

Legislative Statement | Natural and Built Environment Bill

Presented to the House in accordance with Standing Order 272.

This legislative statement supports the second 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 Bill was introduced on 15 November 2022 and was referred to the Environment Committee (the Committee) on 22 November 2022. The Committee received and considered 2,945 written submissions and heard oral evidence from 365 submitters on the Bill. The Committee reported back with recommended changes to the Bill on 27 June 2023.

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

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 Committee for an inquiry, to provide the public with an early opportunity to provide input on key aspects of the future system.

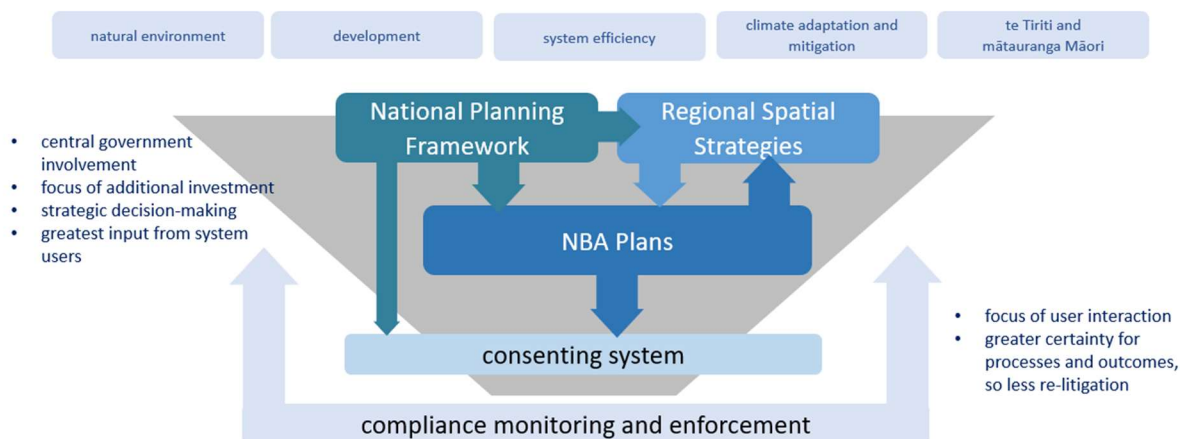
After considering public submissions, the Committee recommended that the Government proceed with the development of the Bill and made detailed recommendations. The Committee's advice has been considered in conjunction with ongoing policy work to develop the Bill.

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 (RSS) will be required by the SP Bill).

Overview – System Operation



Main features of the Bill and changes recommended by the Environment Committee

The Committee recommended amendments to the Bill to improve workability. The Committee has also restructured parts of the Bill for readability reasons, and recommended minor and technical changes.

A summary of the main features of the Bill and key changes proposed by the Committee are outlined below.

Purpose

The purpose of the revised NBE Bill is simplified to uphold Te Oranga o te Taiao, the definition of which has been refined. The purpose must be achieved in a way that protects the health of the natural environment. Subject to this, use and development is enabled in a way that promotes the well-being of present and future generations.

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. The revised Bill clarifies that the Tiriti clause only applies to the Courts when they are seeking to interpret and apply the legislation, or when the Environment Court is determining a plan as the primary decision maker.

Outcomes

The Bill retains the shift from managing adverse effects to promoting positive outcomes. Legislative principles 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 the new chapter of the National Planning Framework (NPF). This will increase certainty in the system as a whole.

The revised Bill proposes refinements and additions to the system outcomes and decision-making principles. While there is still no hierarchy among the outcomes, affording discretion for decision

makers in how they are pursued once limits and targets are met, additional direction is included on how outcomes should be provided for.

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.

The revised Bill proposes that minimum acceptable limits (previously minimum level targets) must be set to drive improvement to the ecological integrity of the natural environment where it is unacceptably degraded. Once a minimum acceptable limit is achieved, it must be maintained or improved. Interim limits have been removed from the Bill.

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 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. The revised Bill proposes to provide additional flexibility by allowing Crown agencies and requiring authorities to apply directly to the Minister for an exemption.

Mandatory targets must continue to be set for any aspect of the natural environment that a limit has been set for to help drive improvement. 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 Bill includes a general duty on everyone to avoid, minimise, remedy, offset, or take steps to compensate for any adverse effect on the environment.

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

National Planning Framework

The 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 revised Bill proposes to expand the list of matters the NPF must provide direction on to include urban trees and enabling the supply of fresh fruit and vegetables.

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 underway to transition existing RMA national direction into the first NPF, so it is in place to inform the first RSS. This transitional NPF will incorporate the policy intent of existing national direction. It will also contain new content 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.

The transitional NPF must be publicly notified with 8 months of the Bill being enacted, with a further version containing additional content to be publicly notified by 1 January 2028.

