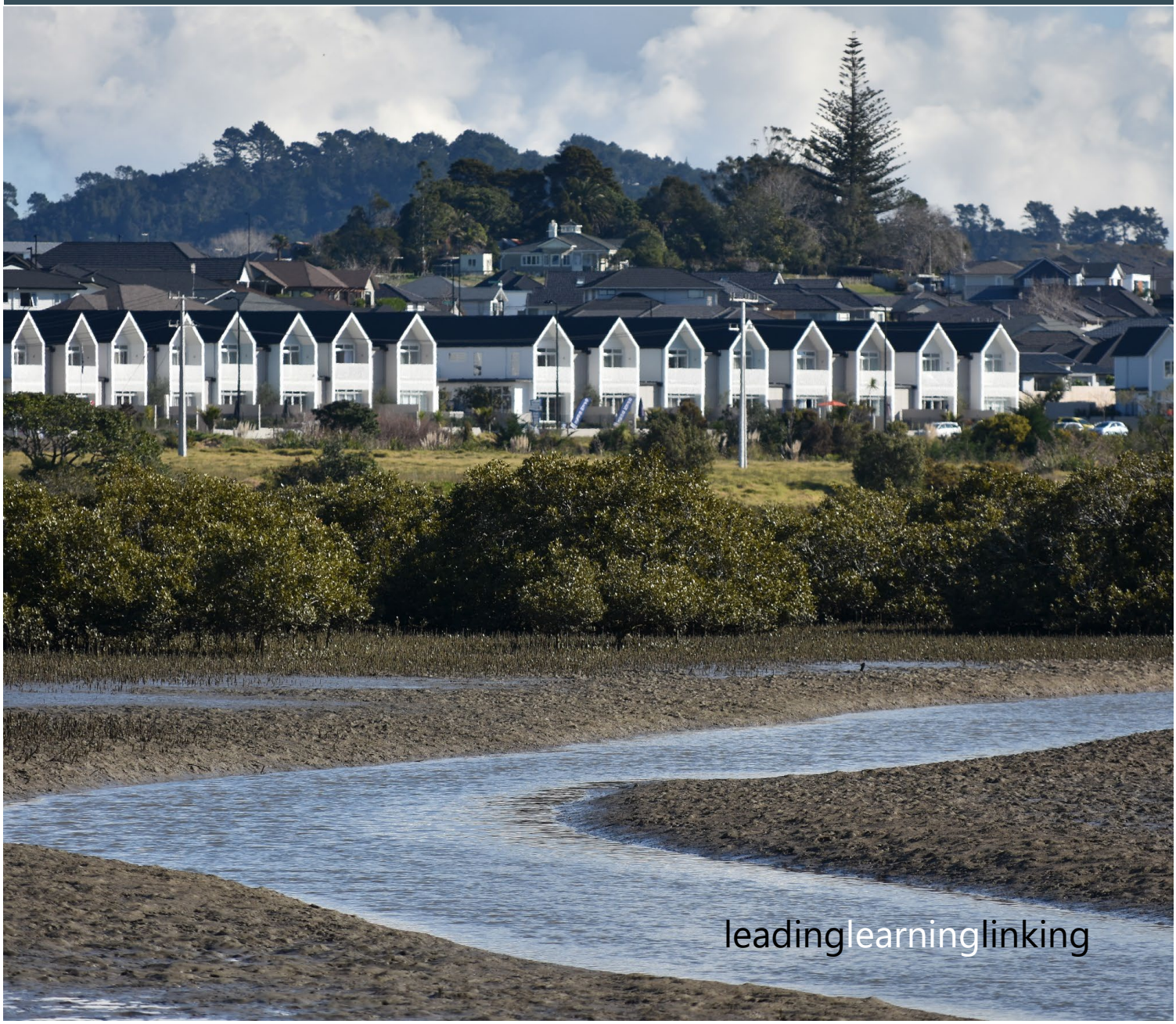
Taituarā
Local Government Professionals Aotearoa

Natural and Built Environments Act

A submission to the Environment Select Committee on the exposure draft of the Natural and Built Environments Act.

