

15 December 2023

Hon Judith Collins, Attorney-General

**Consistency with the New Zealand Bill of Rights Act 1990: Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill**

1. We have considered whether the Resource Management (Natural and Built Environment and Spatial Planning Repeal and Interim Fast-track Consenting) Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 25944/1.26), received on 14 December 2023. We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. The Bill repeals the Natural and Built Environment Act 2023 (NBA) and the Spatial Planning Act 2023 (SPA). The NBA and SPA were enacted by the previous government in August 2023 to replace the Resource Management Act 1991 (RMA).
4. The Bill:
  - a. Includes transitional and savings provisions for some parts of the NBA that are already in use, to provide continuity and certainty for system users. In particular, it retains the NBA fast-track consenting process, with minor amendments.
  - b. Makes minor amendments to the RMA for clarity and workability and extends the RMA freshwater planning deadline.
  - c. Reverses consequential and other amendments made by the NBA and SPA to other legislation, with some limited exceptions.
5. As the RMA had not been repealed, the Bill does not re-enact it. By repealing the NBA, however, the effect of the Bill is to reinstate the RMA where the NBA would otherwise have continued to be in force. We note that we have not vetted the RMA for compliance with the Bill of Rights Act in preparing this advice.
6. The Bill reapplies various provisions of the RMA to other Acts, Regulations, Rules, and Orders, typically in ways similar to existing provisions under the NBA.<sup>1</sup> Some of these provisions of the RMA *prima facie* engage rights affirmed in the Bill of Rights Act:
  - a. Section 14 – Freedom of expression: For example under section 118 of the Urban Development Act 2020 a consent authority may, in accordance with the RMA, request further information before hearing an application for resource consent. The

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<sup>1</sup> Due to time constraints, where the Bill reapplies multiple sections, sub-parts, parts, or the whole of the RMA, to another Act, Regulation, Rules or Order, we have not reviewed these provisions in detail for Bill of Rights Act consistency.

Bill provides that sections 92A and 92B of the RMA apply to section 118 of the Urban Development Act 2020 and they require the applicant to provide information or respond to a request, which engages the right to freedom of expression.

- b. Section 21 – Freedom from unreasonable search and seizure: For example, the Bill provides enforcement officers under Schedule 1, clause 15(6) of the Crown Minerals Act 1991 with a power of entry for inspection under section 332 of the RMA, which we consider constitutes a search and seizure power for the purposes of section 21 of the Bill of Rights Act.
  - c. Section 27(1) – Right to justice: For example, the Bill provides that under section 121(1) of the Urban Development Act 2020 section 96 of the RMA limits who can make a submission on a notified application, such as restrictions where persons are trade competitors.
7. To the extent that these rights are limited by the Bill, we consider these limits are justified in terms of section 5 of the Bill of Rights Act.<sup>2</sup> They apply to persons participating in highly regulated resource management activities.
  8. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



Jeff Orr  
**Chief Legal Counsel**  
**Office of Legal Counsel**

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<sup>2</sup> Under section 5 of the Bill of Rights Act, a limit on a right may be justifiable where the limit serves an important objective, and where the limits on the right are rationally connected to achieving that objective and proportional to its importance; *Hansen v R* [2007] NZSC 7, [2007] 3 NZLR 1.