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Environment and planning in New Zealand

August 2025

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Key points about environment and planning law in New Zealand

The Resource Management Act 1991 (RMA) is the primary source of environmental law in New Zealand and sets out the framework for managing both our natural and built environment.

The RMA is mostly administered by local government through the use of resource consents (which are essentially permits authorising particular uses or activities).

Regional and district plans contain rules that govern the use of natural resources and changes to the built environment, and are administered by the relevant regional and territorial authority.

Central government drives the direction of some of the key issues addressed in regional and district plans through national policy statements and national environmental standards.

The RMA has a range of penalty and enforcement provisions. Many of these are strict liability offences. The maximum fines for offences under the RMA is NZ$600,000 for companies and NZ$300,000 for individuals (or, for individuals, a prison sentence of up to two years).

The resource management system, governed by the RMA, is currently undergoing large-scale reform. In 2024, two RMA amendment bills were passed, marking the second phase of this transformation. In 2025, the Government plans to introduce two new Acts that will eventually replace the RMA. Although the exact content of these new bills is still uncertain, the Government has announced that a Planning Act will focus on regulating the use, development and enjoyment of land, while the Natural Environment Act will concentrate on the use, protection and enhancement of the natural environment.

The Emissions Trading Scheme is New Zealand's current main climate change tool. In 2019, the Government passed the Climate Change Response (Zero Carbon) Amendment Act (Carbon Zero Act) which amended New Zealand's existing climate change legislation to transition the country to a low emissions, climate-resilient economy. This was closely followed by the Climate Change Response (Emissions Trading Reform) Amendment Act 2020 which made several changes to how the legislation interacts with industries like agriculture and forestry.

Historic heritage is primarily regulated by the RMA and the Heritage New Zealand Pouhere Taonga Act 2014. Resource consents or archaeological authorities may be required where historic heritage is affected by a proposed development.

The detail

The Resource Management Act 1991

The RMA regulates the use of land, water and air in New Zealand. The purpose of the RMA is to promote the sustainable management of natural and physical resources.

Functions under the RMA are divided as follows:

- Regional councils have responsibility for the control of matters relating to water and the discharge of contaminants.
- Territorial authorities (or district councils) have the responsibility for the control, use, development and protection of land, and the control of subdivision and noise.
- Regional and territorial authorities share the responsibility for natural hazards and hazardous substances.

There are also several unitary authorities in New Zealand which perform the roles of both regional councils and territorial authorities.

The functions under the RMA are largely administered by the relevant council through permitted activities or resource consents that are granted or declined under district and regional plans.

Planning rules

Under the RMA, regional councils also have a policy statement, which sets the basic direction for environmental management in the region.

Regional councils are also required to have regional plans which contain rules relating to issues such as:

- The use and development of the coastal marine area.
- Discharges to air, land or water.
- Contaminated land.

Every territorial authority is required to have a district plan which contains objectives, policies and rules relating to land use and subdivision activities in the district. In addition, there are various national environmental standards relating to specific matters such as telecommunications facilities, electricity transmission, land contamination, forestry and air quality.

Activities and developments are classified into a hierarchy of activity types and this determines whether a resource consent is required for any proposed activity. District and regional plans classify activities as:

- Permitted (do not require resource consent in order to undertake the activity).
- Controlled activities (cannot be declined but conditions can be imposed to mitigate effects).
- Restricted discretionary, discretionary and non-complying (require resource consent and, if granted, will often be subject to specific conditions to mitigate any adverse environmental effects).
- Prohibited (cannot be consented).

Resource consents

Resource consents are required for activities that contravene a rule in a district plan, or are not provided for as a permitted activity in a regional plan.

Types of resource consents include land use consents, subdivision consents, water permits coastal permits and discharge permits. Resource consents contain conditions that the consent holder must comply with and may include construction conditions as well as ongoing requirements and obligations post construction. Land use consents 'run with the land' so are not required to be transferred to a new owner of the property.

Other types of consents will generally require a transfer if there is a new owner of the relevant property, often subject to Council approval. While land use consents do not generally expire, other consents such as water, coastal and discharge permits are granted for a fixed term and require renewal.