August 2021



What is Taituarā?

Taituarā — Local Government Professionals Aotearoa (formerly the NZ Society of Local Government Managers) is an incorporated society of approximately 900 members[1] drawn from local government Chief Executives, senior managers, and council staff with significant policy or operational responsibilities. We are an apolitical organisation that can provide a wealth of knowledge about the local government sector, and in particular knowledge of the technical, practical and managerial implications of legislation and policy.

Our vision is:

> *Professional local government management, leading staff and enabling communities to shape their future.*

Our primary role is to help local authorities perform their roles and responsibilities as effectively and efficiently as possible. We have an interest in all aspects of the management of local authorities from the provision of advice to elected members, to the planning and delivery of services, and other important support activities such as election management and the collection of rates.

This submission has been developed with input from many local government Chief Executives, senior managers, and council staff from across Aotearoa. We acknowledge the input of our Resource Management Reform Reference Group (RMRG). We encourage the Government and Environment Select Committee to continue to engage with our RMRG on the implications of reforming the resource management system for local government, and in particular the sector's workforce.

The members of the Taituarā RMRG are:

- Aileen Lawrie, Chief Executive, Ōpōtiki District Council (Chair)
- Hamish Lampp, Group Manager Regulatory and Planning, Whanganui District Council
- Simon Mutonhori, Group Manager Planning and Regulatory Services, Wairoa District Council
- Lucy Hicks, Policy and Planning Manager, Environment Southland
- Anna Johnson, City Development Manager, Dunedin City Council
- Charlotte Almond, Policy and Strategy Manager, Horizons Regional Council
- Simon Banks, Project Leader – Urban Planning, Tauranga City Council
- Rachel Rophia, Team Leader – Māori Relationships, Far North District Council
- Marianna Brook, Senior Advisor, Otago Mayoral Forum

[1] As at 20 July 2021

- Pauline Hill, Senior Policy Advisor/Kaitohutohu Matua, Te Hunga Whiriwhiri, Greater Wellington Regional Council
- Blair Dickie, Principal Strategic Advisor, Waikato Regional Council

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Introduction

Taituarā thanks the Environment Select Committee (Select Committee) for the opportunity to submit on the exposure draft of the Natural and Built Environments Act (NBA).

We wish to appear in support of this submission.

Replacing the Resource Management Act 1991 (RMA) is a significant undertaking and will fundamentally change the way in which local government delivers resource management functions in Aotearoa.

We acknowledge that there is still a significant amount of work to be done on the design of the new legislative system, including drafting the balance of the NBA and to draft the Spatial Planning Act (SPA) and Climate Change Adaptation Act (CAA). There is also a considerable amount of work to be done to put in place necessary arrangements to enable an effective transition from the current system to the new one.

While the exposure draft provides some helpful indications as to the Government's intended direction of travel, it also creates many uncertainties. While we appreciate it was never intended that the exposure draft would contain all the detail that will be included in the final Bill, the outcome is a situation where local government (and others) have far more questions than answers. Our submission reflects this.

As well as setting out some general comments on the reform of the resource management system, this submission sets out:

- our views on the exposure draft, and the implications of what is currently proposed for local government
- matters that we consider must be addressed in the complete Bill
- preliminary views on the support and types of resourcing that local government will need to effectively transition to and implement the new resource management system (acknowledging that the full extent of the support and resourcing needed will become clearer as further work on legislative design is progressed)
- further suggestions for ways to create a more efficient and less complex resource management system, as provided for in the Select Committee's Terms of Reference.

Engagement with local government on the resource management reform programme

Local government plays a critical role in the management of the natural and built environments in Aotearoa. Indeed, without local government much of the RMA could not be implemented.

Although the Government's reform of the resource management system will fundamentally change the role that local government plays, it will remain critical to the delivery of the new system. For example, while territorial authorities are likely to lose much of their current responsibility for plan making, we envisage that they will still be expected to invest in implementing regional plans.

