

Legislative Statement | Natural and Built Environment Bill

Presented to the House in accordance with Standing Order 272.

This legislative statement supports the first reading of the Natural and Built Environment Bill (NBE Bill) which, alongside the Spatial Planning Bill (SP Bill), proposes to reform the resource management system. The Bills will repeal and replace the Resource Management Act 1991 (RMA).

The Climate Adaptation Bill, which is also part of the reform, will be introduced in 2023.

Review of the resource management system

The Resource Management Review Panel (the Randerson Panel) was appointed in July 2019 to comprehensively review the resource management system with the aim of improving environmental outcomes while better enabling urban and other development within environmental limits.

The Panel was informed by previous reviews undertaken by the Productivity Commission, the OECD, Local Government New Zealand, and the Environmental Defence Society supported by the Employers and Manufacturers Association, Property Council New Zealand, and Infrastructure New Zealand. There have also been contributions from the Waitangi Tribunal (1993–2022), and the Tax Working Group.

The Panel produced an Issues and Options paper in November 2019 and engaged with local government and stakeholders from industry, primary production, environmental, and Māori organisations. This informed the Panel's June 2020 report, 'New Directions for Resource Management in New Zealand'.

In February 2021, the Government announced it would repeal the RMA and replace it with three new Acts – based on the recommendations of the Randerson Panel.

Exposure draft

In June 2021, an exposure draft of the NBE Bill was referred to the Environment Committee for an inquiry, to provide the public with an early opportunity to provide input on key aspects of the future system.

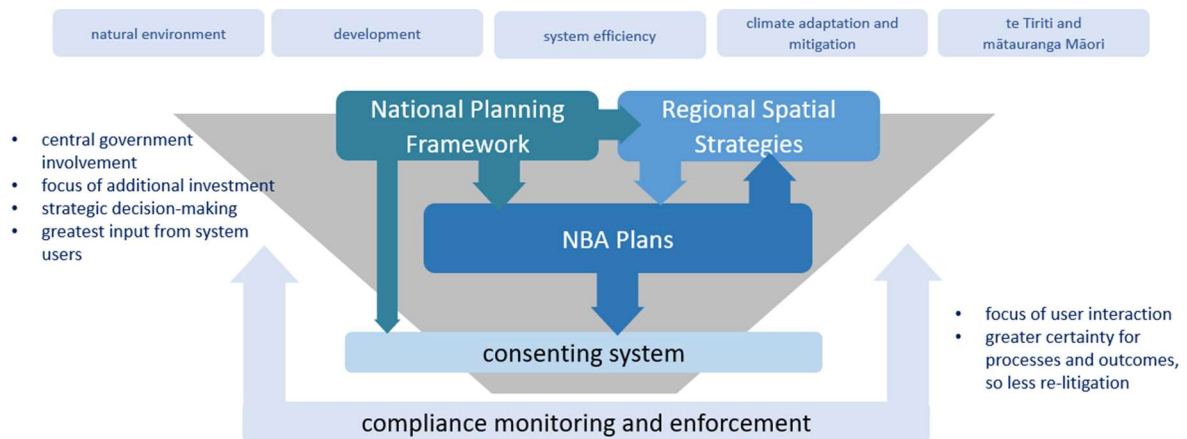
After the Environment Committee considered public submissions, the Committee recommended that the Government proceed with the development of the Bill and made detailed recommendations. The Environment Committee's advice has been considered in conjunction with ongoing policy work to develop the Bill.

New resource management system

The NBE Bill is an integrated statute for resource use and environmental protection that works alongside the SP Bill. The NBE Bill sets out how the environment is to be protected and enhanced, enables development within environmental limits, and aims to achieve positive outcomes for the benefit of the natural and built environment.

The diagram below shows core components of the new system (Regional Spatial Strategies will be required by the SP Bill).

Overview – System Operation



Purpose

The purpose of the NBE Bill, in summary, is to enable the use, development and protection of the environment in a way that supports the well-being of present generations without compromising the well-being of future generations, and to recognise and uphold te Oranga o te Taiao.

The Bill also requires that the principles of te Tiriti o Waitangi are given effect to, as is the case under the Conservation Act 1987.

Outcomes

As recommended by the Randerson Panel, the NBE Bill shifts the focus of the current resource management system from managing adverse effects to promoting positive outcomes. Legislative principles will provide further assistance on how decisions to achieve outcomes should be made.

The outcomes in the Bill will play a different role to that of sections 6 and 7 of the RMA. They are no longer intended to simply serve as a list of matters to consider in deciding resource consents. Rather, the outcomes will guide national direction, strategies, and plans, which will in turn guide consideration of resource consents. They include positive outcomes for the development of infrastructure, including for housing, which will be detailed in a chapter of the National Planning Framework. This will increase certainty in the system as a whole.

