

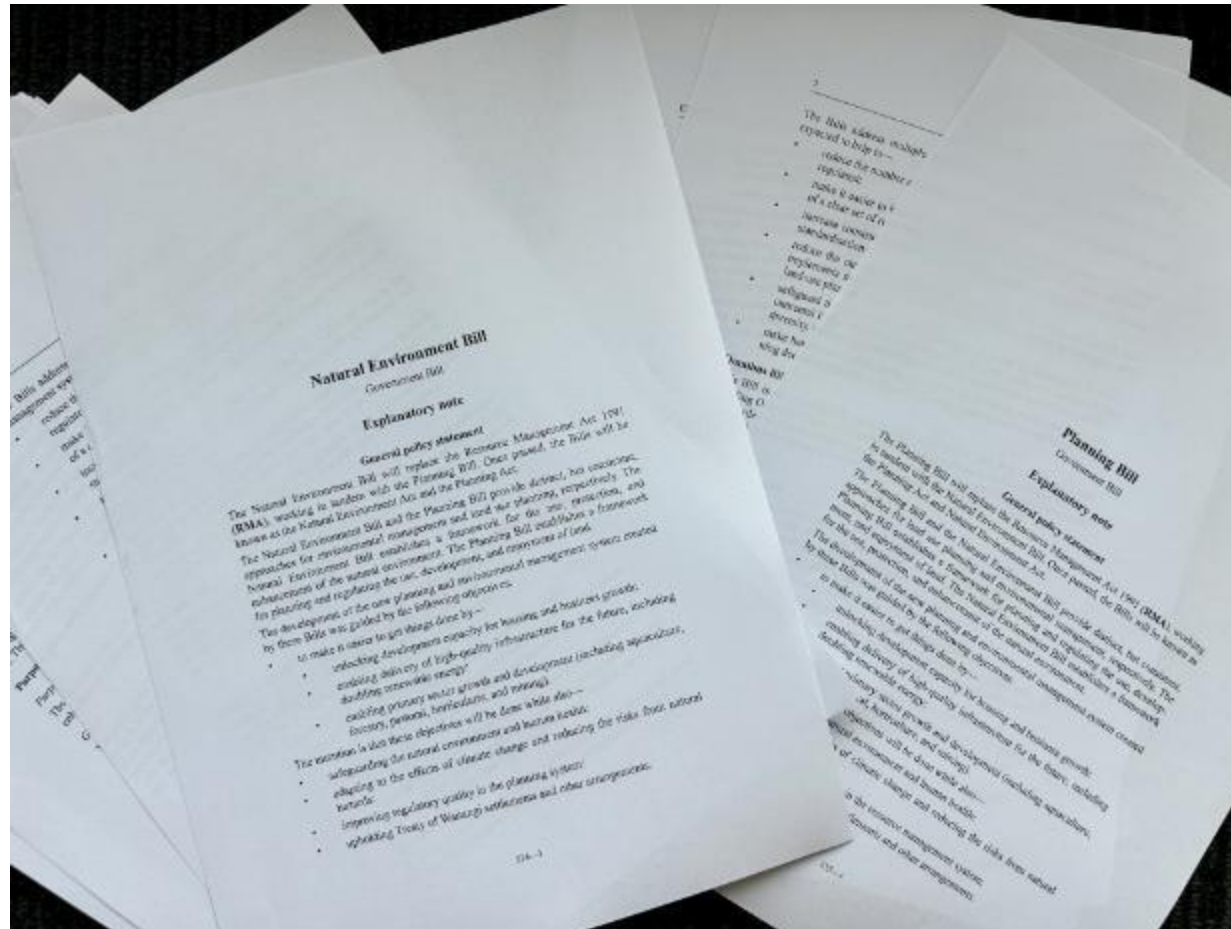


The Natural Environment Bill and Planning Bill

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Regulatory relief on the ground

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www.eds.org.nz



Source: The Post

This webinar

- Where regulatory relief is at in the Bills
- How it could play out on the ground
- Some reflections.

The Bills in a nutshell.



