



Resource Management Act Reform Weekly Update

Whakanaketanga Whakarite Rawa Ahuarangi ā-Wiki

For the week beginning 2 September 2024

Hon. Chris Bishop, Minister for Resource Management Act Reform

Key Updates

RMA Reform Phase 2

RM Bill 2

You have now received the final tranche 2 briefing [BRF-5124 refers] on efficient consent processing and effective council decision making, and a briefing [BRF-5218 refers] on the costs of preparing assessments of environmental effects for designation applications.

You will shortly receive tranche 3 delegated decision briefings on:

- delivering the Going for Housing Growth programme
- better managing outcomes for heritage.

We are continuing to test policy with Māori groups, local government, and key stakeholders. This has included recent meetings with Te Nehenehenui, Ngāti Toa Rangatira, Ngā Hapū o Ngāti Porou, Te Runanganui o Ngāti Porou, Rongowhakaata, Tāmanuhiri Tutu Poroporo Trust, Te Aitanga a Māhaki, Resource Management Law Association and New Zealand Planning Institute.

Business Group: Environmental Management and Adaptation

Owner: Rhedyn Law, 027 363 7954

The High Court decision on Auckland International Airport and Auckland Council/Kāinga Ora

The High Court has found in favour of Auckland International Airport (AIA) in a judicial review against Auckland Council's decision not to notify, and then to award a consent for an intensive housing development. Kāinga Ora had applied for consent to build apartments in the Business-Metropolitan Centre Zone within the Auckland Airport Moderate Aircraft Noise Area (MANA).

In summary the High Court agreed with AIA that the Council:

- scoped the negative effects too narrowly (with regards to noise),
- judged that acoustic insulation standards were able to remedy airport noise effects,
- did not use sufficient information,
- was not consistent with its established practice of proactive consultation with AIA.

Increasing population density close to existing infrastructure and activities, such as airports, will depend on setting appropriate notification policies and consent conditions. People need to understand the trade-offs they are making to invest, live and work in these areas and airports need to be able to operate. Airports, including AIA, are known to take a very precautionary approach to development in airport noise sensitive areas and have habitually opposed development located there. In this case the High Court supported AIA's position that the Council, by not notifying this intensive housing application, had excluded AIA from formal involvement in a decision that could have implications for operating its business.

Kāinga Ora and HUD officials are concerned about High Court decision on three counts:

- it reverses a general trend in consenting processes towards a presumption of non-notification,
- it favours infrastructure providers in how information about effects on them is assessed,
- in the particular context, the decision has undermined the thrust of the NPS-UD because AIA now has an expectation of being notified of any housing development that exceeds a 1:400m² density.

We are less concerned about the wider implications of this decision, viewing it as reasonable to notify AIA given its interests in the area. Resource management decision makers should be able to take AIA's general

opposition to residential development within the MANA into account when weighing the benefits of increasing much needed housing supply and setting conditions on consents. In summary however, we acknowledge that, due to questions about the process, the potential to develop much needed housing in a well-connected area close to amenities was lost.

In Christchurch there have been some similar situations and court cases regarding airports. For example, here is a case from a few years ago where the Environment Court upheld a decision to refuse consent for a residential development within the Christchurch Airport Noise contours https://www.capitalletter.co.nz/sites/default/files/rma_pdfs/rma_net_200C137.pdf. The Christchurch District Plan now includes a limited notification provision that an application for resource consent for a residential activity (or other noise sensitive activities) must be notified to the Airport (unless the Airport gives written approval).

We will continue to monitor relevant processes, and report back should Kāinga Ora's concerns appear to be playing out.

Business Group: Environmental Management and Adaptation

Owner: Lesley Baddon 021 738 357

Status of covenants upheld in High Court for proposed subdivision in St Arnaud

In 2017, Tasman District Council granted a resource consent to Beechrest (2014) Ltd (Beechrest), to subdivide two lots in St Arnaud into 10 lots allowing buildings up to 7m high. However, the 10 new lots are subject to the same 16 covenants as the parent titles, which, among other requirements, specify that only one house per lot was allowed.

A land covenant is a legally binding interest in land managed under the Property Law Act 2007 and is registered on the title of a property. The intent of a covenant is to limit or restrict the owner and any future owners as to how they use the land/property. Covenants are private arrangements, and as such councils do not consider them when issuing resource consents. This can result in an activity being permitted under the district plan (for example, subdivision) but not being permitted under a land covenant. Obtaining a resource consent does not negate obligations under a covenant.

