

Proposed definitions for “Reasonably Practicable” in the context of resource management

Recommendation paper to the Ministry for the Environment on the definition of “Reasonably Practicable” as it applies in the proposals for national direction and the resource management legislation under development

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Taituarā

Local Government Professionals Aotearoa

Recommendation from Taituarā — Local Government Professionals Aotearoa (Taituarā) on the resource management definition of “Reasonably Practicable” particularly within the:

- proposals for national direction currently being developed
- resource management legislation that is under development.

What is Taituarā?

Taituarā¹ — is an incorporated society of approximately 1000 members drawn from the local government sector (the sector). Our members include chief executives, senior managers, and council officials with significant policy or operational responsibilities. Taituarā is an apolitical organisation, with a wealth of knowledge about the sector and the technical, practical, and managerial implications of local government legislation and regulations.

The purpose of Taituarā is: To promote and support professional management for all staff working in local government.

We are committed to the ongoing development of local government capability to enhance service delivery to local communities throughout Aotearoa New Zealand. Our focus is on providing professional leadership development, and the promotion of innovation and excellence in regulatory and management practice.

We have an interest in all aspects of the management of local authorities from the provision of advice to the planning and delivery of services, infrastructure and climate resilience and mitigation. Implementing resource management legislation is part of the sector’s purpose and their broader role in providing for and supporting the sustainable environmental, economic, and social wellbeing of their communities. Taituarā support the sector in achieving their purpose.

¹ For additional information see the Taituarā website: <https://taituara.org.nz/>. Our Annual Report 2024 provides further detail.

The purpose of the Taituarā Resource Management Reform Reference Group is to assist the local government sector to contribute to the reform of the resource management system by identifying issues with the potential to impact on local authorities and to support the sector's transition to, and implementation of, the new system.

1. Introduction

To meet the Government's goals in relation to the resource management system reform, Taituarā met with their Resource Management Reform Reference Group (RMRG) to develop agreed definitions for the terms "as far as reasonably practicable" and "as soon as reasonably practicable".

Definition of these terms should provide better consistency of application and operationalisation across national direction and any new resource management legislation.

2. Background

On 24 October 2024 the Ministry for the Environment (MfE) led Local Government Practitioners Group (LPGP)² met to discuss the use of the term "where practicable". This was to better understand how it is or will be interpreted in relation to upcoming changes in National Direction instruments such as the National Policy Statements (NPSs).³

Discussion focused on the definitions of "where practicable" and "reasonably practicable" and also included discussion of "as far as practicable" – in particular, in relation to effects management.

Also mentioned by MfE, was the goal of the Government to make resource application processes more efficient. This is particularly in relation to the cost and timeframe of each application in the context of the Government's high-level goals for the new system.

Following the meeting Taituarā developed a discussion paper for their RMRG. The paper included the Government's objectives for Resource Management Reform, along with an analysis of the feedback from LPGP meeting attendees, and the analysis of several National Direction instruments (please see Appendix One for an overview of the analysis completed).

² The LPGP is a joint initiative between MfE, Taituarā and Te Uru Kahika. Taituarā have been a member, along with members from our RMRG since its inception.

³ Note: While there is further discussion required on other definitions and their place in any effects management hierarchy, the terms under discussion are whole and separate and should be dealt with separately so that they assist in supporting the consenting process (absent of, or alongside, an effects hierarchy).

3. Summary

The term “reasonably practicable” appears 110 times, across 45 sections, in the current version of the Resource Management Act 1991 (RMA).⁴ The word “practicable” also appears – in various framing – a further 28 times. Therefore, it can be said that the term is fundamental to the interpretation of the legislation. The word “reasonable” or “reasonably” is also used many times in the RMA but is not independently defined either on its own or in relation to the word “practicable”.

By common definition, practicable means able to be done or put into practice successfully. Reasonably is a moderator, it means to be sensible and fair. This draws in the cost versus benefit of the term “reasonably practicable” as something that is both sensible and doable. Therefore, these words provide more opportunities for sound reasoning when applied to the resource management context, together.

The lack of definition has led to inconsistent use and leaves a term that is fundamental to resource management policy and legislation, open to ad hoc legal interpretation. Further, it does not provide those working with or managing the RMA with a clear line drawn on the legislative gateways they must pass through to either gain, approve, amend, or revoke resource consents. This flies in the face of the Government’s current goals for reform of the resource management system that relate to providing greater certainty.

There are precedents, within the RMA, for proxy definitions of what is “reasonable”, where the scope of the term has been contextualised and narrowed to a more functional level. There are also examples of this in MfE guidance, where the term “reasonably practicable” is given a contextual definition that differs across instruments but is based on a more succinct and functional definition of the term which could be comparable across instruments.

