

Natural and Built Environment replaces the Resource Management Act: What you need to know

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Russell Palmer (/authors/russell-palmer), Digital Political Journalist
 @russellpalm (<https://twitter.com/@russellpalm>) ✉ russell.palmer@rnz.co.nz (n
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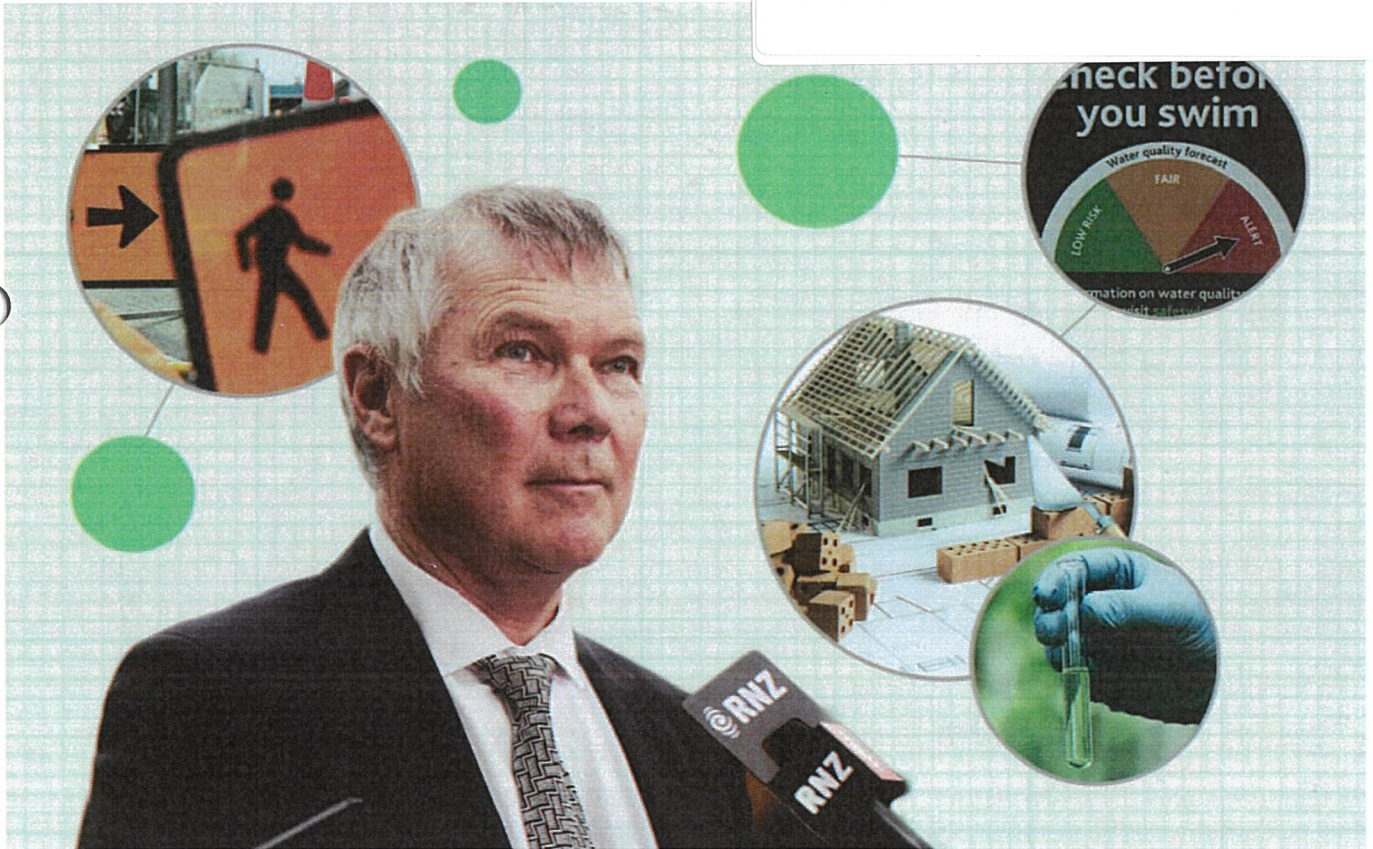


Photo: RNZ

Explainer - Back from the dead, cobbled together from old parts, and handed over to the NBA: It's not Frankenstein's monster playing basketball, it's the Resource Management Act (RMA).

