

Departmental Disclosure Statement

Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 December 2023.

Contents

Contents.....	2
Part One: General Policy Statement.....	3
Part Two: Background Material and Policy Information	4
Part Three: Testing of Legislative Content.....	6
Part Four: Significant Legislative Features	8
Appendix One: Further Information Relating to Part Two.....	10

Part One: General Policy Statement

The Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill repeals the Natural and Built Environment Act 2023 (**NBA**) and the Spatial Planning Act 2023 (**SPA**). The Bill delivers on the Government's policy commitment to repeal the NBA and SPA and reinstate the Resource Management Act 1991 (**RMA**) as the primary legislation for New Zealand's resource management system, pending the Government's proposed future resource management reform.

The Bill aims to deliver an orderly return to the RMA, which is achieved by:

- transitional and savings provisions for some parts of the NBA that are already in use, to provide continuity and certainty for system users,
- minor amendments to the RMA for clarity and workability, and
- reversing consequential and other amendments made by the NBA and SPA to other legislation (with some limited exceptions).

Transitional and saving arrangements in this Bill include retention of the NBA fast-track consenting process. Provisions ensure that fast-track consenting remains for significant projects until an alternative fast-track infrastructure consenting regime can be introduced to the RMA. These provisions also ensure Treaty settlements are upheld for fast-track consenting.

The Bill also extends the RMA freshwater planning deadline to provide time to replace the National Policy Statement for Freshwater Management 2020.

As spatial planning under the SPA has not yet begun and no decisions have been made under the SPA, no transitional or savings provisions are required for this act.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Reports used to inform the development of the NBA are relevant to the transitions and savings provisions and to the retention of NBA fast-track provisions. These are listed in Appendix 1.	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
Cabinet suspended the requirement for Regulatory Impact Statements for decisions relating to 100-day plan proposals (taken within the 100-day period) that solely involve the repeal of legislation [CAB-23-MIN-0468]. The extension of the deadline for councils to notify freshwater planning instruments is not covered by the 100-day exemption and, due to time constraints, a RIS was not developed. Instead, the Treasury and Ministry for the Environment have agreed that decisions to change the deadline will be subject to post-implementation assessment in line with other 100-day Plan initiatives, and when Cabinet makes further decisions relating to commitments to replace the National Policy Statement for Freshwater Management 2020 (NPS-FM).	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The Bill was prepared under urgency. Analysis of the costs and benefits or potential loss of income or wealth attributable to the policy has not been considered.	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>This Bill does not introduce any new legislative provisions as it reverts to previous law and transitions/saves some existing provisions. The RMA has remained in force alongside the NBA and SPA and, with some small exceptions like the new fast-track provisions, has continued to be the relevant resource management law. The Bill represents no change for most users. It does not create new obligations or standards, or substantively impact existing obligations or standards. Given the timeframe for the repeal, a cost-benefit analysis was not undertaken.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
--

This Bill does not introduce any new legislative provisions as it reverts to previous law and transitions/saves some existing provisions. There are no changes to impact on New Zealand's international obligations.
--

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Due to limited time, high-level Treaty impact assessments were provided to Cabinet on the NBA and SPA repeal [CAB-23-MIN-0473] and the extension of notification date for freshwater planning instruments [CAB-23-SUB-0468]. The assessments identified that this Bill has implications under the Treaty of Waitangi due to the complex interactions between Treaty settlements and the resource management system, including in relation to water, and the greater role in planning and decision-making that iwi/hapu would have had under the NBA, which is now being repealed. They also noted Waitangi Tribunal findings in relation to the RMA in terms of recognition and protection of Māori interests.
--

Given the timeframes for the repeal, only limited engagement with Post-Settlement Governance Entities and other Māori groups has been able to occur.
--

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	
---	--

	YES
--	------------

Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/advice/

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	YES
<p>In repealing the NBA, offences and penalties provisions revert to those in the RMA section 338 and 339. Two offences created by the NBA will cease to exist, these being: contravention of any condition of a resource consent (NBA s701(1)(c), and contravention of s669 which imposes a duty to comply with an enforceable undertaking (NBA s701(1)(f)).</p> <p>The Bill also has the effect of removing civil pecuniary penalties (NBA s717). These provisions had not come into force.</p> <p>The Legislation Act applies general savings provisions that allow the continuation of compliance and enforcement proceedings under way, and the investigation and taking of action for offences committed during the period the NBA was in effect.</p> <p>The Bill (Schedule 1) specifies some transitional and savings provisions to provide certainty to regulated communities about how some process matters in the NBA are applied up to and following repeal.</p> <p>By returning to the RMA, maximum penalties for offences return to 2 years imprisonment. The effect is to reestablish the availability of jury trials under the jurisdiction of the District Court.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
<p>The Bill re-establishes the RMA as the primary legislation for resource management, with some transitional and savings provisions. Apart from the removal of two offences created by the NBA, there are no substantial policy changes.</p>	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
<p>Due to the associated timeframes for the Bill, only limited engagement has occurred with local authorities, Post-Settlement Governance Entities and other Māori groups.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
<p>Schedule 1 contains a no compensation clause (Clause 19). It states that a “person is not entitled to any compensation or other payment or benefit for any of the following that arises from the enactment or operation of this Act: (a) any adverse effect on their rights or interests: (b) any loss or transfer of their functions, duties, powers, office, or employment: (c) any other loss or damage suffered or likely to be suffered by the person.”</p> <p>Adverse outcomes that would give rise to compensation claims are not expected from this Bill. The clause is included to preclude claims for compensation in the event that the repeal Bill creates unanticipated situations.</p>	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person’s rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The NBA SPA Repeal Bill includes the following relevant clauses:</p> <ul style="list-style-type: none">• Clause 7 of Schedule 1 gives the Governor-General power to make regulations by Order in Council to provide a process for giving effect to Mana Whakahono ā Rohe and joint management agreements, if necessary, as part of the transition.• Clause 8 of Schedule 1 modifies the regulatory powers associated with the fast-track process, to align with equivalent RMA regulation making powers.• Clause 18 of Schedule 1 gives the Governor-General power to make regulations by Order in Council to facilitate the orderly transition from the NBA to the RMA. The power is limited to transitional and savings provisions and regulations made under this power will be secondary legislation. <p>These powers are needed given the speed of repeal and the need to adapt to situations as and if they arise.</p> <p>Schedule 2 includes various amendments, some of which restore regulatory powers to those that existed prior to the NBA being enacted.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO

Appendix One: Further Information Relating to Part Two

Question 2.1 — Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?

The following reports are relevant to the transitional and savings provisions and the retention of fast-track.

New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel June 2020

<https://environment.govt.nz/assets/Publications/Files/rm-panel-review-report-web.pdf>

Natural and Built Environments Bill Exposure Draft (19 June 2021) Parliamentary Paper on Exposure Draft of the Natural and Built Environments Bill

<https://environment.govt.nz/publications/natural-and-built-environments-bill-parliamentary-paper-on-the-exposure-draft/>

Summary of Initial Impact Analysis of RM Reform (30 June 2021)

<https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/summary-of-initial-impact-analysis-of-rm-reform/>

Inquiry on the Natural and Built Environments Bill: Parliamentary Paper (Report of the Environment Committee, November 2021) https://www.parliament.nz/resource/en-NZ/SCR_116599/0935c4f14c63608e55c528b75167a69daee92254

Government Response to Report of the Environment Committee on the Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

https://www.parliament.nz/resource/en-NZ/PAP_119748/89cc271ebe07331c5be669f6396b3ea5d621c8d3