

It's been another big year in the resource management space with new legislation, national direction, and leading cases. We summarise the key updates from 2024 below.

Fast-track Approvals Bill

Fast-track regime #3 (the Fast-track Approvals Bill) is currently making its way through Parliament. We expect the Bill to be enacted by the end of 2024. Like the COVID-19 Fast-track Act, the Bill includes a list of scheduled projects whose applicants can immediately lodge consent applications without first needing to apply for referral. The list was released in October and contains 149 projects across a wide variety of sectors and regions.

The Fast-Track Bill has proven controversial for a range of reasons, following the direction from Cabinet, the Select Committee rightly responded to concerns about ministerial decision-making on fast-track consents with decision-making reverting to expert consenting panels, but there has also been some unhelpful rhetoric - "...goodbye Freddy" - for managing environmental trade-offs around potentially controversial projects.

The previous COVID-19 Fast-track Act process proved largely successful in enabling thoughtful, well-planned development projects to secure consents relatively quickly. However, questions remain about whether the new system will be as efficient. The capacity for decision-making panels to be stood up to deliver timely decisions on what will be hundreds of applications has some feeling nervous. Opponents of the Bill and certain listed projects are also lining up to test the new legislation through the Courts.

New resource management legislation

Resource management reform is seemingly never-ending. Following the swift repeal of Labour's National and Built Environment and Spatial Planning Acts in December 2023, the new Government announced its own plans to repeal and replace the RMA.

As with the last suite of reforms, and despite criticising the complexity of Labour's two-piece legislative regime, the new proposal will also consist of two new pieces of legislation – one to address urban development and infrastructure, and another focused on environmental protection and the management of environmental effects. An Expert Advisory Group has been appointed and is expected to provide its advice to the Minister for RMA Reforms, Hon Chris Bishop, before Christmas. The aim is to move quickly and introduce legislation into Parliament in mid-2025, to be passed mid-2026.

MDRS and IPI (is it over yet?)

IPI processes to incorporate the MDRS continued to occupy significant time for councils, communities and stakeholders. While many councils have now completed the IPI process, extended deadlines for some councils, coupled with delays in providing a legislative fix, have resulted in continued limbo for all involved. Will 2025 be the year of the unwinding of many of the MDRS provisions? Many will hope so.

MACAA updates

In September, the Government introduced the Marine and Coastal Area (Takutai Moana) (Customary Marine Title) Amendment Bill. Through the Bill, the Government has sought to address recent Court decisions which the Government considered to have materially reduced the threshold applicants needed to prove exclusive occupation. Unusually, the Bill specifically names the Court decisions the amendments are to supersede. This Bill is intended to be passed before the end of this year, with the Select Committee being directed to urgently report back by 5 December.

Targeted amendments to the good old RMA (while we still have it)

In October, the first of some RMA "quick fixes" was enacted through the Resource Management (Freshwater and Other Matters) Amendment Act. These amendments are intended to reduce regulatory burden on both consent applicants and councils by amending stock exclusion and intensive winter grazing regulations, suspending the requirements for councils to identify Significant Natural Areas, and removing the need for consent applicants to demonstrate their activities follow the Te Mana o te Wai hierarchy of obligations.

The second amendment bill (which will include, among other matters, flexibility for Councils to opt out of MDRS and longer durations for port consents) is expected to be introduced to Parliament before the end of 2024 and enacted in mid-2025.

Updates to National Direction

The Government also announced it will be introducing a new package of national direction, including amendments to 14 current National Policy Statements and National Environmental Standards, as well as seven new national instruments.

There are expected to be four packages of national direction: infrastructure and energy, housing, farming and primary sector, and emergencies and natural hazards. There is a particular focus on energy and infrastructure including introducing provisions to reduce consenting costs and increase certainty around infrastructure upgrades, as well as enabling specified infrastructure to locate on Highly Productive Land.

Formal consultation is expected to occur in early 2025, and Cabinet decisions announced in mid-2025.

Significant Supreme Court cases

The approach to interpreting and using higher order planning documents, as set out by the Supreme Court in *King Salmon*, has been clarified by the Supreme Court this year.

In *East West Link*, the Supreme Court built on its recent nuanced approach to the "avoidance policies" it grappled with in *King Salmon*, reminding us all that while "avoid means avoid", that language should also be read in the context of the other policies. This means there may be "exceptions pathways" for certain projects with environmental effects that cannot be entirely avoided.

We have said it before and we'll say it again: the words matter, people. Plan provisions need to be clearly drafted and where directive language has been used, consent applicants need to really engage with those provisions.

Diffuse discharges and farming activities

This year the courts grappled with the interpretation of two key sections of the RMA which impose additional restrictions on the ability for regional councils to promulgate permitted activity rules or grant discharge consents in degraded catchments. The decisions would have widespread implications for farming activities, including new consenting requirements for many currently permitted discharges, creating significant resourcing and administrative headaches for regional councils.

In response, the Government announced it will amend these sections to enable councils to take a programmed reduction approach when granting discharge consents which allows applicants to be granted consent where adverse effects are proposed to be reduced over time. Amendments to section 107 were included in the Resource Management (Freshwater and Other Matters) Amendment Act 2024, which came into force on 25 October. Amendments to section 70 are expected to be included as part of the second amendment bill, to be introduced before the end of 2024.

The importance of managing reverse sensitivity effects

This year, Auckland Airport successfully judicially reviewed Auckland Council's decision to grant resource consent to Kāinga Ora for a residential development within an aircraft noise overlay on a non-notified basis. The High Court emphasised there was a need in this case to assess reverse sensitivity effects through the notification process, and that failure to do so could lead to risk that the decision maker on the substantive assessment proceeds with inadequate information.

The Court said that an operator of an existing activity will often be best placed to assess the potential reverse sensitivity effects of a new proposed activity on its future operations. This decision also provides important commentary on the interplay between overlays and zoning, and confirms zoning rules can be modified by an overlay.

As you can see, there's a lot going on. We expect next year to be just as busy with many of these amendments and new directions continuing into 2025.

Any questions? Talk to one of our experts



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