The old RMA - itself an ambitious attempt to combine multiple laws into one system - is widely regarded as having failed to achieve its aims: The environment suffers while development and infrastructure costs more and takes longer.

However, the government's proposal to fix it is, arguably, just as complex - and other parties in Parliament were not enthusiastic (<https://www.rnz.co.nz/news/political/478807/rma-replacements-find-few-fans-on-cross-benches>) at first blush.

The old law - with more than 1000 additions over three decades - runs to 890 pages. Two of the bills set to replace it already total 891, and there's a third one yet to come.

Page numbers don't necessarily translate to efficiency though, and the government is adamant the new system will make it easier to get things done while ensuring real protections for nature.

RNZ spoke to the reform programme's biggest supporter, Environment Minister David Parker, about how it would really work, how he hopes it will make things easier, and why it's all so complicated.

A restructuring, in three Acts

The RMA we all know and loathe is set to be replaced by not one, but three new pieces of legislation.

Two of them - the **Natural and Built Environment Bill (NBA)**, and the **Spatial Planning Bill (SPA)** - were introduced to Parliament in November (<https://www.rnz.co.nz/news/political/478772/government-brings-resource-management-act-replacements-to-parliament>). (When they pass into law, they'll turn from "Bills" to "Acts of Parliament", hence NBA not NBB, and the NBA also makes to some other current laws like the Fisheries Act.)

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The NBA and SPA set out how the consenting and building system will work in future, how planning will take place, and how the environment will be protected.

Public submissions (https://www.parliament.nz/en/pb/sc/make-a-submission/document/53SCEN_SCF_BILL_129831/natural-and-built-environment-bill) on these proposed laws close on 5 February 2023, and the legislation is expected to be passed next year, before the general election.



Environment Minister David Parker Photo: RNZ / Angus Dreaver

P The third bill, the **Climate Adaptation Bill (CAA)**, is set to be introduced next year and passed in 2024. This would establish the systems and mechanisms for protecting communities against climate change's effects - like managed retreat from coastlines (<https://www.rnz.co.nz/programmes/the-detail/story/2018843338/matata-the-town-that-had-to-retreat>) as sea levels rise - and set out how this is paid for and who's footing the bill.

Parker expects the new system will be better for all involved.

"There's a bit more front-end planning, a few more standards, a lot more becomes permitted, but it's all against the background of clear limits and targets so that as you do all those things, you're still protecting the environment," he says.

"It's better for the environment, it's better for developers, it's better for homeowners, it's better for councillors. Councillors will actually enjoy it more too, we know that they're pretty frustrated with the operation of the system. So it's better, faster, cheaper."

Something borrowed

The government says its new legislation will be the most significant change to New Zealand's resource management systems in decades.

However, Parker says some parts of the old system are working well, and it's not worth throwing the baby out with the bathwater.

"Quite a bit of it is carried forward," he says. "There's a tension here, do you start afresh with everything and throw everything up in the air and have uncertainty as to what the law means? Or where the law is working well - or parts of the law are working - do you just transfer over that same language?"

Core parts of the system will remain:

- Consenting is largely the same process, applies to the same things, and will still be managed by councils - although some of the categories of consents the government considers unnecessary are being removed

- Councils will continue to enforce consenting requirements, although their enforcement powers are being boosted with more funding and new tools

- The Environment Court will continue to do its job - dealing with appeals about the regional and district plans, and appeals against resource consent decisions - with additional powers to intervene and if the minister of the day decides it should (based on defined



An example would be bringing a particular stream up to "swimmable" water quality levels, with developers required to do riparian planting along a riverbank to be allowed to build homes.

