

IS THE RMA WORKING AND WHAT CAN WE DO BETTER TO POSITION RENEWABLES?

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Overview

- RMA – issues for wind energy
- RMA Reforms
 - Drivers
 - Key elements
- How can we better position renewables?

Context



Very few wind farms declined resource consent (compared to those consented).



But some potential applications not progressed due to RMA issues.

And other consented wind farms incurred delay and cost and suffer from uncertainty due to RMA issues.

Issue One – Arbitrary Setbacks

- Porirua District Plan includes a 700 metre setback from a zone boundary or the boundary of a site that is not part of the wind farm. Otherwise a wind farm will be assessed as a non-complying activity.
- Proposed Plan Change 15B (PNCC) included a 700 metre setback from the boundary of the wind farm site with an adjacent property, unless the owner and occupier consent. Otherwise a wind farm will be assessed as a non-complying activity. I understand this position may have softened following recent mediations.

Issue One – Arbitrary Setbacks



Prevent proposals

- May not be possible to avoid property boundaries
- Barrier with NC threshold

Poor outcomes

- Avoid property boundaries to avoid NC activity status

Raised expectations

- Misplaced assumption regarding effects
- Greater debate about breach of setbacks

Issue Two – Activity Status Issues

- Examples of great lengths to avoid non-complying (NC) activity status.
- Potential for splitting applications so activities considered separately.
- Can lead to perverse outcomes e.g. avoid degraded wetland so not NC but massive volume of earthworks.
- May not be best outcome from perspective of sustainable management and adverse effects and/or cost of wind farm.

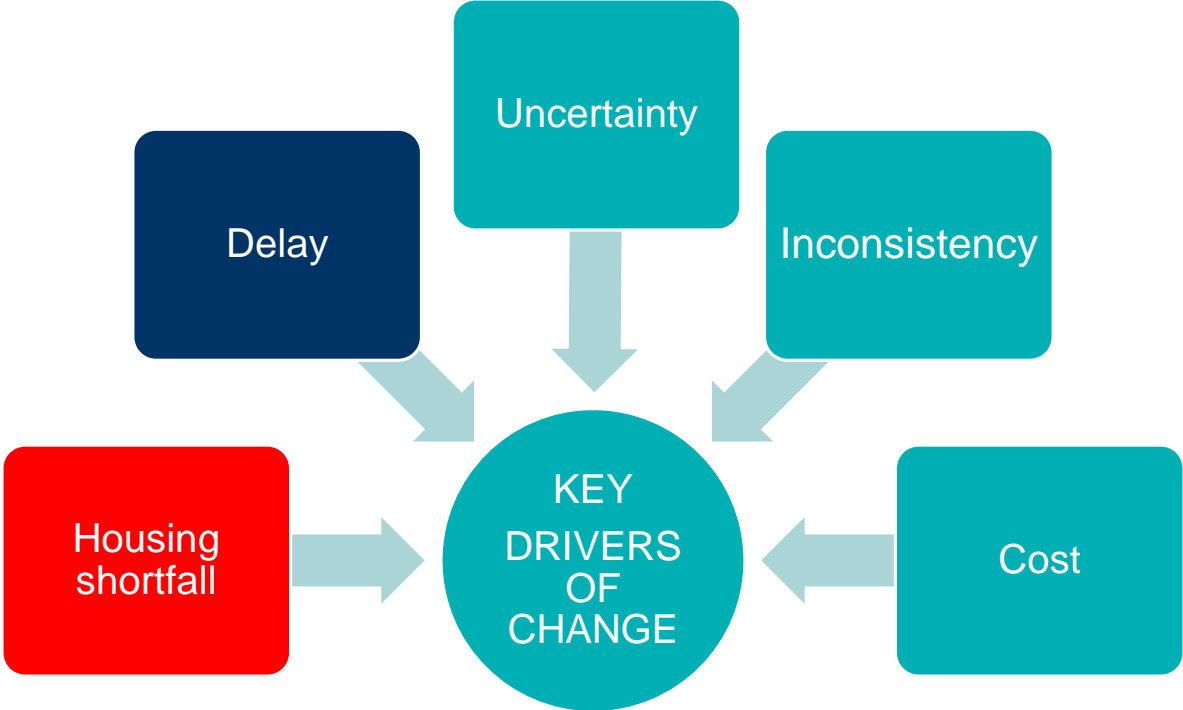
Issue Three – Noise Standard



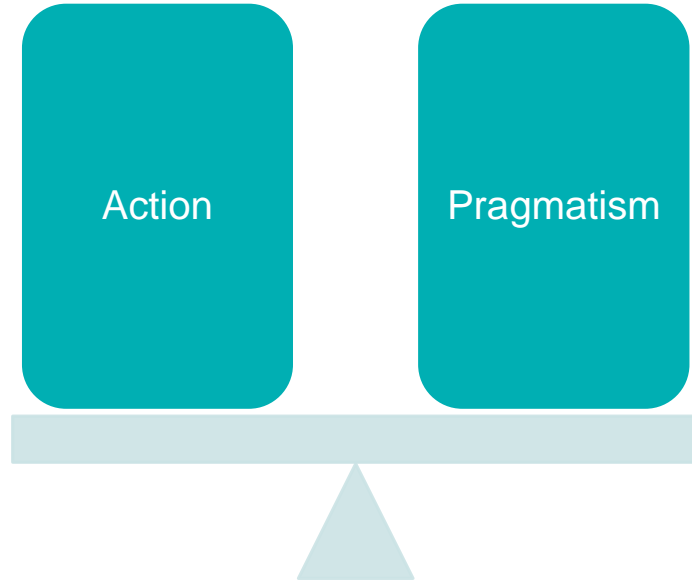
Persuasive
(but not
binding)

Frequent
debate (some
consider NZS
industry-led
process)

RMA Reforms - Key Drivers of Change?