The consenting process

This process starts with an application to the relevant authority in the form specified under the RMA (and accompanied by an assessment of environmental effects). The local authority will decide whether the owners of adjacent land should be notified of the application and/or whether public submissions should be invited and a hearing held. If an application is publicly notified this will impact on the duration and complexity of the consenting process.

The RMA and the regional and district plans provide guidance to the local authority on how to make a decision on notification and on whether to grant consent for an application. The amount of discretion that the local authority may exercise, and the legal tests an applicant must meet in order to obtain consent, will depend on the nature of the consent sought (and whether it is envisaged by the relevant planning rules). The local authority can also impose conditions on any resource consent it grants in order to address any adverse effects on the environment.

There is a right of appeal to the Environment Court for both the applicant and, where an application is notified, for submitters. There is also a right of appeal from the Environment Court's decision to the High Court but on points of law only.

The current Government aims to change the planning and consenting process to increase standardisation of requirements for common activities as a way of reducing the need for individual bespoke consents.

Alternative consenting pathways

In addition to the process set out above, there are several alternative pathways available to obtain a resource consent:

- The direct referral process allows for the resource consent application to be decided by the Environment Court in the first instance, rather than the relevant council. This pathway effectively bypasses the council level hearing and results in a hearing before the Environment Court. The application is publicly notified and members of the public have the right to lodge submissions. This process can be used to streamline the consenting pathway for large and complex applications which would likely end up in the Environment Court on appeal after a council decision in any event. There is a right to appeal the Environment Court's decision to the High Court, but this right is limited to points of law.
- A resource consent application may also be referred to a Board of Inquiry if the Minister for the Environment decides it is a nationally significant project. All submissions on the proposal will be considered by the board and they will make a final decision on the matter. It is possible to appeal the board's decision to the High Court, however appeals are vlimited to points of law.
- The Fast-track Approvals Act 2024 was enacted in December 2024 and created a streamlined 'one stop shop' consenting process for gaining approvals under the RMA and related legislation.

Existing use rights

The RMA provides for "existing use rights" that allow the continued use of land in a way that contravenes a rule in a district plan where that use was lawfully established before the relevant rule was put in place. In addition to showing that an activity has been lawfully established, the environmental effects of the land use must also be the same as (or similar to) what they were before the rule became operative and the land use cannot have been discontinued for a period of more than 12 months. Activities that have existing use rights are not required to obtain resource consent.

In terms of regional plan rules, activities that were permitted, or were lawfully carried on without a resource consent, but which become controlled, discretionary or non-complying activities as a result of a new rule in a regional plan, may be continued for a limited period provided that the environmental effects of the land use must also be the same as they were before the rule became operative and the land use cannot have been discontinued for a period of more than six months. An application for a resource consent must be made within six months of the rule becoming operative. Where an application for resource consent has been lodged, the activity can continue until such time as the final decision is issued.

Designations

Designations are a mechanism that allow Ministers of the Crown, local authorities and network utility operators (who have the status of 'requiring authorities' under the RMA) to identify, acquire and develop land for a public work or infrastructure. Designations are often used for public infrastructure such as transport networks, airports, telecommunication and electricity and education facilities.

A designation will create a 'spot zone' over a particular site within a district plan. This 'spot zone' sets out the parameters of the work to be undertaken on the site without the need for land use consent (although regional plan consents are still required) and subject to compliance with any conditions on the designations. Designations are secured by lodging a 'notice of requirement' with the relevant district council. The process for considering notices of requirement is similar to resource consent applications except that the district council makes a recommendation on the notice of requirement and the requiring authority issues the decision. Submitters have a right of appeal to the Environment Court on the decision issued by the requiring authority.

A designation also restricts third parties from carrying out work on the designated land that will prevent or hinder the project or work to which the designation relates, without first obtaining the approval of the requiring authority.

Phase two of the Government's RMA reform seeks to make several changes to designations, such as extending the default lapse period from 5 – 10 years and requiring assessments to be proportionate to the actual and potential environmental effects of the proposal.

