

4 April 2024

Hon Chris Bishop
Minister Responsible for RMA Reform
rmreform@mfe.govt.nz

Dear Minister

Re: Inviting your views on targeted changes to the Resource Management Act 1991 (RMA)

Thank you for your letter of 28 March 2024 outlining the Government's plans for the resource management system and inviting our input. Unfortunately, given the short time frame in which to respond we have not been able to consult with our wider membership.

Notwithstanding, I have outlined some general comments for your consideration.

Firstly, BusinessNZ would like to congratulate you on the action you have taken so far in respect to repealing the Natural and Built Environment Act and Spatial Planning Act given that they were complex pieces of legislation and significantly flawed with multiple and largely conflicting objectives.

It is noted that you have introduced a permanent fast-track consenting process for regionally and nationally significant infrastructure and developments with the Fast-track Approvals Bill currently before the Environment Committee.

BusinessNZ notes that while the Bill is a standalone Bill, the Government is committed to further reform of the Resource Management Act (RMA) later this Parliamentary term, with new resource management laws based on the guiding principle of the enjoyment of property rights. Ultimately BusinessNZ supports this approach but accepts that it is necessary to make progress on much needed infrastructure in the meantime – hence our broad support for the Fast-track Approvals Bill.

BusinessNZ is currently developing its submission in response to the Fast-track Bill and although a draft submission has gone out to the broader BusinessNZ membership it could be subject to further change before being lodged with the Environment Committee later this month.

Notwithstanding the above, key recommendations which BusinessNZ will likely be making to the Environment Committee include, but are not limited to:

- Consideration should be given to inserting a sunset clause in the Fast-track Bill, given that once the full replacement legislation for the RMA is in place, this Bill should be redundant.
- Eligibility criteria for projects to be referred to the Expert Panel should include economic efficiency, with cost benefit analysis used to help prioritise projects for both referral and approval.
- To encourage efficient investment in natural resource and infrastructure development for the economic well-being of current and future generations of New Zealanders, the Select Committee should insert clauses into the Bill: (a) recognising the importance of upholding property rights to encourage efficient investment; and (b) introducing a compensation regime for regulatory takings to encourage better decision-making from regulators when affecting private property in the public interest.

BusinessNZ notes that in your letter you ask for specific issues which could be covered in a Bill later this year which will have a high impact over the short term but which are not complex or fundamental changes to the system, as such issues will be considered as part of Phase Three work later this parliamentary term.

This is difficult given that most required changes could be considered fundamental and therefore outside of the scope of the proposed Bill.

Having said that, there are several issues which could be considered to have real short-term impacts but are not necessarily difficult to implement.

Firstly, providing for greater compensation where local councils restrict the use of land in the public interest (regulatory takings) would be useful in providing greater discipline on councils in deciding whether to regulate activity or not. Section 85 is rather weak in this respect and needs revision.

There is no allowance in the RMA, other than in some specific instances, for the payment of compensation in recompense for regulatory takings (or for a reduction in private property rights in the public interest). This is a substantial flaw in the Act and serves (and will continue to serve) to depress necessary economic activity.¹

¹ If considering this statement in demand and supply terms, a zero price on regulation is always going to mean that the demand for regulations will be high while the voluntary supply of property rights in return will be very low.

Second, a number of National Policy Statements (NPSs) could potentially have unintended consequences and should be re-examined with regard to whether they can actually achieve their stated objectives. For example, it is noted that the Government intends reviewing the National Policy Statement for Freshwater Management (NPS-FM).

In respect to the NPS-FM, BusinessNZ has a number of concerns with the current structure, including, but not limited to:

- The overwhelming objective of protecting the environment, with human drinking water second in the queue and economic development a distant third;
- The inability to make trade-offs between competing environmental and economic objectives with environmental bottom lines trumping important economic development, irrespective of the cost or benefit;
- Uncertainty surrounding freshwater allocation regimes and consenting/reconsenting paths with limited respect for upholding property rights to water and lack of any compensation where consents can be altered without any form of compensation;
- The difficulty in being freely able to transfer and trade water consents so they flow to their highest valued use is also severely constrained under current arrangements.

In respect to the NPS – Highly Productive Land (HPL) MfE and MPI sought feedback on managing the use and development of HPL.

Since the policy was introduced in 2022, fundamental issues have been raised about its restrictions on the use and development of highly productive land for activities that do not rely on soil.

While doubtless the NPS-HPL was well intentioned by its proponents, the actual impact of the NPS-HPL is less than ideal and needs urgent reconsideration, particularly given the desirability of ensuring the rapid development of renewable energy, especially solar energy, close to business and household demand. Some would argue that the need for a NPS-HPL is unnecessary given that natural incentives exist for landowners to use resources in the most productive way possible, whether this is for crops, housing or any other activity, including the development of solar energy and aggregates.

In respect to the proposed NPS (currently under development) for Natural Hazard Decision-making (NPS-NHD), BusinessNZ notes the rationale for MfE promoting this NPS is based on the growing threat to NZ from a range of natural hazards, including earthquakes, flooding and landslips, potentially increasing the risk to human life and property, infrastructure included.

The fundamental problem with the NPS-NHD as currently drafted is that the NPS-NHD refers to risk tolerance but there is no clear definition of what is 'tolerable' risk or 'intolerable' risk, apart from relatively vague references to loss of property and/or

potential loss of life. It is fundamental that risk to property and life is relatively constant across the board to ensure optimal resource allocation while providing for local communities and individuals to make decisions based on their own personal circumstances.

Requiring all physical development to be in scope of the proposed NPS-NHD would be cumbersome and is unnecessary given that most developers face strong market incentives to ensure any infrastructure they build is fit for the purpose for which it was developed in the first place, taking into account the cost and benefits of same.

The final issue that I wish to raise is consenting periods, given that they are currently for a maximum of 35 years but in reality, consents are often for much shorter periods, which is problematic given the capital tied up with some consents e.g. for irrigation. Extending consent periods would provide for greater certainty for investors, particularly where large sunk cost investments are made. In many cases the value of consents for agricultural irrigation has been capitalised into land values.

Investors will not invest in relevant schemes if they consider their rights to future water use will be unduly jeopardised. It is certainly the case that some investments have been delayed or abandoned because of uncertainty over existing and future water property rights. To secure future investment in water infrastructure, current property rights to water need to be enhanced to provide greater certainty of future use, including length of consent periods in general.

John Pask, BusinessNZ Economist, is leading our response in respect to the RMA reforms. Please feel free for officials to contact John directly on email: jpask@businessnz.org.nz or phone: 021714563 if they wish to discuss any issues raised in this letter.

In the meantime, please do not hesitate to contact me directly if you so wish.

With kind regards,

A handwritten signature in black ink, appearing to read 'Catherine Beard', with a long, sweeping flourish extending to the right.

Catherine Beard
Director of Advocacy