regional level. While national guidance and direction always sounds enticing, the reality is that many environmental issues are genuinely local. What is an issue in Auckland is not necessarily so in Christchurch.

There is also a risk that by separating the RMA into multiple acts we further fragment the resource management system and introduce unnecessary complexity.

Watch this space as we provide more detailed updates on particular aspects of this report over the coming weeks.

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