The Balancing Act



Key planks of latest RMA reforms

1. Improving national consistency and direction
2. Creating a responsive planning process
3. Simplifying the consenting system

1. Improving national consistency and direction

- Key components of the Amendment Act include:
 - Introduction of National Planning Standards
 - Changes to process for developing National Policy Statements and National Environmental Standards

2. Creating a responsive planning process

- Key components include:
 - Tighter timelines
 - Introduction of the ‘Collaborative Planning Process’
 - Introduction of the ‘Streamlined Planning Process’
 - Increased iwi engagement on plan development
 - Strike out of submissions

3. Simplifying the consenting system

- Key components include:
 - Fast-track applications
 - Council discretion to waive requirement for consent
 - New limits on involvement/appeal rights
 - Regulation-making power requiring fixed fees/remuneration for certain consents, hearings panels and hearings

Reception?

- *“Resource Management Act Reform – death by a thousand cuts”*
- *“RMA bill too modest on housing”*
- *“Environment Commissioner warns resource management reforms ‘go to far’”*
- *“RMA reforms ignore ‘invisible legions’ who want housing: Environment Commissioner”*
- *“RMA reforms ‘threaten’ local democracy”*
- *“Don Brash attacks ‘preferential treatment’ for Maori in RMA reforms”*
- *“Winston Peters uses Orewa speech to claim RMA changes on separatist track”*
- *“Public say in development undermined by RMA Bill”*
- *“RMA reform bill delayed two months as select committee seeks extension”*

Response:

1. Reduction in powers given to Minister
2. Slight relaxation of restrictions on appeals to the Environment Court
3. Increased iwi participation and protection
4. Changes to the process for developing and consulting on National Policy Statements and National Environmental Standards
5. Changes to National Planning template provisions

1. Reduction in Powers for Minister

- The bill gave the Minister the ability, via a new section 360D, to:
 - Make regulations to permit a specified land use
 - Prohibit a local authority from making specified rules or types of rules
 - Specify rules re types of rules that are overridden by regulations, and
 - To prohibit or remove specified rules or types of rules that would, in the Minister's opinion, duplicate, overlap or deal with the same subject matter as is in legislation
- Amendment Act: all those powers removed, apart from the ability to prohibit or remove rules which *do* (i.e. *not* simply in the Minister's opinion) duplicate the same subject matter contained in legislation
- However substantial powers for direction remain via the National Planning Template and NPS and NES provisions

2. Constraints on appeals

- The Bill precluded “boundary activity” appeals. The Act allows appeals for a non-complying boundary activity
- Appeals are precluded for decisions on all types of resource consents for residential activity on residentially zoned land (where controlled, restricted discretionary or discretionary in a relevant Plan)
- No Environment Court jurisdiction from the Streamlined Planning Process. MfE suggests a slight relaxation to allow appeals for some designation decisions

3. Iwi Participation and Protection

Significant changes include:

- An IPA must be entered into
- Iwi authorities may initiate
- a requirement for local authorities to review their internal policies and processes to ensure consistency with any IPA
- only allowing termination or changing of the IPA by mutual agreement
- a requirement to report relationship arrangement data to the Minister
- a new principles section that iwi and local authorities are required to act consistently with
- Nothing in NPS, NES consultation process will undermine the Crown's Treaty or other obligations to Maori.

4. NPS, NES, s360 Regs

- A new single process to cover all NPSs, NESs and RMA s.360 regulations (with the ability to recommend changes to NPStandard)
- This is modelled on the process found in s.46A of the RMA which allows the Minister to either use the “Board of Inquiry” process or a similar process but without a Board of Inquiry
- If there is a recommendation that a NPStandard provision be amended, Minister can rely upon public consultation already undertaken
- If a s.360 regulation is recommended after consultation on a Proposal for National Direction, and the subject matter is the same or similar, then further consultation for the s.360 regulation is not required

5. National Planning Template

- The National Planning Template has been renamed National Planning Standards. Other amendments include:
 - Removing the power to address matters of national significance
 - Clarifying that National Planning Standards must give effect to NPSs, and be consistent with NESs, regulations and water conservation orders; and
 - Clarify process when Councils adopt or apply a National Planning Standard
 - Allowing the Minister to consider, when developing National Planning Standards, whether they:
 - support implementation of NESs, NPSs and other regulations;
 - should allow for local circumstances and to what extent; and
 - ought to apply to specific regions or districts, rather than nationally

Opportunities for renewables

- Review and strengthen NPS?
- National direction via NES – defaults for activity status for wind farms and consistent treatment of noise
- National planning standards – defaults for activity status for renewable energy and consistent treatment of noise
- Streamlined planning processes?

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