Considering the analysis of the National Direction instruments, it is arguable that the term “practicable”, operating without clear definition, has become poorly used, overused, misconstrued and, at times, circular, to the extent that it is likely that new legislative instruments may be impeded in their simplicity and clarity particularly by the NPSs that guide their development.

The term “reasonably practicable” is used in the RMA in these ways:

- It is usually used in relation to timing but does not refer to the legal principle where time is of the essence

⁴ Noting the most current version available, is subject to amendments.

- It is sometimes used in relation to options for achieving objectives, for example 32(1)(b)(i) "... identify other reasonably practicable options for achieving the objectives..."
- Or in relation to basic accessibility such as 39AA(5)(a) "... if it is reasonably practicable to do so, enable access to the hearing by ..."
- Or in relation to reasons in reports such as 303(1)(c) "... a report setting out, so far as is reasonably practicable and in respect of ...".

These uses can provide a starting point for definitions of "reasonably practicable" that can be applied across:

1. As far as reasonably practicable (to denote the extent to which any action is sensible and can be taken)
2. As soon as reasonably practicable (to denote the time in which any action can be taken within a sensible timeframe).

4. Recommendations

Taituarā, in consideration of the current reform goals, recommends the following two definitions for "reasonably practicable":

As far as reasonably practicable means that a resource consent application must:

- a. Comply with legislation.
- b. Clearly outline the activity covered by the application, the costs (disbenefits) and benefits of the activity, and the scope of the activity.
- c. Clearly outline the effects of the activity that are outside of those allowable under the relevant national standards, along with:
 - i. Evidence-based effects management plans that can be implemented by the applicant or other interested parties sufficient to mitigate those effects to the satisfaction of the conditions of consent.
 - ii. Monitoring and reporting plans that show compliance with the conditions of the consent granted, and so that effects management plans can be adapted to maintain compliance with the conditions of the consent in a timely way.

As soon as reasonably practicable means that a resource consent application must be submitted, assessed, responded to, progressed, and decided at a time no later than:

- a. That stated in the relevant legislation, or,

- b. 90⁵ days, or,
- c. A time agreed by the parties, or,
- d. A time determined as reasonable by an adjudicator.

This would address the (whether actual or perceived) "dragging on of time" that may be due to actions or influences outside of the application process. Rather, time would be of the essence, in law.

5. Next steps

Taituarā is ready to assist, should MfE have any further questions on the above.

⁵ While this timeframe is not arbitrary, it is offered as a discussion point. A reasonable time for each step must be considered, and a reasonable time overall.

Appendix One: Taituarā analysis

The three high-level goals for the new resource management system focus on a core principle of “enabling”, and this was discussed by MfE in the context of energy infrastructure. The high-level goals are:

1. Unlocking development capacity for housing.
2. Enabling delivery of high-quality infrastructure.
3. Enabling primary sector development.

Additionally, of the 10 core features published, the following six are relevant to the definition of “where practicable” and the way NPSs should align smoothly with the Government’s objectives for reform:

- ... focus on **actual effects** on the environment
- Strengthen and clarify the role of environmental **limits** ...
- ... greater use of national **standards** [and evidence-based monitoring]
- ... one regulatory plan per region ...
- A structure for a new “low cost” resolution process
- Provide faster and cheaper processes with less reliance on litigation, contained within shorter and simpler legislation that is more accessible.

(See [Beehive.govt.nz](https://www.beehive.govt.nz) the official website of the Government for more information on the above)

Taituarā considered the above, while analysing:

1. LPGP meeting attendees feedback, which included in brief:
 - The importance of aligning policy instruments, and policy and law
 - Differences in the use of terms and the way they are applied
 - Confusion around overuse of the different “practicables” at each stage of the hierarchy
 - The importance of cost versus benefit, but a lack of emphasis on benefits
 - The complexity of scale of activities and ensuring a sensible/fair approach

- A current lack of focus on enabling
- Where definition is weak the tendency to apply the terms narrowly is the most prudent approach
- The large volume of technical information, where it does not align, and where it is not feasible or credible; that which is not yet known, and that which is assumed but not known
- Lack of clarity around consideration of natural hazards in relation to specific activities – the need for guidance on what is reasonable and practicable.

2. Three National Direction instruments, as directed by MfE:

- NPS Freshwater Management
- NPS Indigenous Biodiversity
- the New Zealand Coastal Policy Statement.

The above were analysed for their use of the term “practicable” as both a stand-alone term and together with qualifiers such as “as far as”, “the extent that”, “where” etc.

3. An additional five National Direction instruments:

- Resource Management (Freshwater and Other Matters) Amendment Bill (enacted October 2024)
- NPS on Urban Development
- NPS on Renewable Electricity Generation
- An assortment of MfE guidelines on the use of the term “reasonably practicable”
- The RMA.



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