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Speech

Overhauling the Resource Management Act

The lectern and backdrop for this, my 20th annual speech to Nelson Rotary is the 80,000 pages of council resource management plans and rules. If in a single pile it would stand ten metres tall and probably require a resource consent for breaching local height restrictions. This mountain of red tape well illustrates the need for an overhaul of the Resource Management Act.

The Act is not working for New Zealand or New Zealanders. It is making housing too expensive. It is hampering job and export growth. It is stymying much needed infrastructure. And it is not doing a particularly good job of managing vital natural resources like freshwater and the coastal environment.

The purpose of this speech is to build a broad constituency for considered but substantial reform of the RMA this year. I want to give some political and historical context to the Government's plans. I am releasing the latest research on the impact it is having in areas like house prices and giving some practical examples of how the Act is failing. I want to outline the direction and timetable for reform but announcements on the detail will come at a later date.

First, some reflections on 2014. The election result was a stunner. It is more than 100 years since a governing party has increased its parliamentary numbers at three consecutive elections. John Key has to get the bulk of the credit for this result.

I've worked with National's last seven leaders, back to Muldoon and none match John's all-round skills. He has the charisma to connect with world leaders and truck drivers, business leaders and toddlers. He has a huge intellect and is all over the detail of Government policy. He is an avid nationalist, as reflected in his ambition for a more distinct New Zealand flag. But the Prime Minister's greatest strength is his determination to do what is right for New Zealand, even when the politics is hard-going as illustrated by his firm approach late last year on national security.

It is not just John Key's leadership that gives National a serious chance of securing a fourth term in 2017. I don't believe New Zealand has seen before

such a tight, complementary set of skills in the kitchen Cabinet of Bill English, Steven Joyce, Gerry Brownlee and Paula Bennett. Bill's skills are not just managing the finances, but in getting the very best out of the public service. Steven's skills as a campaign and political strategist are world class. Gerry's smooth running of the Parliament ensures the Government's business gets done. And Paula's sharp political instincts keep the Government connected to middle New Zealand.

The role I enjoy is down in the policy engine-room of Government, particularly in areas related to my professional background in natural resources and building.

The big challenge in the environmental area is finding a path that better manages New Zealand's water, air, oceans and native flora and fauna while enabling our economy to grow and prosper. Key priorities this year will be passing a new Environment Reporting Act to give greater clarity to New Zealand's important clean, green brand. We will also be advancing work on a new Marine Protected Areas Act to enable better management of our oceans and the establishment of recreational fishing-only areas. A sensitive issue will be working with the Pike River disaster families on the long-term management of the mine now it is the final resting place for their loved ones when it returns to the Department of Conservation later this year.

The focus in the building and housing area is to increase the supply, affordability and quality. On 1 April we will be introducing the new HomeStart scheme that will help 90,000 KiwiSavers pull together a deposit for a new home. We have a huge housing programme of work in Christchurch and Auckland and new initiatives in the pipeline. Another challenge will be finalising the legislation on earthquake-prone buildings, a difficult issue that will have major implications for thousands of older buildings in provincial areas like Nelson.

However, the most challenging of my jobs this year will be the reform of the Resource Management Act. The Act, in governing the use of water, land, air and the coast, and which is responsible for protecting heritage, native plants and animals is so wide-ranging that it has implications right across the economy and into almost every facet of life.

There is not a single official anywhere who understands this huge pile of RMA plans and rules. Even at a local level, only a few individuals working in council or in planning consultancy will fully understand how the rules work in their city or district.

The problem with this complexity is that it is difficult to make the connection between the labyrinth of RMA rules and the significant decline in housing affordability and home ownership over the past 25 years.

Today I am releasing a Treasury-commissioned report by Motu Research and respected economist Arthur Grimes and property researcher Ian Mitchell titled, *The Impacts of Planning Rules, Regulations, Uncertainty and Delay on*

Residential Property Development. The report identifies that a significant number of housing projects were abandoned because of the delays and uncertainty of the RMA. It estimates that for projects that proceeded, the RMA added $30,000 extra cost to each apartment and at least $15,000 per section. It also says that RMA rules reduced development capacity of homes by 22 per cent. If you extrapolate this study over the past decade, the RMA has reduced housing supply by 40,000 homes and added $30 billion in cost.