That's why it is vital that the Government engages closely with local government on its reform programme. Local government must be engaged not only in the design of the NBA, SPA and CAA and the National Planning Framework (NPF), but also on what arrangements and support will be needed for effective transition to and implementation of the new system. Given the significant scope of the reform programme and the time the transition will take close engagement with local government will have to continue for some time.

To date, Taituarā is concerned that the Government's engagement with local government hasn't been proportionate to the significance of the resource management reform programme, or the implications that it will have for the sector. We are concerned at the rapid pace with which the reform of the resource management system is progressing. Indeed, the timeframe for making submissions on the exposure draft has been difficult for councils.

While we acknowledge that the Minister for the Environment (Minister) has signaled to Mayors, Chairs and Chief Executives a desire to engage with local government in a more substantive and enduring way, we cannot emphasise the importance of this enough. The Government should continue to work closely with Taituarā and Local Government New Zealand (LGNZ) to find an effective mechanism for genuinely and meaningfully partnering with the sector on the reform programme. If such engagement is to be effective and enduring, it will need to be adequately resourced by the Government.

Ensuring appropriate local input into place-making decisions is of critical importance to both local government and mana whenua. But it appears that there is a disconnect between this view and the views of the Government as reflected in the exposure draft. That's despite the Prime Minister recently saying in a speech to the LGNZ Conference, "*We want to support councils to envisage a role that is not about pipes*

and plants but is about place-making, place-building and wellbeing."[2] Slowing down the reform process would allow the Government to properly partner with local government and mana whenua to design a system that not only better aligns with the needs of its key implementation partners, but also reflects all parties' desire for strong community involvement in place-making and place-building.

Part of the rationale behind putting out an exposure draft of the NBA was to receive early feedback from interested parties that could inform the development of the balance of the Bill. But the exposure draft (and indeed the NBA itself) is largely hollow legislation in that so much of the detail underpinning it will be set via the NPF. Without a considerable amount of detail on the contents of the NPF, or the process for developing it, a lot of local government's input at this stage is speculative.

[2] https://www.beehive.govt.nz/speech/speech-lgnz-conference-0

Summary

The key points of our submission are:

1. The Government must engage closely with local government on the reform programme, including design of legislation and the arrangements for transitioning to and implementing the new system to ensure the most efficient and effective output and delivery. This will enable the Government to leverage local expertise and knowledge, including knowledge local government staff have of processes established under other statutory and regulatory documents that could be relevant to the design and implementation of the NBA.

2. We support the Government's commitment to giving mana whenua a greater and more strategic role in the new system. This will require working closely with mana whenua in the design of, transition to and implementation of the new system.

3. As the Treaty partner, the Crown should fund participation by mana whenua in the new system. This should include funding to support mana whenua to participate in legislative design and implementation work programmes.

4. Place-making is of critical importance to local government and its communities. This must be reflected in the design of the new system, and in particular opportunities for input into plan making by local authorities and the public.

5. The proposal to completely overhaul the resource management system carries a high risk of failure due to the sheer scale of change and the disconnect between new proposed delivery mechanisms and existing tools, institutions and governance arrangements. We suggest that a staged approach to the reform programme would better deliver on the Government's objectives for the reform programme and reduce risks associated with the current proposal.

6. We are concerned that the local government and resource management sectors are already facing significant capacity issues and will struggle to deliver on a new system while continuing to progress essential short-term planning work.

7. The success of the new resource management system will depend in large part on how well the transition to and implementation of the new system is planned for, managed and resourced. Central government needs to dedicate

considerably more focus and resource to transition and implementation arrangements.

8. The reform of the resource management system needs to align with other reforms impacting the local government sector, including Three Waters Reform and the Review into the Future for Local Government. We are concerned that the reform programmes are not well-integrated.

9. The purpose of the NBA as currently drafted does not adequately prioritise the built environment. The emphasis appears squarely on environmental protection, despite the stated objective of a system that is more enabling of development. This must be addressed.