- The RMA is being split into two.
- A reduced scope.
- Purpose and principles replaced by goals.
- Removal of Te Tiriti principles.
- Similar instruments, but more heavy lifting by central government.
- Environmental limits (if you can call them that).
- Spatial plans.
- Less public participation.
- Regulatory relief.

Regulatory relief in a nutshell.



Regulatory relief is a fancy name for making councils compensate landowners for rules that impact the use of people's land.



Source: NZ Geographic



Raewyn Peart



Source: Jay Farnworth

How is this meant to work?

Regional councils and territorial authorities will have to create a relief framework in their plans if...

a **specified rule** is **reasonably likely** to have a **significant adverse impact** on the **reasonable use** of private land

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Specified rules under the Planning Bill are:

Outstanding natural landscapes

Outstanding natural features

Areas of high natural character around water bodies

Sites of significance to Māori

Significant historic heritage

Specified rules under the Natural Environment Bill are:

Sites of significance to Māori

Identified areas of terrestrial indigenous biodiversity

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Sites of significance to Māori

Identified areas of terrestrial indigenous biodiversity

What biodiversity rules *don't* relate to an identified area?

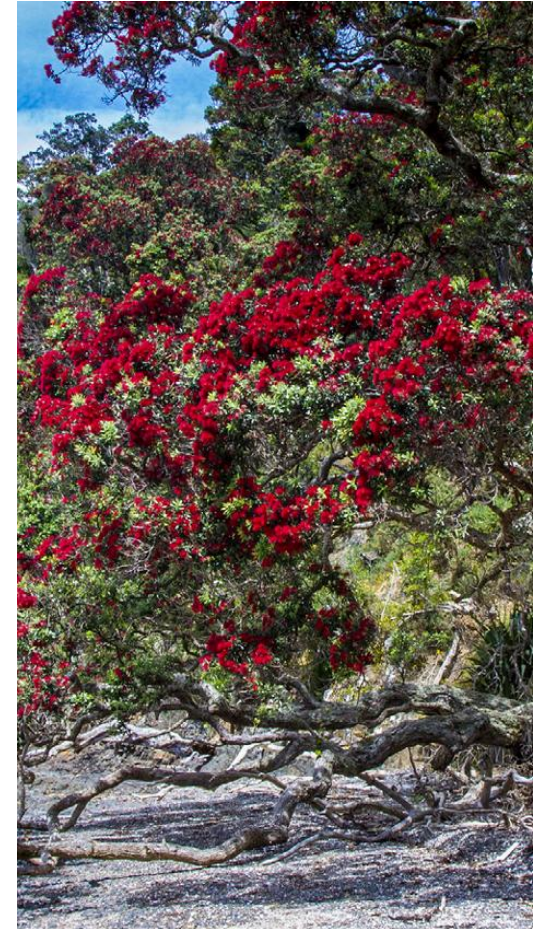
General vegetation clearance rules in a rural zone?

Notable indigenous trees?

Riparian planting?

Wetland habitat?

Urban green space?



Raewyn Peart



Source: Watercare

“we consider that the existing list [of specified rules] is needed to realise the purpose of the regime, and we recommend that specified topics remain largely as they are”.

The cost burden for biodiversity protection will fall on regional councils.

Regional councils and territorial authorities will have to create a relief framework in their plans if...

a specified rule is reasonably likely to have a significant adverse **impact** on the reasonable use of private land.

Impact means ...

the impact of a specified rule on the reasonable use of land.

Regional councils and territorial authorities will have to create a relief framework in their plans if...

a specified rule is reasonably likely to have a **significant adverse impact** on the reasonable use of private land

“Significant impact” means ...

It depends on national standards.

But there are criteria for determining levels of impact.

The extent to which a rule:

Restricts “development potential”

Imposes obligations on a landowner (eg to restore)

Creates costs or constraints on reasonable use or enjoyment

Affects land value.

What's the baseline for measuring this stuff?

Regional councils and territorial authorities will have to create a relief framework in their plans if...

a specified rule is reasonably likely to have a significant adverse impact on the **reasonable use** of private land.

A reasonable use now excludes where that use would have
“significant” adverse effects on the environment.

But what does this mean in the context of significant natural areas?