This research is consistent with the work of the Productivity Commission. It made plain that tight land regulation under the RMA with rules like the Auckland Metropolitan Urban Limit was the single greatest factor in driving house prices to all-time highs. The example of a 29-hectare block of unimproved rural land in Flat Bush just inside the Council's urban limit appreciating in value from $890,000 to $112 million in just over a decade shows how RMA regulation is helping make land speculators rich at the expense of young aspiring home owners.

And it is not just housing developments that are frustrated by the bureaucracy of the RMA. The Government's Small Business Advisory Group cites the RMA as the biggest single regulatory frustration for those small enterprises trying to grow and create wealth for our country. Business New Zealand last week cited RMA reform as their most important legislative issue this year for maintaining New Zealand's economic and employment growth.

The concern is backed up by international research. The OECD published in November a comparative study of its 34 member countries on the cost burden of environmental regulation. In most OECD reports New Zealand ranks very well as a good place to do business and create jobs. We ranked bottom when it came to the administrative burden of the Resource Management Act. I have no problem where there are costs to achieve good environmental outcomes. The OECD study actually showed that many countries had more stringent environmental policies than New Zealand but a far lesser administrative burden.

A key difference of the New Zealand system of environmental regulation under the RMA is that we have a very fragmented system where there are differing rules in every district and region, and secondly that we require consents for most activities when most other countries simply had national standards that had to be met.

Examples can be more powerful than national or international studies. I get inundated with hundreds of complaints from all corners of New Zealand and from people from all walks of life with frustrations over their experience with the RMA.

My first example is the Stoke Medical Centre, a typical suburban GP clinic on Main Road Stoke, employing 15 full-time staff. Three years ago the practice wanted to expand its staff and extend its permissible opening hours. This required a change to their resource consent which Council ruled under the Act had to be notified. Six months and $57,000 of bills later the amended consent

was granted with the requirement that they had to provide seven new bike stands. And this cost excluded the time doctors and practice staff had spent on the process. The bike stands cost $35 each but the bureaucratic paper associated with each meant they ended up costing over $8000 a stand. The tragedy of this case is that the $57,000 consent cost will ultimately come out of the health budget and people's GP charges in an area where there are many low income struggling families and retirees.

It is not just health dollars that are being wasted under the RMA. The resource consenting process for Nelson's new Young Parents' School officially opened by the Prime Minister last year was a fiasco. The new school is smart social policy aimed at supporting teenage mums by enabling them to continue their education, while also ensuring their pre-school children are engaged in education from an early age. The school is sited at Auckland Point School where the roll is a lot less than the school's capacity. The Principal and Board of Trustees fully supported the initiative being on their school site.

The problem was that the school is designated under the RMA for "primary education" and the Young Parents School was about providing education for secondary school age mums and early childhood education for their children. This meant under the RMA a change of designation, notification of neighbours and a full Commissioner hearing at a direct cost of $64,000. There would have been no change out of $100,000 if you included the considerable staff time of the Education Ministry, Kindergarten Association and school. This process also delayed the Young Parents School's opening by more than a year. More was spent on the RMA bureaucracy than on the facility for the specialist teachers, young mums and their babies.

The nonsense of this case is that the RMA is meant to be about protecting the environment and whether Auckland Point School has primary, pre-school or secondary students, makes not a jot of difference. The early childhood regulations and building consent requirements are separate and ensure the facilities are safe and appropriate. More good would have been achieved for the environment had the $64,000 of cash been deposited in the school's composting bins.

I could give hundreds of examples of the RMA wrecking Kiwi family dreams of building their own home. I choose this Nelson example because it illustrates how far council planners under the RMA are now intruding into people's lives.

A couple in their 60s bought a 630 square metre flat section in Sanctuary Drive in the Marsden Valley. Their architectural designer produced plans for their dream home that included an internal access garage in the front corner to minimise the portion of the section used for the driveway and located their living area so as to maximise the sun. The orientation was similar to 14 other homes in the subdivision. They were gobsmacked to have their consent application declined on the basis of a new RMA rule that had just come into effect in late 2012. They were told they had to relocate the garage out the back and have their living area face the road.

The RMA justification for rejecting the design was that the house failed to provide for a “positive private to public space relationship”. In plain language they wanted the living area to face the road so the residents would keep a safe eye on the street. The couple abandoned the section at a cost of many thousands of dollars. So much for a person’s home being their castle. The RMA is being used to micro-manage building designs down to the extent of what direction people should look.

This sort of madness has been repeated in Auckland and had property magnate Bob Jones venting his spleen late last year. He owns a 17-storey CBD building and wanted to re-establish a ground-floor shop window that had been blocked off by a previous tenant. Not only did this minor work require a $4500 resource consent, but because it would have people looking out on a designated heritage site, the consent required a cultural impact statement and consultation with 13 iwi. This is all for permission to replace a window!