10. The purpose clause as currently drafted is unclear and is likely to create a number of conflicts between the competing, unprioritised considerations it sets out. The NBA appears to continue the RMA's approach of setting out long "shopping lists" of matters that need to be considered. This is at odds with the Government's objective of a resource management system that is more efficient, effective and less complex. A clearer hierarchy of priorities (as in the NPS-FM) would assist.

11. The requirement to meet environmental limits could have unintended consequences, particularly for development. The NBA needs to better address whether trade-offs are permissible in the new system, and if so, how they should be managed.

12. The NBA in and of itself is largely hollow legislation. Much of the detail that underpins the NBA remains to be set via the NPF. Local government should be closely engaged in the development of the NPF to ensure it is workable.

13. There is a considerable amount of detail to be worked out with respect to plan making processes, planning committees and their secretariats. These details must be worked out in partnership with local government and mana whenua.

14. A key issue to resolve is what roles and functions constituent local authorities will continue to play in the new system. This must be done in partnership with local government.

15. The Government should look closely at other plan making processes in its design of the new NBA process, including Auckland Council's Unitary Plan process, the process adopted for Christchurch City Council's Replacement District Plan and the new Freshwater Planning Process that all regional councils are currently working on.

Overarching comments

Before turning our attention to the specific contents of the exposure draft, we make some overarching comments on the resource management reform programme and the NBA.

Alignment of the NBA with the Government's objectives for the reform of the resource management system

We broadly agree with and support the Government's five objectives for the reform of the resource management system, being:

1. Protect and restore the environment and its capacity to provide for the wellbeing of present and future generations.
2. Better enable development within natural environmental limits.
3. Giver proper recognition to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori and mātauranga Māori.
4. Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change.
5. Improve system efficiency and effectiveness, and reduce complexity while retaining appropriate local democratic input.

Notwithstanding our broad support for these objectives, we have some reservations as to whether a complete overhaul of the resource management system will achieve these objectives. While certain changes are necessary (such as providing a more strategic role for mana whenua in the resource management system, shifting to an outcomes (as opposed to effects) based system, requiring councils to undertake strategic planning and providing stronger national direction around how to adapt to and mitigate the impacts of climate change), a staged and slower approach to reform may help to better achieve the Government's reform objectives, and in particular objective five. We provide some suggestions for staging the reform process in further detail below.

Much of this submission discusses whether the provisions of the exposure draft will or will not satisfy these objectives. However, how well the NBA meets these objectives will depend in large part on:

- the drafting of the balance of the NBA
- how the NBA integrates with the SPA and CAA
- the development of the proposed NPF
- the arrangements for transition to and implementation of the new system (including how it happens and what resources are dedicated to it).

We note that a full Regulatory Impact Statement by Treasury for the NBA exposure draft is not yet available. Given the far-reaching extent and financial and resource implications that the reform will have on all sectors throughout Aotearoa, the proposed changes will result in significant transaction costs. A comprehensive and critical analysis of the impact versus benefit of these changes needs to be completed and made available as soon as possible.

The importance of local democratic input

We are concerned that the proposals around the creation of regional natural and built environments plans (NBA plans) and establishment of regional planning committees have the potential to significantly curtail opportunities for local input into plan making.

What a community looks and feels like is highly localised, and something that should be determined by local people. Creating new regional plan making functions and regionalised rules has the potential to undermine the ability of local communities to influence and make decisions about the place they live. Communities across the country – and indeed within regions – are varied and diverse. This variation and diversity is why we have local government. However, the shift to more consolidated regional processes and decision-making is at odds with this.

Usually, participation increases when the policy or plan being developed and consulted on is easier to engage with. This is influenced by how easily people can understand the policy or plan and how it might affect them or the things they have an interest in. How accessible policy or planning documents are will also influence people's willingness to participate. The larger and more difficult to read a document is, the less likely a community is to engage with it. Councils know from experience that people tend to get concerned when something happens next door, or in their neighbourhood, but typically have little understanding that the rules dictating these things need to be influenced at the district planning level. This is likely to be exacerbated if those rules are set at a regional level.