The Randerson Panel¹ proposed a comprehensive set of outcomes to build on and more clearly define the existing matters in sections 6 and 7. The Panel recommended no hierarchy among the outcomes – any conflict in the application of the matters would be reconciled and clarified through regulations and plans. The Panel also proposed requirements for the Minister to identify targets to achieve continuing progress towards these outcomes and to identify nationally significant features, landscapes, areas and habitats.

The Bill contains a revised and consolidated list of outcomes, building off the refinements proposed by the Environment Committee in its inquiry report. There is still no hierarchy among the outcomes, affording discretion for decision-makers in how they are pursued once limits and targets are met. New requirements to identify and protect nationally important places refine the Panel's approach by

¹ Report of the Resource Management Review Panel, June 2020, p.79.

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ensuring these matters are appropriately managed. The Environment Committee will be asked to consider whether the new requirements strike the right balance between enabling development and protecting the environment.

Limits and targets

Environmental limits will be set at the state of ecological integrity at Bill enactment, preventing further degradation in the natural environment. Limits for human health will be set according to relevant health guidelines. Limits will apply across areas known as management units, not specific sites, to achieve 'no-net-loss' of ecological integrity within the management unit. This provides flexibility to resource users while managing cumulative effects.

Limits may be set in the National Planning Framework (NPF) by the Minister, or in Natural and Built Environment Plans (NBE plans) if required by the NPF. A tightly framed exemptions regime will further enable development.

Minimum level targets will be set in the NPF where the environment is already unacceptably degraded. These must be implemented in NBE plans and consent decisions. Discretionary targets may also be set for other parts of the natural and built environment to achieve the outcomes in the Bill.

Managing adverse effects

Managing adverse effects will still be an important feature of the new resource management system. The NBE Bill includes a general duty on everyone to avoid, minimise, remedy, offset, or take steps to provide redress for any adverse effect on the environment.

The Bill also provides that any activity creating an adverse effect that is more than trivial on specified nationally important places or highly vulnerable biodiversity areas can only be considered for approval if an exemption applies.

National Planning Framework

The NBE Bill requires an NPF to be prepared as secondary legislation. The responsible Minister must ensure the NPF includes direction on key topics, including the outcomes.

The NPF will set the national level policy framework for resource management that directs planning and decision-making in Regional Spatial Strategies (RSS), and NBE plans and consenting. Including all national direction in one cohesive instrument will improve integration between existing instruments.

The NPF will contain some key features of the new resource management system:

- outcomes – in addition to those in the Bill itself
- environmental limits and targets – to prevent further degradation in the natural environment and drive improvement
- overarching layer – to provide direction on integrated management and resolve conflicts between outcomes.

Work is already underway to transition existing RMA national direction into the NPF, to ensure the first NPF is in place to inform the first RSS. The first NPF will incorporate the policy intent of existing national direction, and contain new content in a chapter on infrastructure (developed by the Infrastructure Commission/Te Waihanga) and other necessary new content to inform RSS. Additional content will be added to the NPF through future amendments to it.

Regional planning committees

The NBE Bill will establish a regional planning committee in each region to prepare, consult on, and approve an NBE plan. The committees will comprise local government and Māori appointees. Each committee will include a minimum of six members nominated by each local authority and a minimum of two Māori representatives. Regions will determine the exact number of people in their regional planning committee, with disputes being resolved by the Local Government Commission.

Councils in the region will be able to develop 'outcomes statements' that the committee will have to consider when making decisions.

Natural and Built Environment Plans

The NBE Bill will require the regional planning committee for each region to prepare a single NBE plan that manages the natural and built environment, replacing existing regional policy statements, regional plans, and district plans. This will reduce over 100 RMA plans under the current system to 15 NBE plans. The Nelson and Tasman regions (ie Nelson City and Tasman District as unitary authorities) will produce a combined NBE plan.

NBE plans will implement the Natural and Built Environment Act (NBA) on a local scale, give effect to the NPF where directed, be consistent with RSS, guide consent decision-making, and provide more certainty about consenting, notification, and assessment requirements.

A new feedback process called 'Enduring Submissions' will be introduced to allow submissions to be lodged before plan notification and throughout the plan hearings process. Submissions will be heard by an Independent Hearings Panel (IHP), broadly following the approach used to develop the Auckland Unitary Plan, with appeals to the Environment Court only allowed if the regional planning committee rejects the IHP's recommendations.

Resource consents

The NBE Bill requires decision-makers to consider how a consent contributes to achieving outcomes. Notification and consenting decisions will be assessed against plan provisions that must align with outcomes, targets and limits set out in planning instruments. The NPF will play a critical role in providing guidance on consenting activity categories and will improve consistency for users.