Limits and targets would be set through the NPF, or the NPF can direct the planning committees to include them in the NBE plans for targeting region-specific effects.

The legislation also provides for "adaptive management", allowing an activity to be monitored to ensure it remains within a series of strictly enforced limits which change over time.

Playing the long game

P The whole programme is expected to take about 10 years to be rolled out. Parker says this delay is intentional.

"A lesson from the RMA is that if you try to do the whole of the country at once the system gums up and everything is delayed, so we decided that we'd be better to start with three regions," he says.

Another reason is how long it takes to do the planning.

Photo: RNZ

Current RMA plans take council committees about 10 years to fully draft.

Parker expects the new system will cut it down to four years - and indeed, the legislation would set that as a hard deadline for the first plans - but there's still a process which must be followed including seeking feedback from the public.

Parker says when the new laws take effect in a region, the old RMA processes will be completely switched off in that region: no side-by-side operation of two laws.

He says the government has not yet decided which regions the new system will be trialled in, but they will include at least one region from the North Island, and one from the South Island.

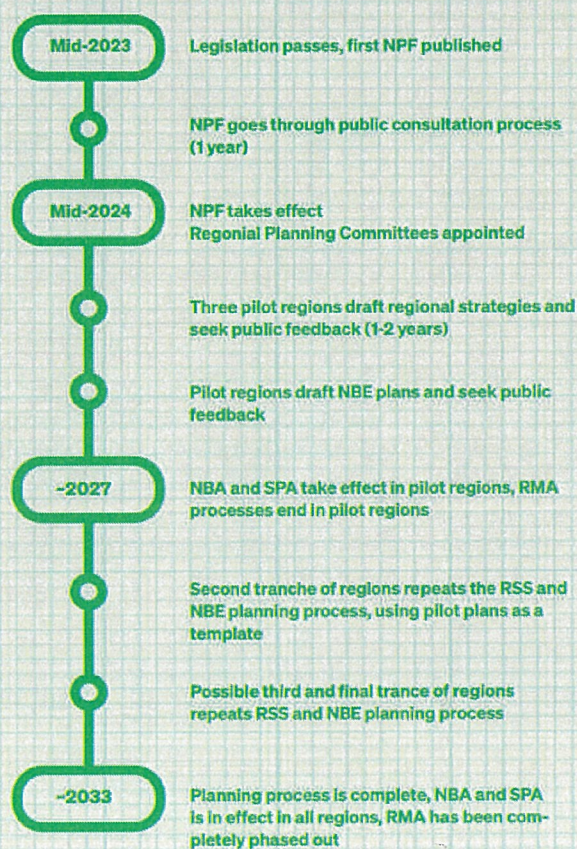
The new system would then be rolled out to the remaining regions of the country - either split into two groups, or all at once depending on how things are going.

He's also confident the National Planning Framework at least would survive a change of government.

"Actually, if you look historically, there hasn't been too much yo-yoing of the existing national direction," he says.

"The existing national direction that we have for water and air, protection of soils and the like, and intensification of housing ... was passed with cross-party agreement in the last year or two - that's been in place for a while. And of course, the country needs it in some form.

Timeline for RMA replacement



More involvement for Māori

The RMA interacts with more than 60 Treaty settlements and those interactions will be carried over into the new legislation.

One of the stated objectives of the new legislation is also to "give effect to the principles of te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori".

The "give effect to" terminology is a more active requirement compared to the old RMA wording which requires the principles to be "taken into account". The new language brings it in line with the Conservation Act.

A new National Māori Entity will be set up to monitor the government's Treaty responsibilities under the new system, as well as being one of the groups tasked with assessing the system's overall effect.

The entity will be a body corporate and must be independent of Māori groups, government ministers and agencies, and any other groups given powers and responsibilities under the bills.

It will have seven members each appointed for up to six years - on a rolling basis - by the minister, based on nominations by iwi, hapū or Māori. Between them the members will need experience and knowledge of te Tiriti, tikanga Māori, mātauranga Māori, monitoring and reporting, knowledge of the law, communications and governance.