It seems inevitable that the shift to 14 regional NBA plans will result in planning documents that are by default large and complex. By necessity, these documents will need to include a considerable amount of detail if they are to deliver outcomes for both environmental protection and land use and development within the many, varied districts that make up a region.

Further exacerbating the loss of local input into plan making is the proposal to significantly reduce input by democratically elected local representatives. This is so in respect of both the proposed membership of the planning committees that will be

responsible for making NBA plans, and the proposed shift to greater use of national direction.

The proposed planning committee structure will make individual local authorities (and particularly territorial authorities) less relevant in place-making decisions for their communities. While the mechanisms for public input into regional plan making are still to be determined, we have reservations around the likelihood of communities engaging with regional-scale processes and bodies. These are likely to be perceived as operating at arms-length from local circumstances and issues, and unrepresentative of the communities they are making decisions on behalf of.

Just as important as input into plan making by individual local authorities is input by the communities that they represent. Local authorities and their democratically elected governors are well connected to their communities, and particularly the many and varied community-based groups that contribute to the development of a place. We are concerned that limiting local authority involvement in plan making may, consequently, limit the input of community-based groups, who may feel less connected to regional level processes (particularly if they don't feel connected to the local government representatives sitting on those committees) and concerned at their ability to influence highly localised, place-based decisions through a more regional system. This makes consideration of the role that constituent local authorities continue to play in the new system critically important.

While we can see value in greater use of national direction, the development of national direction typically has low levels of public engagement and input from democratically elected local representatives. These concerns must be addressed in the further work to be done around setting the process for developing the NPF.

The Government seems to view a significant reduction in local democratic input into resource management planning as a necessary cost to achieving better system efficiency. If this is the Government's position it should be more openly acknowledged so that communities are able to debate it.

<u>Transition to and implementation of the new resource management system</u>

The success of the new resource management system is critically dependent on how well the transition to and implementation of the new system is planned for, managed and resourced. Local government needs to be closely engaged with on transition and implementation arrangements. This should include consideration of what resourcing from central government will be needed to support transition and implementation.

It is unfortunate that transition and implementation challenges and risks have not been considered in the exposure draft, and don't yet seem to have received a

considerable amount of attention from the Government. Transition and implementation are both the biggest challenge and risk to the success of the reform programme. The lack of focus on transition and implementation is what stifled the 1991 reform of the resource management system.

A number of local government's concerns around transition to and implementation of the new system are noted throughout this submission. Key concerns relate to:

- how the reforms will change local government's roles and responsibilities and impact on a sector that is already under significant strain and facing capacity issues
- support for the change in planning culture – particularly the proposed shift to a system that promotes outcomes for the benefit of the environment (as opposed to managing adverse effects) and that gives a greater and more strategic role to mana whenua
- timing and sequencing of the component parts of the reform programme (the NBA, NPF, SPA and CAA) and the transition
- implications for existing plans and plan changes at various stages of development. Work needs to be done to identify what planning provisions can be carried over into the new system and not "lost in transition".

The resource management system underpins many areas for councils, including growth and development, infrastructure planning and funding, natural hazards management and responding to climate change. Councils will need time and support to integrate the reforms right across their business. This will not be a quick, easy or cheap undertaking.

The resource management sector is currently under significant strain and facing capacity issues, including sourcing and retaining appropriately skilled people. We are concerned that the complete overhaul of the resource management system presents very real risks to keeping and maintaining talent and institutional knowledge, particularly if there is inadequate consideration of how existing employment arrangements will be affected. We make further comment on this issue in connection with our feedback on planning committee secretariats below.

One of the key aspects of transition is working through the time at which the NPF takes effect, relative to the time at which regional spatial strategies and NBA plans are required to be developed. Having high level direction in place will be critical to the success of implementing new regional spatial strategies and NBA plans.