National Environment Standard for Plantation Forestry (NES-PF)

The NES- PF came into force in May 2018 and aims to manage the environmental effects of plantation forestry activities in New Zealand through one set of rules that apply to forestry activities. Regional and district councils across New Zealand are now required to apply the rules in the NES-PF in relation to plantation forests. The NES-PF prevails over district or regional plan rules except where the NES-PF specifically allows more stringent plan rules.

In addition to addressing plantation forestry activities, the NES-PF regulations address afforestation, pruning and thinning of trees and slash, earthworks associated with forestry, river crossings, forestry quarries and harvesting of logs.

Some forestry activities have been classified as permitted activities under the NES-PF meaning that a resource consent is not required for these activities (although permitted activity standards need to be met and/or management plans put in place for some activities). Other activities require resource consent which must be obtained from the relevant council.

Liability

Under the RMA, the Environment Court can require a person to do something in order to avoid, remedy, or mitigate an actual or likely adverse effect on the environment relating to any land of which the person is the owner or occupier. Therefore, if you are purchasing land that may be affected by historic contamination issues, it is important to investigate this thoroughly and, if necessary, include appropriate indemnities or warranties in the sale and purchase agreement.

Historic contamination issues may arise in purchases of land where there have been industrial activities carried out in the past. Examples could include forestry and timber processing sites and quarries

on farm land. The RMA creates many strict liability offences, which mean that it is not necessary to prove that a person intended to commit an offence, or was reckless or negligent.

There are several prosecution options available to councils in the case of contaminated land, including:

- Issuing infringement notices.
- Abatement notices and enforcement orders.
- Criminal offences.

Infringement notices are issued for minor cases of pollution and the penalty will usually be a low level fine. The infringement fees range from NZ$300 to NZ$1,000 depending on the offence under the RMA.

An abatement notice or enforcement order will be issued by the Environment Court and will require the recipient to comply with the RMA. This means that the recipient will need to cease the activity immediately and potentially remediate the situation. These notices and orders are issued for more serious contamination and recipients have a right to appeal. Criminal offences under the RMA carry a maximum fine for individuals of NZ$300,000 plus NZ$10,000 per day for continuing offences and a prison term of no more than two years.

A company, if convicted of an offence, can be subject to a maximum fine of NZ$600,000 plus NZ$10,000 per day for continuing offences.

Examples of criminal offences include:

- Contravening the provisions of an enforcement order or abatement notice.
- Developing land without a resource consent.
- Taking, damming or diverting fresh inland coastal water without a resource consent.

Phase three of the Government's reforms seeks to address the issue that profit gained from offending often outweighs the financial consequences imposed through enforcement. The new legislation seeks to balance the need for an effective compliance and enforcement system with the need for regulators to have a broader range of tools to enable them to better target the prevention, reduction and mitigation of environmental harm that arises from non-compliance. Under new legislation we could expect a similar approach to the Health and Safety at Work Act 2015 by clarifying that individuals will be directly liable if they fail to exercise due diligence to ensure their organisation complies with environmental compliance requirements. We can also expect civil pecuniary penalties to completement the existing criminal-liability regime, targeted at offending which causes high harm but involves low intentionality.

Historic heritage

In New Zealand, heritage is primarily regulated by the RMA and the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA).

The HNZPTA makes it unlawful for any person to modify or destroy any archaeological site without the prior authority of Heritage New Zealand. If you wish to do any work that may affect an archaeological site, you must obtain an authority from Heritage New Zealand before you begin. An archaeological site is defined as any place in New Zealand (including buildings, structures or shipwrecks) that was associated with pre-1900 human activity, where there is evidence relating to the history of New Zealand that can be investigated using archaeological methods. If a previously unknown site is uncovered during earthworks, work must stop and an archaeological authority will be required to in order to continue.

District councils or unitary authorities can include rules in their district plans which seek to protect a range of historic heritage resources. District plan rules commonly schedule and map heritage buildings and archaeological sites, and require resource consent to be obtained for activities which have an adverse impact on them.