My final example is to illustrate the connection between jobs, export growth and the RMA. It has long been recognised that Golden Bay has substantial aquaculture potential. RMA consents were lodged 20 years ago, prior to the turn of the century, for new marine farms, but are still unresolved. I have had lawyers joking to me that the battle over where the farms might be located has got at least another five years of legal machinations and fees to play out. There has to be a balance between water space for nature, recreation and export production but the main winners in these protracted and expensive court wrangles are the legal fraternity.

When National came to office in 2008 we set out a two-phase process for reforming the RMA. We completed the first phase of reform in our first term. This involved setting up the Environmental Protection Authority as a nationwide agency to deal with nationally significant consents. Previously major infrastructure consents took many years. They are now being processed in the required nine-month timeframe. It has enabled projects like the $1 billion Tauhara geothermal power station, the $2 billion Waterview motorway in Auckland and the $1 billion Transmission Gully highway in Wellington to be progressed at pace.

We introduced specific provisions banning the RMA from being able to be used for limiting trade competition that has seen an end to our two giant supermarket chains blocking each other’s developments. The Bill also banned general tree protection rules that required people to get a consent to trim their own trees. This reduced the number of consents in Auckland by 4000 per year.

This Bill also tightened enforcement and increased fines that has seen a doubling in the number of prosecutions for discharge breaches and a 50 per cent increase in the average fine imposed. We also introduced tighter provisions requiring councils to process consents in a more timely way that has seen the number of late consents reduce from 14,000 a year to under 1000 a year.

The second phase of RMA reform was always going to be more challenging. We commissioned in 2010 technical reports on infrastructure and urban planning leading to a discussion document called *Building Competitive Cities*. We also sought an expert report on the purposes and principles of the Act that included Nelson Mayor Rachel Reese, whose work I acknowledge.

I subsequently slipped on a banana skin as occurs sometimes in politics in 2012, resigning as Environment Minister and passing the baton on to colleague Amy Adams. Amy did a huge amount of work in pulling together this second phase of reforms but in 2013 was unable to secure the Parliamentary numbers to advance a Bill. The Maori and United Future parties pulled the plug out of concern that the proposed changes went too far.

With Amy's promotion post the election to the Justice portfolio, I am relishing the challenge of finishing the RMA job I started in 2009. The numbers in Parliament have changed such that National and ACT have the numbers. My preference is to build a broader base of support.

The Resource Management Act is New Zealand's most significant and important environment law. We more than any other developed country depend on our natural resources in industries like farming, tourism, forestry and fishing for our national income. Our environment is at the core of our national character and the beach, river and mountain holidays we have all enjoyed over summer. I want to get these reforms right and ensure we have got a balance that enables New Zealand to grow and prosper without compromising the great kiwi lifestyle.

But let me equally be plain that tinkering with the RMA won't do. The Act has some fundamental design flaws that require substantial overhaul. The purposes and principles are out-dated and ill matched with the reality of the issues it manages like housing development. The plan making process is too cumbersome and slow. The Act needs re-engineering away from litigation towards collaboration. Property owners need stronger protection from unnecessary bureaucratic meddling. We need stronger national consistency and direction. We need to redesign the paper based planning and consultation systems for today's age of the internet.

The most contentious of the planned reforms will be to the purpose and principles of the Act in Part 2. The significance of these provisions is that every plan, every rule, and every consent is tested against these provisions. We are not proposing changes to the over-riding purpose of sustainable management in Section 5, but we are proposing significant changes to Sections 6 and 7.

I do not subscribe to the view that the current 18 issues listed in these sections are something akin to the Ten Commandments and carved in stone. There are four particular changes that are crucial if the Act is to work better.

The first is that the management of significant natural hazards has got to be

added. New Zealand is one of the most natural hazard prone countries in the world with significant risks from earthquakes, floods, landslides and volcanoes. I give one simple example to emphasise the point – the Bexley subdivision in Christchurch. Hundreds of pages of reports and submissions were written on the effects of this housing development covering birdlife, landscape, coastal impacts, effects of recreation, effects of Maori cultural values, but nowhere did any official consider the effects of land liquefying in an earthquake like what occurred in 2010 and 2011. This was despite this risk having clearly been identified by council natural hazard experts.