In 2020, Beechrest applied to the District Court to modify these covenants, which was declined by Judge Chris Tuohy, concluding "modifying the covenants, which were an important factor in peoples' decisions to purchase in the area, would have removed their property rights, including the protections provided by the covenants". The opponents argued that more sites and more housing would severely alter the natural, alpine characteristics of the area. Beechrest appealed to the High Court, where the High Court agreed with the District Court. Beechrest has recently been declined leave to appeal to the Court of Appeal.

We are aware of the impact of covenants on development. HUD commenced work on policy options to address residential covenants under the former Government, however this work is currently paused. Officials will undertake further policy work during phase 3 of resource management reform.

The latest Radio New Zealand article on this matter can be found here: <https://www.rnz.co.nz/news/national/526138/villagers-win-fight-against-prominent-nelson-wine-grower-over-alpine-village-subdivision>.

Business Group: Environmental Management and Adaptation

Owner: Liz Moncrieff, 027 262 9093

RMA Statutory Notifications to the Minister Responsible for RMA Reform

Type	From	Planning Instrument	Purpose	Date Received	Consultation Period or Statutory Timeframe	Response
s 9(2)(f)(iv)						

This information is included in the RMA Reform Weekly Update, in addition to Hon Simmonds' Environment Weekly Update, in recognition of the correlation between the Environment and RMA Reform portfolios.

Intensification Planning Instrument Progress

Note		Council	ISPP progress Finish date	Extension requested/granted to date
Councils in the process of completing their ISPPs				
Decision made on referred recommendations				
Advice sent to office for Minister's decision				
Recommendations to be referred to Minister				
Extension request received	Christchurch City Council	Request for extension received 22 August 2024.		Advice 11 September 2024
	Waikato District Council	Hearings complete. Decision on extension request made.	22 October 2024	Yes
	Waipā District Council	Hearings complete. Decision on extension request made.	30 August 2024	Yes
No current indication of further extensions needed	Waimakariri District Council	Hearings yet to commence.	17 December 2024	Yes
	Hamilton City Council	Hearings due to commence September.	20 December 2024	Yes
These councils have substantial time to complete	Christchurch City Council	Hearings complete. IHP has delivered its recommendation report to Council.	12 September 2024 for parts of plan implementing policy 3 & 4 of NPS UD. 12 December 2025 for implementing MDRS.	Yes

	Tauranga City Council (Tauriko West)	Submissions closed.	31 December 2025	Yes
	Auckland	Hearings paused.	31 March 2026	Yes
Councils that have completed their ISPPs				
	Porirua City Council	Completed.	14 December 2023	Yes
	Hutt City Council	Completed.	22 September 2023	Yes
	Upper Hutt City Council	Completed.	20 December 2023	Yes
	Kāpiti Coast District Council	Completed.	20 August 2023	No
	Selwyn District Council	Completed.	20 August 2023	No
	Rotorua District Council	Completed.	31 March 2024	No
	Western Bay of Plenty	Completed.	1 March 2024	Yes
	Wellington City Council	Completed.	20 March 2024	Yes
	Tauranga City Council	Completed (substantive part).	17 July 2024	Yes

Upcoming Briefings for Minister Bishop

Papers sent to the Minister in the last seven days and due to the Minister in the following 3 weeks
As at 1pm, 28 August 2024

Tracking Number	Title	Purpose	Responsible General Manager / Chief Advisor	Title Suitable for Proactive Release?	Date due to Minister
[REDACTED]	[REDACTED]	s 9(2)(f)(iv) [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BRF-5057	Fast-track Approvals Bill Amendment paper outline and associated draft Cabinet paper	Outlines Fast-track Approvals Bill policy and workability changes through the amendment paper process and provides a draft Cabinet paper seeking Cabinet approval to instruct PCO drafting.	Jo Gascoigne	Y/N	Sent 22 August
[REDACTED]	[REDACTED]	s 9(2)(f)(iv) [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
BRF-5211	RM Act Amendment Bill 2 - Going for Housing Growth decisions	Seeks decisions on the Going for Housing Growth policy content for inclusion in RM Bill 2.	Liz Moncrieff	Y/N	30 August
BRF-5247	Fast-track Approvals Bill - advice on expert panel capacity	Seeks approval to amend the Bill to include options to stand up more expert panels more quickly.	Ilana Miller	Y/N	4 September
BRF-4969	Improving the environmental data system	Provides the next iteration of the improving environmental data work programme.	Jonathan Ryan	Y/N	4 September
BRF-5180	Progressing resource management reform for historic heritage decisions	Provides information to progress resource management reform for	Liz Moncrieff	Y/N	4 September