What is a reasonable use when it comes to people's expectations for future land development?

There's lots of grey areas here.

Regional councils and territorial authorities will have to create a relief framework in their plans if...

a specified rule is **reasonably likely** to have a significant adverse impact on the reasonable use of private land.

How on Earth can you tell, if a rule simply requires a discretionary consent?

Councils have to create relief frameworks for specified rules that meet all these criteria.

Relief could include a bunch of different things.

Cash in the hand, rates relief, alternative development rights, fees waivers and access to assistance programmes like for fencing or pest control (etc).

The relief framework is part of the plan, so it goes through the normal process.

Once it's operative, the relief framework has to be implemented.

Who is eligible?

You need to have owned the land since the operative RMA plan was notified, and not sold it since.

This could get pretty complicated.

Specific relief entitlements are notified to landowners.



There's a review process (through the council).

There's an objection process (through the Planning Tribunal).

Appeals to the Environment Court.

Is this retrospective?

In a strict legal sense, perhaps not.

In any common sense interpretation of the word, absolutely yes.

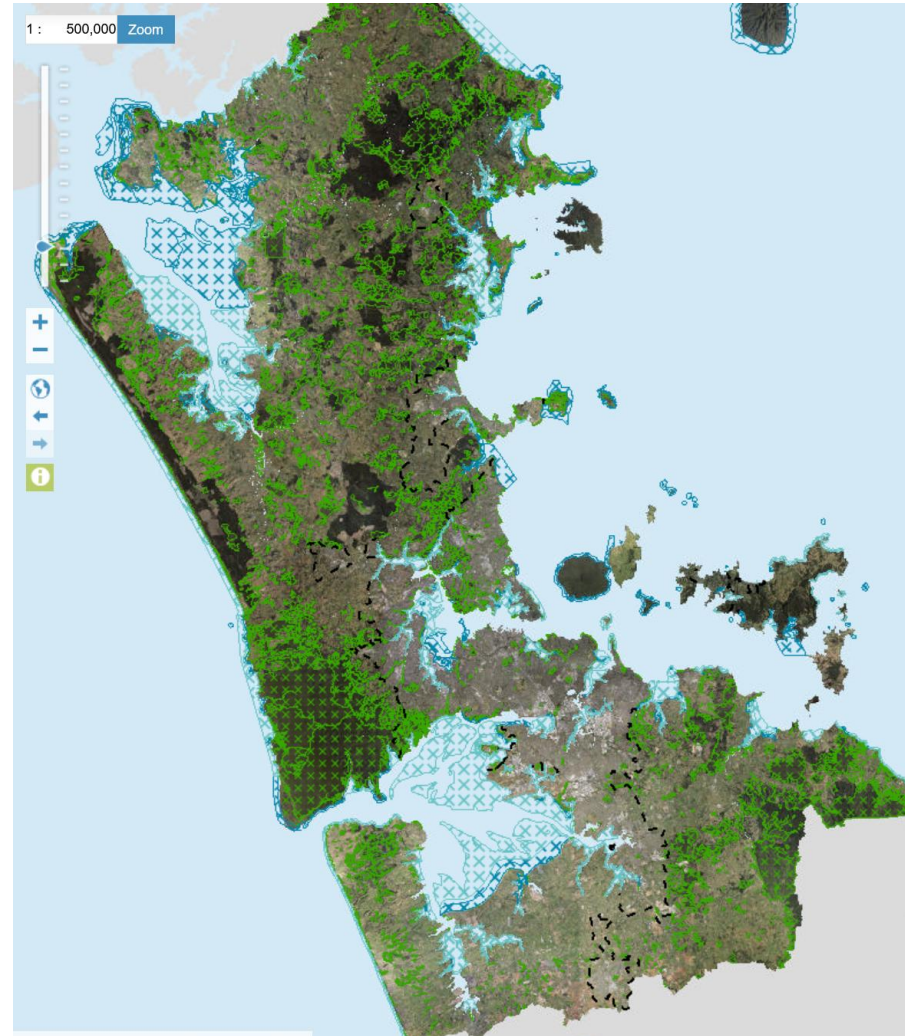
Protections that existed yesterday without compensation may require it tomorrow if they're still there.