I'm sure the people of Bexley and the taxpayers who ended up with a bill for hundreds of millions of dollars would have much preferred the RMA process gave more attention to the earthquake risks than the more esoteric concerns the law required them to focus on. That is why the Government is so determined to ensure the Act is amended in this way.

The second change we need to make is to properly recognise the urban environment. Eighty per cent of resource consents are about urban issues yet currently they rate no direct mention in the purposes and principles of the Act. It is as though the Act was designed for a Garden of Eden prior to the development of cities. The careful design of our urban environments so we have places to live, work, shop and play and the appropriate transport links to travel between them is core to the proper functioning of the Resource Management Act.

The third change is specifically recognising the importance of more affordable housing. The Productivity Commission's 2012 report noted a sharp shift in the type of housing being built since the RMA was enacted. They noted that 30 years ago, New Zealand built a healthy mix of new homes across the price spectrum whereas today new homes are pitched towards the top of the market. Thirty-five per cent of new homes built were sold below the then median house price as compared to just five per cent today.

There are three ways in which the RMA makes the development of new lower cost housing near impossible.

The first is the way the Act is used to constrain land supply and push up section prices. Section prices have increased way more significantly than the built house cost. If the section costs $250,000, nobody is going to put a modest $150,000 building on it.

The second problem is that the RMA puts huge weight on protecting landscape, amenity, natural character and heritage without any balancing consideration over the cost implications. When deciding whether a sub-division will be allowed, whether an apartment building can be built higher, what section size or apartment size will be allowed, side yard requirements, set-backs for viewing shafts, there is no legal requirement to consider the impacts these will have on the supply and affordability of housing.

And then there is the third problem arising from the consultation, submission

and appeal rights of neighbours. Neighbouring property owners' interests are in protecting their property rights and amenity and little for increasing the supply of affordable housing for others. I've seen neighbours object to adjacent land being used for housing because they like the outlook of green pasture and frolicking horses, which they view as their amenity values that the RMA says must be protected.

Neighbours will often push for conditions that will increase the cost of adjacent housing developments or make them unviable. At one hearing, a neighbour was quite blatant in wanting conditions that would ensure that only millionaires could afford to build, noting that this would also enhance his own property's value. More commonly, such blatant self-interest is dressed up in language of ensuring only quality developments are allowed. It is not that there are not legitimate neighbourhood interests but rather that the process does not have anyone actively advocating for the young family wanting access to an affordable house or apartment.

We need to make important changes to confront these problems. Councils need to be required to free up sufficient land for development to keep pace with growth. They also need to explicitly consider housing supply and affordability alongside factors like amenity, natural character and heritage.

The fourth change is adding the provision for appropriate infrastructure to the purpose of the RMA.

Good infrastructure is essential to the functioning of a modern nation – whether it be for transport, communication, water or energy. The stories of 19th century London, Auckland or Nelson without a reticulated sewer system emphasises the connection between the environment and infrastructure. Even today, many of our urban water pollution problems relate to poorly designed or maintained sewerage and storm water systems. The absence of any mention of the importance of good infrastructure is an anomaly in the RMA that needs addressing.

I am also of the view that economic growth, jobs and exports need recognition. The idea that the only consideration in resource consenting is protection of nature is naïve. This is not the National Parks Act. When consideration is being given to allow a new factory, a new road, a new marine farm, a mine or a new tourism attraction, we need to carefully weigh up the effects on the environment alongside the benefits of economic growth and jobs. We are a Bluegreen Government that is quite upfront about wanting to utilise our natural resources to create jobs and increase incomes but we want to do so in a responsible way that avoids unnecessary harm to the environment.

These changes to Sections 6 and 7 require careful drafting. We are reviewing the proposals drafted two years ago in light of the most recent case law. We want to ensure the Act remains focused on environmental effects but with a better appreciation of the way plans and rules impact on housing affordability, jobs and economic growth, and the development of our cities.

A fifth change we wish to make is to give more explicit recognition to property rights. There always has to be a balance between the rights of a person to use their own land and the wider community interests, but the pendulum has swung too far. We are looking at amendments that limit the degree to which council officials can meddle in people's lives. We also want greater discretion for councils to waive the need for resource consents where the wider environmental effects are negligible. So in examples like I cited with the Stoke Medical Centre, the Nelson Young Parents School or Bob Jones' window, the council could waive the requirement for a consent.