The entity will be able to change its name if it wants, and will be audited by the Auditor-General.

Planning committees will also be required to consult with iwi and hapū groups affected by their plans, and these groups will be able to at any time submit a statement on te oranga o te taiao, which roughly translates as 'the wellbeing of the environment'.

The legislation describes it as: "a te ao Māori concept that speaks to the health of the natural environment, the essential relationship between the health of the natural environment and its capacity to sustain life, and the interconnectedness of all parts of the environment".

The Environmental Defence Society has urged the government to provide a fuller explanation. The legislation does not require anything be done about these statements.

Finally, the legislation would also set up a new Freshwater Working Group, which would provide recommendations on allocation.

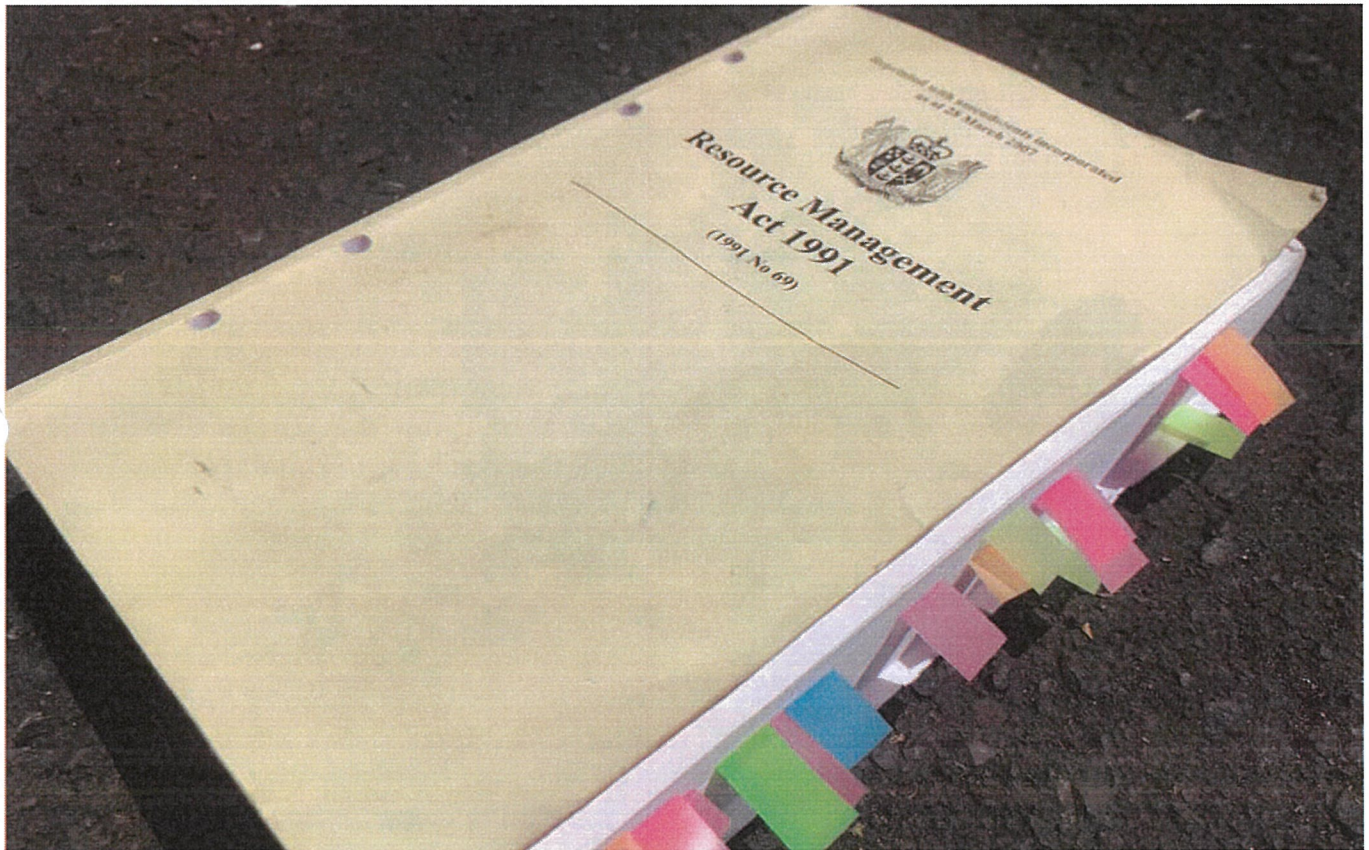
There is also a clause within the legislation which states any rights or interests in freshwater or geothermal resources are preserved, consistent with a 2012 High Court ruling (<https://maorilawreview.co.nz/2013/03/partial-privatisation-no-material-impairment-to-remediating-treaty-breaches-new-zealand-maori-council-v-attorney-general-2013-nzsc-6/>).