The number of activity categories is reducing from six in the RMA to four: permitted (yes); controlled (probably), discretionary (maybe) or prohibited (no). The scope of permitted activities has been expanded to reduce the number of unnecessary consents.

The new system includes a framework for allocating resources that is designed to move toward a more deliberate and strategic approach to how resources are allocated. The current legal requirement for a first-in first-served approach and the near automatic renewal of existing users when issuing consents will be updated for freshwater resources, as well as other resources where regional planning committees choose to apply the new framework and/or the NPF directs different approaches.

The new allocation framework implements the Randerson report's recommendations and enables a range of allocation methods. Three principles of sustainability, efficiency and equity will guide the development of allocation methods alongside other relevant provisions in the Bill (including the Tiriti clause) and any detailed direction in the NPF.

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A Freshwater Working Group will be established to make recommendations on matters relating to freshwater allocation, and on a process for engagement between the Crown and iwi and hāpu, at the regional or local level, on freshwater allocation.

There will be no changes to the existing RMA provisions on charging for sand, shingle, shell and other natural material and occupation of marine/river space, and geothermal energy. Payments of royalties for sand and shingle extraction to Customary Marine Title holders will continue, consistent with rights under the Marine and Coastal Area (Takutai Moana) Act 2011. The Bill enables market-based allocation methods except for freshwater takes and diversions. Pricing for water cannot be enacted without prior parliamentary approval.

The Bill makes it clear that elected councils are responsible for ensuring planning and consent processes are efficient.

Designations

Under the NBE Bill, designation powers will be available to a wider range of infrastructure providers, including providers of site-specific infrastructure.

Procedural changes will enable requiring authorities to secure land for future infrastructure earlier, and to protect that land from conflicting land use, without needing to provide detailed information up front about how the effects of (future) construction and operation will be managed. In conjunction with increased lapse dates, this approach enables better strategic planning.

Compliance, monitoring, enforcement, and system oversight

The compliance, monitoring and enforcement aspects of the resource management system will be strengthened to drive better compliance and environmental outcomes.

System oversight will include regular government monitoring and reporting to Parliament on resource management system performance.

Māori participation

A new National Māori Entity will be established to monitor the Te Tiriti performance of the system. Once established, the Entity will be able to determine its permanent name.

The RMA interfaces with over 70 pieces of Treaty of Waitangi settlement legislation. All Treaty settlement obligations, Ngā Hapū o Ngāti Porou commitments, and existing arrangements under the RMA (Mana Whakahono a Rohe and joint management agreements) relating to resource management will be transitioned into the future system in accordance with principles and processes set out in the NBE Bill. The effect of those existing arrangements will be carried forward, meaning they will not be written up or down.

An omnibus bill or bills is proposed to amend relevant settlement Acts and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 (NHNP Act), informed by discussions with those affected groups.

The timing of the omnibus bill(s) will depend on the timing of the NBE and SP Bills and how long it takes to reach agreement on deeds to amend with Post Settlement Governance Entities (PSGEs). Because the content of the omnibus bill(s) can only be finalised once the content of the NBE and SP Bills is certain, there will be a delay between the Bills receiving Royal Assent and the omnibus bill(s) upholding Treaty settlements and NHNP Act being enacted.

Transition to the new resource management system

The 'transition' period primarily refers to the time from enactment of the NBE Bill until each of the 15 regions have an NBE plan in place that has legal effect. This will be staged, starting with three regions. NBE plans will be faster to prepare, reducing from (on average) 7 years for RMA plans to a maximum of 4 years. Transition to the new resource management system is anticipated to take around 7-10 years following enactment of the Bill.

The RMA will continue to apply prior to NBE plans having legal effect. This includes RMA national direction, regional policy statements, plans, consents and RMA processes and decision-making (including the freshwater planning process). New RMA national direction developed during the transition will consider the desirability of consistency with the NBA.

The Spatial Planning Act, NBA and NPF will generally not have legal effect on decisions made under RMA plans and policy statements. This approach will support establishing the new system efficiently and effectively. It will also minimise disruption during the transition period and avoid the complexity of applying the RMA and NBA simultaneously to decision-making in any region. The Government can if required continue to update RMA national direction.

Additional transitional provisions will be added to the NBE Bill during its progress through the House.

Water Services Entities Bill (WSEB)

The WSEB is currently going through the parliamentary process. The WSEB and NBE Bill will need to cross-reference each other to provide certainty about how the two regimes interact. Amendments proposed to the RMA as a result of the WSEB will need to be carried over into the NBE Bill.