A sixth change is to consolidate this mountain of RMA rules across our councils. It does not make sense for a small country of four and a half million people to have each of the councils reinventing the wheel. For example, we have over 50 different definitions of how to measure the height of a building. We intend to legislate to require councils to use standard planning templates. Councils will still be able to choose from these templates what will apply in different areas but rather than having hundreds of different rules across the country in residential areas there will be a standardised range.

A seventh important change is speeding up the plan-making process. The process set out in in Schedule One of the Act is cumbersome, inflexible and slow. It takes on average six years to complete a plan. We have had residential housing go from boom to bust and back to boom in this timeframe. The OECD has made plain that responsive and timely plan making is essential to avoiding the sort of property bubble that wreaked havoc in the recent Global Financial Crisis. It is not just the economy that is harmed by this arcanely slow RMA plan making process. Canterbury's biggest RMA issue is the management of fresh water yet after 18 years it still had no regional water plan. Auckland took 15 years to develop a coastal plan for one of New Zealand's most cherished areas – the Hauraki Gulf.

Four times in recent years we have had to pass special legislation to get around the RMA's slow plan making process. We did it to get a water plan in Canterbury, did it again to support the Auckland council's ambition to get a new super city unitary plan in place in a reasonable time and a third time to support Christchurch's rebuild. The Special Housing Areas legislation I put through Parliament in 2013 and which expires next year was required to make new areas available for residential housing without taking years for areas to be zoned. This all points to the need to develop new and faster ways to produce plans. The difficulty here is that while everybody supports faster plan making, nobody is prepared to give up their opportunity to be consulted, make submissions, make cross-submissions and to be able to appeal. Our reforms will simplify the plan making process but also provide new and alternative ways of producing good quality plans.

The eighth change is about fostering a new collaborative way of resolving resource management issues. The RMA processes currently favour a litigious and adversarial approach. We have been experimenting with collaborative processes where those with a range of interests are encouraged to get

around the table and find a balanced solution. It has worked very successfully with the Land and Water Forum, and the creation of new marine reserves in areas like the sub-Antarctic, West Coast and Kaikōura. We are proposing amendments to the Resource Management Act that will facilitate and encourage these sorts of solutions.

The ninth area of reform is around strengthening the powers for national regulation. The RMA makes provision for National Policy Statements and National Environment Standards but these have been used infrequently. Our Government has done more in five years than previous governments in the preceding 18 years covering coastal management, freshwater management, metering of water takes, contaminated land and renewable electricity. However, these tools remain cumbersome. Take a simple issue like requiring all dairy farmers to fence their stock out of rivers. It is a policy most New Zealanders would agree with and indeed farmers and Fonterra have developed a Clean Streams Accord to that effect.

To implement such a policy under the existing law, the Government would need to write a national policy and consult extensively on it. When passed, each council would then have to change their regional plans with another process of consultation. After even this the council would not be able to implement the policy until each individual farmer's resource consent came up for renewal, a process that is likely to take about 30 years. This is ridiculous.

We are proposing a law change that will enable national regulation of these sorts of issues after one round of national consultation and the power to implement immediately backed up by an instant fine regime. Our plan is to have such a rule in place for dairy cows to be banned from streams and rivers by July 2017.

The tenth and final change I want to signal is the need to reframe the Act into an era of electronic communications. The current Act still requires truckloads of paper to be shipped between submitters. For example, all submitters on a plan change must get a copy of other submitters' views. There are sometimes 10,000 submitters to a plan and the council can be required to provide a paper copy to each of the other 9999 submissions.

The public notification requirements are equally arcane. Councils need to be required to have their full up-to-date resource management plans publicly available on the Net and in a form that is readily accessible and understandable to the general public. The age has also arrived that councils rather than being required to send out full applications and submissions in paper form need simply to make the information available on the Net.

These ten broad areas of reform set the direction for this RMA overhaul. We have a power of work ahead to do with officials, with our support parties, at Cabinet committees and Cabinet in developing a detailed Bill. Our ambition is to have a Bill drafted and introduced in the first half of the year, advancing to a full select committee process for passage by year's end.

Changing the law is just part of the solution. We also need a change in culture among Councils and Resource Management practitioners. We need a ‘can do’ rather than ‘can’t do’ mentality. We need a tighter focus on actual environmental effects. We need officials to be practical and to appreciate the impact of the time and costs of how they administer the RMA.

The key political challenge with these reforms will be in being bold enough to ensure we make progress on core issues like improving housing supply and affordability while ensuring we maintain the core environmental controls that protect that which makes New Zealand such a great place to live. It’s a Bluegreen balance I’m confident our Government can deliver.

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