How long is a piece of red tape?

P One of the criticisms levelled at the legislation is its length and complexity.

The NBA and SPA bills combined total 891 PDF pages - exactly one more page than the RMA - but this includes general policy statements and clause-by-clause analysis that will drop out once it passes through Parliament.

Parker says the final product will be about 20 percent shorter, even including the fast-tracking process accounts for about 100 pages and currently is contained in a separate Act.



The current RMA legislation is 890 pages long. Photo: Bill McKay

The new bills also use a more modern style: more bullet points make it easier to interpret but with the same amount of words taking up more space.

Even so, a lengthy piece of law. Parker argues it's the nature of the beast, and compares it to Australia's equivalent - an 800-page federal statute plus a roughly 600-page statute for each state.

"You're covering how you deal with land use and development for things as varied as protecting the air, the soil, your sea, what you're doing about development, housing, infrastructure. This touches every aspect of life, so it would be nice if you could cover it in a few pages, but no other country seems to achieve that either."

He says the law needs to be specific about many of these aspects or it would leave too much uncertainty. This means lists of how, for example, coastal waters are handled and who has authority over maritime areas.

But mostly, he's adamant front-loading regulations into regularly updated plans will make the system work more smoothly.

"We think we are reforming it to make it simpler and easier and cheaper. In fact, we've I think we've got very good analysis to show it will be simpler, cheaper, and it'll be better for people to use."

Counting the cost

That cost-benefit analysis has already received media attention, but for completeness here are some of the main findings:

Total Ministry for the Environment cost-benefit analysis predicts costs of \$3.891b and benefits of \$10.039b. This doesn't account for non-monetary benefits like environment protection.

Total establishment is expected to cost \$864m for central government AND councils, over 10 years.

Conservative estimates predict \$2.85 in benefits for every dollar spent over that time - or \$4.90 under more "realistic" estimates.

Planning processes and other spending to set the system up will increase the cost for central government by an estimated 112 percent.

For councils, overall costs are expected to increase about 11 percent. This includes developing and monitoring new economic instruments (\$27m a year); increased monitoring and enforcement (\$18m a year) and review and compliance with the NPF (\$15m a year). Some of the government's establishment funding will support councils, but they'll be expected to foot some of the bill themselves.

Consenting costs between 2014 and 2019 increased by 66 percent (notified) and 124 percent (non-notified), taking on average 50 percent longer. It currently accounts for about 5.5 percent of total project cost - totalling \$1.3b a year across New Zealand - compared to between 0.1 percent and 5 percent in Europe. The new system is expected to cut costs to system users by 19 percent (\$150m a year).

The government has already allocated: in 2021, \$131.8m for design, enactment, transition, capacity building, initial implementation; in 2022 a further \$179m, to be spent over the next four years.

The government is also putting some extra money in to help with the new plans and extra monitoring and enforcement requirements.

Parker says the consenting system will be cheaper for councils to operate, and he expects those cost savings to be passed on to ratepayers.



What you need to know

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