Regulatory relief on the ground: Auckland



Source: NZ Herald

The Acts require the Council to include a 'relief framework' in its plans if they impose 'specified rules' on privately owned land which are 'reasonably likely' to have a 'significant adverse impact' on its 'reasonable use'.



Source: Auckland Council

Overlay	Area on private land (ha)	Number of private properties
Significant Ecological Area	26,000	17,300
Outstanding Natural Landscapes	30,000	4,300
Outstanding Natural Features	2,000	1,300
Outstanding Natural Character	1,000	60
High Natural Character	6,000	800
Sites and Places of Significance to Mana Whenua	170	200
Historic Heritage (extent of place)	350	4,400
Historic Heritage (points)	NA	70
TOTAL	49,000	24,000

Source: Auckland Council submission on Planning Bill and Natural Environment Bill

The Council doesn't want to fire ahead with a relief framework without understanding how much it might cost.

There's a huge amount of fiscal and legal risk in getting it wrong, because the Acts strictly require the framework to be implemented.

The Council is now subject to a rates cap.



Which rules are within the scope of the system at all?

For 24,000+ properties:

Which property owners are eligible (haven't sold since 2013)?

What's the specific scope of specified rules for biodiversity?

Vegetation clearance rules in rural zones?

Notable trees (and only native ones)?

Drinking water source protection?

Waitakere Ranges?

What on Earth do various new legal terms mean?

Is there a significant impact on each of these properties?

What's a 'reasonable use' of each of those properties?

Whew.

Once the Council has decided that the specified rules it wants to include in its plans are reasonably likely to have a significant adverse impact on the reasonable use of land...

it writes up a relief framework its plan.



The Council still has no idea what kinds of relief would be acceptable to landowners.

There's no actual legal test.

Relief specifically does not have to be granted 'on an equivalent basis'.

The Council sets relief at the lower end of what landowners might want.



Council notifies its plan.



Thousands of submissions seek to maximise relief.

Independent hearings panel makes recommendations.

Council doesn't accept all of them.

Appeals are made to the Environment Court.

Now comes implementation.

Eligibility is finalised.

There's detailed assessment of every affected property.

There are some educated guesses.

Formal offers are made to landowners.



Specific promises to individual landowners have deep implications for council liability and financial planning.



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Objection!



From Planning Tribunal to Environment Court to High Court.

The Council can't budget properly.

Its long-term plan becomes uncertain.

Developers don't know what rules will survive and which ones won't.

Ratepayers don't know about future costs.

Expanded across the whole country, what might all this mean?

Worse environmental outcomes.

Likely Councils couldn't pay for existing RMA controls to be rolled over.

Large incentives for landowners to game the system.

Councils may be unwilling to even try to impose protections.

Relief could cost councils across the country between \$7m and \$2b.

No one has a damn clue how this is going to play out.



Source: NZ Geographic

It has potential to undermine biodiversity limits.

Procedural churn.

Deep uncertainty.

Unclear terminology.

“This clause does not prevent a person from being eligible for relief if the relief framework provides for relief to be granted where the impact is less than a significant adverse impact on the reasonable use of land”.

The actual cost won't be clear until very late in the process, by which time it's too late to change.

What would happen if

Compensation is paid but a rule is removed later on (eg because of rezoning)?

National standards change the definition of a “significant impact”?

A private plan change seeks to remove a specified rule for which relief has already been provided?

A rule stays the same, but a relevant policy changes?

National standards require protections, but council can't pay for them?



Some reflections

We need to think about what *would* likely happen, not what would be *nice* to happen.

In other aspects of society, we don't compensate for restrictions on property interests.

What *is* a property right, and *is* it being eroded?

There are ideological inconsistencies.

Compensation for polluting the commons?

Property rights of the Crown in wildlife?

It's a one way street, there's no balance (as there is with limits).

There's an alternative.

Require a plan to provide relief where land is rendered incapable of reasonable use.

The RMA has had such a provision for many years. It simply hasn't been used properly.

Require councils to screen their plans, before they're notified, to ensure they actually do comply with this requirement.

Proportionality is important.

Thank you