The Government has recommended that historic heritage, notable trees and archaeological sites are removed from future planning legislation and wholly dealt with under the HNZPTA and by Heritage NZ, to avoid confusion with special character protection under the RMA and prevent barriers to urban development.

Climate change policy in New Zealand

Internationally, New Zealand signed up to the Paris Agreement and is committed to reducing greenhouse gas emissions by 30% from 2005 levels by 2030.

In 2020, New Zealand committed to a 2050 domestic target of net zero emissions of all greenhouse gases other than biogenic methane, and a reduction of biogenic methane emissions by 24% to 47% below 2017 by 2050.

The New Zealand Emissions Trading Scheme (ETS), a cap and trade scheme, is one of the government's main tools to ensure New Zealand meets these targets. The ETS creates a financial incentive for participants to invest in technologies and practices that reduce emissions. It also encourages forest planting by allowing eligible foresters to earn New Zealand emissions units. The ETS covers some sectors (forestry, stationary energy, liquid fossil fuels, waste) but not others (agriculture is included nominally, but without any surrender obligations).

In 2020, the government made changes to the ETS by introducing, among other things, a cap on emissions so as to allow it to reduce the total emissions from the scheme, and the ability for the government to auction NZ emissions units every year.

The ETS is not the only tool used to reduce greenhouse gas emissions.

The New Zealand government published its first three emissions budgets in May 2022. Emissions budgets account for both ETS and non-ETS emissions, and used to determine New Zealand's progress in reaching its targets. These budgets are for the years 2022 – 2025, 2026 – 2030 and 2031 – 2035, with their progress monitored by the Climate Change Commission, which was established in 2019 to advise the government on the policies needed to achieve its targets.

Legislative reform

Shortly after winning the October 2023 election, the current Government set in motion its phased approach to reforming the resource management system. While there is general consensus that the current system is need of reform, there is obvious conflict about what matters should be prioritized and how the system should operate.

As the first phase of the Government's RMA reform, the Natural and Built Environment Act and Spatial Planning Act were repealed in December 2023. The Government reasoned that these Acts introduced "new legal complexity and uncertainty" and that new legislation is needed to protect the environment while making it easier to get things done.

Phase two targeted changes to the RMA and national direction while new replacement legislation is being development. The Resource Management (Freshwater and Others Matters) Amendment Act was introduced in May 2024 which, among other things, exclude the Te Mana o Te Wai hierarchy of obligation and associated objective contained in the National Policy Statement for Freshwater Management 2020 (NPS-FM) from resource consent application and decision-making processes until the NPS-FM is replaced. The Resource Management (Consenting and Other System Changes) Amendment Bill was introduced late 2024 which would amend existing provisions in the RMA relating to infrastructure, energy, housing growth, farming and the primary sector, natural hazards and emergencies and system improvements. The Government announced Phase two would also see amendments to National Environmental Standards and National Policy Statements relating to infrastructure and energy, housing, emergencies and natural hazards.

Most recently the Government has provided more detail on the two Acts it plans to enact as part of phase three. The Government announced that a Planning Act will focus on regulating the use, development and enjoyment of land, while the Natural Environment Act will concentrate on the use, protection and enhancement of the natural environment. The stated aim of this legislation is to narrow the scope of the resource management system and the effects is controls, with the enjoyment of private property rights as the guiding principle. The Government has stated that this legislation will shift the system for a precautionary to a more permissive approach which will unlock development, streamline processes, and aims to enhance New Zealand's ability to meet its housing, infrastructure and environmental objectives.

How we can help you

- Obtaining planning authorisations for large scale major infrastructure projects right through to smaller developments like single residential houses.
- Guiding you through the consenting process, from providing you with strategic advice in the early stages of your project to appearing for you in court if necessary.
- Seeking changes to regional and district plans both in terms of the zoning of properties and changes to the planning rules.
- Conducting due diligence investigations to help you accurately assess environmental risks and your responsibilities under the RMA.

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CSBrand-171711-Doing Business in New Zealand-Flyer-Environment and planning-01 — 23/08/2025