

An avalanche of RMA reform – are we ready and what will it mean for infrastructure?

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After years of repeated demands for the RMA to be dumped and blamed for a myriad of major issues (from water quality to the housing crisis), the RMA's demise seems imminent.

While this article is focused on infrastructure, and the path ahead, it is critical for all New Zealanders that the policy settings of the RMA replacement legislation, and its subordinate policies are properly set. Failure to do so will be felt for generations to come. There is a significant and pressing need for major infrastructure upgrades across New Zealand. We have invested far too little over the last 30+ years. Much of our infrastructure is creaking; at or over capacity; at the end of its design life; and/or failing to provide sustainable environmental, social, cultural and economic outcomes. Significantly adding to these problems is the effect of climate change on existing infrastructure, and the need for new infrastructure to respond to it (both to adapt to and also to reduce our greenhouse gas emissions).

2020 started with a significant Government commitment for infrastructure spending, with \$12b announced under the New Zealand Upgrade Programme. Then COVID-19 struck bringing significant uncertainty. To help respond to the social and economic effects of COVID-19 the Government announced as part of the 2020 Budget the COVID-19 Response and Recovery Fund, providing an additional package of infrastructure investments. \$3b from this fund is targeted for housing, environmental, community and social development, and transport infrastructure projects.

Despite COVID-19, 2020 was one of the busiest years of RMA reform and national policy development, the effects of which are only now being felt. In addition, while not the focus of this article there was also significant reform (with sweeping powers) in the urban development sector through the Urban Development Act 2020 (linking into the Kāinga Ora - Homes and Communities Act 2019).

So what happened in 2020?

On 1 July 2020 the Resource Management Amendment Act 2020 (Act) largely came into force with two key implications for infrastructure:

- Establishing an extensive planning process (including public involvement) for all freshwater planning instruments prepared by regional councils to give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM). Once notified 17 freshwater planning processes will then take place in short order around the country. These processes will be resource intensive, complex and will create considerable medium-term uncertainty for infrastructure providers in the water sectors.
- Repealing the sections of the RMA prohibiting consideration of the effects of greenhouse gas emissions on climate change during both consenting and plan making. No replacement provisions are provided, leaving no guidance within the RMA itself. However, guidance may be provided in climate change emissions reduction plans and national adaptation plans as required by the Climate Change Response (Zero Carbon) Amendment Act 2019 (Climate Change Act). Future infrastructure projects will need to ensure they address their actual and potential adverse effects on climate change as part of their consenting application.

The COVID-19 Recovery (Fast-track Consenting) Act 2020 (Recovery Act) came into force on 8 July 2020 with a purpose to "urgently promote employment to support New Zealand's recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources." A key driver of the Recovery Act's process is a limitation on public involvement in the process and appeals. However, the Recovery Act still requires decision-makers to seek comments from over 22 people and entities.

For those projects named in the Recovery Act it provides a simplified process (with a specialist hearing panel) and reduced reasons for decline. For other projects Ministerial approval is required to use the process and the requirements then largely reflect those in the RMA. At the time of writing, one listed project, the Matawii Storage Reservoir in Northland, has gained approval and two listed projects are underway. On 23 November 2020 the first three referred projects were approved by the Minister for referral to a specialist panel and are awaiting decisions in 2021. It will be interesting to see how broadly the Recovery Act is used, and the outcomes it provides, during 2021.

In September 2020 the NPS-FM and the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (NES-FW) both came into force providing considerable consenting challenges for infrastructure that impinges on freshwater (in particular rivers and wetlands). The NPS-FM's fundamental concept, and sole objective, of Te Mana o te Wai imposes a hierarchy of obligations placing the ability of people and communities to provide for their social, economic and cultural well-being as the lowest priority (below the health and well-being of waterbodies and the essential health needs of people). With respect to infrastructure, the NPS-FM and NES-FW impose bottom lines along with policies and rules significantly restricting or prohibiting infrastructure that may affect fresh water and its environments.

What lies ahead over the next year for the RMA and its national policies?

Current expectation is that the National Policy Statement for Indigenous Biodiversity will be in force by April 2021. Protection of indigenous biodiversity is important, and New Zealand has lost a significant amount of its original biodiversity. However, the very broad application and restrictive controls proposed in the draft version, if retained, will significantly affect the development of new, and the consenting of existing, infrastructure.

Renewable electricity generation is key to enabling the Government to meet its emissions reduction targets under the Climate Change Act and to meet the increased energy demand through transitioning New Zealand's economy away from fossil fuels. Minister Parker has stated that the Government will develop an updated National Policy Statement for Renewable Energy Generation (NPS-REG) – the current version commenced in 2011. The Government has also announced that it is investigating options to "green the grid", investing \$30m for a detailed business case and a further \$70m in detailed design and engineering work focusing on pumped hydro storage projects and other alternative technologies. Minister Parker has made it clear that the Government see the electricity sector as presenting an opportunity to accelerate our COVID-19 economic recovery, while reaching our emissions targets. However, without a new NPS-REG the RMA legislative and policy reforms discussed above provide significant challenges to consenting existing and new projects.

Finally, the most significant reform relates to the Government's plans to scrap the RMA and introduce three new pieces of legislation. The intent is that legislation will be in place by the end of this term. The Randerson Report released in June 2020 recommended the repeal of the RMA and its replacement by:

- A Natural and Built Environments Act which primarily replaces the RMA and focuses on "enhancing the quality of the environment and on achieving positive outcomes to support the wellbeing of present and future generations"
- A Strategic Planning Act to require regional spatial planning throughout New Zealand
- A Managed Retreat and Climate Change Adaptation Act to help prepare for and fund managed retreat from rising seas and other hazards.

This is a fundamental package of reform that will radically change how we plan for, approve (and fund) infrastructure into the future. The scale of the reform is enormous, and it will affect all infrastructure projects. It must be carefully managed to ensure in the interim we do not stifle much needed infrastructure development and provide enduring and sustainable outcomes. We also need to ensure that as a 'team of five million' we are ready for this avalanche of change and have sufficient resources to actually deliver the many concurrent and complex reforms while providing certainty for infrastructure projects during this time of heightened Government investment.

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