		historic heritage decisions for Phase 2, Bill 2, Tranche 3.			
BRF-5152	Proactive release of briefing regarding Christchurch City Council's extension request for its Intensification Planning Instrument	For noting only.	Liz Moncrieff	Y/N	4 September
BRF-5196	Climate Priorities Ministers Group September	Supports attendance at the September meeting of the CPMG.	Katherine Wilson	Y/N	5 September
BRF-5227	Further advice on Fast-track Approvals Bill: threshold for decline and condition-setting	Provides further advice on the threshold for declining approvals and condition-setting under the Fast-track Approvals Bill.	Martyn Pinckard	Y/N	6 September
BRF-4063	Review of the Resource Management (Infringement Offences) Regulations 1999	Seeks direction regarding the partially completed review of the Resource Management (Infringement Offences) Regulations 1999.	Liz Moncrieff	Y/N	6 September
BRF-5249	Extension request from Christchurch City Council (August 2024)	Provides advice on Christchurch City Council's extension request for more time to complete its intensification plan change	Liz Moncrieff	Y/N	11 September
		s 9(2)(f)(iv)			
BRF-5095	Proactive Release of fast-track briefings	Seeks approval to proactively release the second tranche of fast-track briefing notes.	Jo Gascoigne	Y/N	16 September
	s 9(2)(f)(iv)				
	s 9(2)(f)(iv)				

Cabinet Papers

As at 1pm, 28 August 2024

Tracking Number	Title	Description	Committee	Responsible General Manager	Date due to Minister's Office	Lodgement Date	Date of Committee Meeting	Date of Cabinet Meeting
CAB-460	Fast Track Approvals Bill - Amendment Papers (Policy and Workability)	Seeks Cabinet's agreement to authorise PCO to draft an Amendment Paper to the Fast-track Approvals Bill relating to policy and workability changes.	ECO	Jo Gascoigne	22 August	12 September	18 September	23 September
CAB-470	Fast-track Approvals Bill -Amendment Papers (Listed Projects)	Seeks Cabinet's agreement on projects to be listed in Schedule 2 of the Fast-track Approvals Bill.	ECO	Ilana Miller	12 September	19 September	25 September	30 September
	s 9(2)(f)(iv)							
CAB-XXX	Fast Track Approvals Bill - LEG PAPERS	Seeks Cabinet's agreement to final changes to Fast Track Bill.	LEG	Jo Gascoigne	17 October	31 October	7 November	11 November
CAB-XXX	Resource Management Act Bill 2 LEG paper	Seeks Cabinet's agreement to introduce Resource Management Amendment Bill 2.	LEG	Liz Moncrieff	25 November	5 December	12 December	N/A

Official Information Act Requests for Minister Bishop

As at 1pm, 28 August 2024

Tracking Number	MO Tracking Number	Request	Correspondent	Organisation	Date due to Minister's Office	Date due to Requestor
OIAM-602	OIA24-CB219	Copy of all communications relating to the Botany apartment proposal.	s 9(2)(a)	N/A	29 August	5 September
OIAM-618	OIA24-CB229	Request on what progress on repealing David Parker's 'te Mana o te Wai' and requesting if the Government is removing three waters, and costs implicated if councils are still progressing.		N/A	13 September	20 September

Ministerial Correspondence Update

As at 1pm, 28 August 2024

We are preparing responses to 34 pieces of correspondence on a wide range of topics including timeframes for the removal of class 3 soils from the National Policy Statement for Highly Productive Land (NPS-HPL), concerns about the NPS-HPL impacting resource consent applications, concerns about the Christchurch City Council seeking a further extension of time for Plan Change 14 decisions, opposition to buildings being included in heritage schedules, and support for, and opposition to, projects being included in the Fast-Track Approvals Bill.

Written Parliamentary Questions Update

As at 1pm, 28 August 2024

We are preparing responses to written parliamentary questions about advice received, and papers taken to Cabinet and Cabinet committees in August.

Key Dates

Upcoming Chief Executive and Deputy Secretary Acting Responsibilities

Staff member	First day of absence	Last day of absence	Acting arrangements
Laura Dixon	30 August	30 August	Pepi Batsos will be acting.
Sam Buckle	3 September	5 September	Glenn Wigley will be acting.
Laura Dixon	6 September	20 September	Arun Patel will be acting.