Regional planning committees

The Bill will establish a regional planning committee (RPC) in each region to prepare, consult on, and approve an NBE plan (and RSS under the Spatial Planning Act). Each RPC will have at least six members, comprising council and Māori appointees. Most members will be appointed by a region's councils, and a minimum of two will be appointed by Māori appointing bodies. Regions will determine the exact number of members on their RPC, with any disputes to be resolved by the Local Government Commission.

While these main features of the RPC are largely unchanged, the revised Bill proposes several improvements to improve processes and strengthen local voice:

- set clear timeframes and key steps for the formation of an RPC
- clarify the interface with current local government practices and legislation
- simplify the resourcing arrangements for the secretariat
- provide simpler arrangements for unitary authorities
- improve the dispute resolution process for iwi, hapū and other Māori groups, including the option to use tikanga-based facilitation and mediation
- require the RPC to provide constituent local authorities in its region with an opportunity to review and provide feedback on:
 - how a proposed plan provides for statements of community outcomes (SCO) and statements of regional environmental outcomes (SREO)
 - the financial implications for the local authorities of implementing the plan.

Natural and Built Environment Plans

The NBE Bill will require the RPC 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 the number of RMA plans in the current system from over 100 to 16. The Nelson and Tasman regions will produce a combined NBE plan.

NBE plans will implement the NBE Bill on a regional and 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. The revised Bill refines the purpose of NBE plans to include providing for the needs of the community.

Submissions on an NBE plan 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 RPC rejects the IHP's recommendations. The revised Bill extends submission timeframes to better enable the provision of supporting information and providing for a summary of submissions.

The revised Bill also streamlines evaluation reporting requirements, which have become increasingly costly and burdensome under the RMA.

Resource consents

The Bill requires decision makers to consider how a consent contributes to achieving outcomes. Notification and consenting decisions will be assessed against plan provisions, which 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 Bill makes it clear that elected councils are responsible for ensuring that planning and consent processes are efficient.

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

This approach is reinforced by a new procedural principle requiring plans to reduce reliance on resource consenting processes. The revised Bill also proposes significant changes to improve the workability of activity categories and notification provisions, while reflecting important jurisprudence from the Supreme Court in the *King Salmon* and *Davidson* cases.

Resource allocation

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 consents held by existing users will no longer be the only option for allocating certain resources.

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

- expand the exemptions to RMA transitional consents and 10-year NBE consents to include all existing hydro-electricity generation schemes with a generation capacity of at least 5 megawatts, as well as public wastewater and stormwater networks
- include a regulation-making power for the Minister for the Environment to introduce further exemption grounds for nationally or regionally significant infrastructure, and water storage that would deliver better environmental or climate change resilience outcomes
- amend the maximum duration of transitional RMA consents (if granted) from 3 years to 5 years after allocation methods in NBE plans take effect.

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 occur without prior parliamentary approval.

Fast-track consenting

The revised Bill proposes to keep and refine the fast-track consenting process for use during the transition to the new system. It sets a clearer two-step process for fast-track consenting (Ministerial referral process, then Expert Consenting Panel consideration) that is more consistent with the now repealed COVID-19 Recovery (Fast-track Consenting) Act 2020.

Designations

Under the 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.

The revised Bill proposes several refinements to the designations process, including:

- clearer notification pathways, and stronger alignment with Public Works Act 1981
- improving the public benefit test to enable entities other than those already defined in the Bill as network utility operators to apply to become requiring authorities
- enabling natural and green infrastructure to be provided for as a public work
- clarifying that designations can only be made to land and not the coastal marine area.

Compliance, monitoring, enforcement, and system oversight

The revised Bill refines and further strengthens compliance, monitoring and enforcement aspects of the resource management system to drive better compliance and environmental outcomes.

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

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 revised Bill proposes to clarify that the Entity's advisory function is based on knowledge and insights gained from its primary

(monitoring) function, and that its role in the NPF is not a replacement for direct engagement with iwi, hapū, Māori. The revised Bill now also establishes a nominating committee to appoint members.

The RMA interfaces with over 60 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 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 passage 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. The revised Bill provides more flexibility for when the RPC composition process can start once agreement has been reached with PSGEs and other groups.

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 16 regions have an NBE plan in place that has legal effect. The transition will occur on a region by region basis as treaty settlements are upheld and RPCs established. Transition to the new resource management system is anticipated to take around 7-10 years following enactment of the NBE 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. New RMA national direction developed during the transition will consider the desirability of consistency with the NBA. RMA national direction will cease to apply in a region once a decisions version of the NBE plan is released by the RPC (ie the region’s NBEA date).

The SPA, 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. Government can if required continue to update RMA national direction.

The revised Bill includes much more detailed commencement, savings and transitional provisions.