All these risks and challenges must be kept "front of mind" when the Government designs the arrangements for transition and implementation. They justify the importance of central government working closely with local government on this

part of the reform programme. They also justify adequate national funding being made available to support the transition, particularly given the considerable public benefit that there is in getting the new planning system right. We encourage the Government to develop its implementation programme with reference to the Eight Principles of Effective Implementation that Taituarā has developed (contained in **Appendix 1**).

A staged approach to reforming the resource management system

We believe that a staged approach to reforming the resource management system would better achieve the objective of an efficient and effective system.

The proposal to completely overhaul the resource management system carries a high risk of failure due to:

- the sheer scale of change
- the disconnect between the new proposed delivery mechanisms and existing institutions, tools and governance arrangements
- whether a sector already facing significant capacity issues will be able to deliver on a new system while still progressing essential short-term planning work (including finalising second generation plans, progressing plan changes and giving effect to the new direction in the NPS-UD and NPS-FM as well as the National Planning Standards).

The likely scenario is that transitioning to an entirely new system will make things significantly worse before they get better.

A staged approach would deliver the Government's objectives in a way that significantly reduces the risks associated with the current proposal, while delivering improvements progressively.

We suggest that the reform programme could be broken into the following stages.

Stage 1

- Implement the SPA. The lack of strategic spatial planning has been one of the major issues with the current system, both in terms of a lack of integrated planning and delivery on housing and environmental outcomes.
    - Given this is likely to be the most transformative element of the reform programme, allowing time for well-designed and implemented legislation will help to ensure that it is indeed transformative.

    - Embedding the SPA would also help identify issues with regional ways of working that could be ironed out prior to the introduction of the NBA.
- Allow councils to continue to progress work on second generation plans and giving effect to the NPS-FM and NPS-UD. Although freshwater plans would not be as large as NBA plans, learnings from the new Freshwater Planning Process could helpfully inform new NBA processes.
- Councils could also be encouraged to start thinking about how they work together in a regional way on certain, confined subject matters, to help test and iron out some of the issues associated with a regional way of working (prior to it being mandated). We note that the Government is currently involved in a number of regional planning exercises, including in Wellington/Horowhenua, Tauranga and Queenstown, that it could also draw learnings from to feed into the wider reform programme.
- Integrate and upgrade national direction to provide a holistic framework to help direct activity under the RMA in the interim. This could include direction on environmental outcomes through an integrated framework of objectives and policies that are clearly drafted and could be adopted into plans and/or direct future plan changes, and environmental limits through appropriate national environmental strategies.
- Make interim changes to the RMA to start to embed some of the key focus and process change aspects that are proposed. These might include:
    - Changes to ensure plans focus on promoting outcomes and not just managing effects. This would allow these changes to be incorporated into many second generation plans that are still in progress.
    - Greater requirements around plan rules directing notification.
    - Changes to plan making processes (which should include looking at the Auckland Unitary Plan, Christchurch Replacement District Plan and NPS-FM freshwater planning models).
    - Potential interim changes to sections 5, 6 and 7 to address the most significant and critical areas of change, which could include introduction of Te Oranga o te Taiao and spatial strategies to allow experience and case law to develop around these concepts before further changes are introduced.
    - Changes to Treaty obligations and other changes to improve mana whenua participation.
- As part of Stage 1, work could be undertaken to test the new, proposed NBA plan making system with a region that doesn't require considerable changes to governance or local authority roles (i.e. a unitary authority) through an area-specific piece of new legislation. This would allow any problems to be addressed through revised legislation before it is rolled out more completely.

Stage 2

- This would occur following, and be informed by, the completion of the Review into the Future for Local Government and be timed after most second generation plans are completed and bedded in.
- This would include transfer to the NBA and single regional plans, including any associated changes to governance or local authority roles.

Implementation of the CAA and changes to compliance, monitoring and enforcement could potentially occur at either stage. However, the bottom-line is that it is important to prioritise changes within the capacity of the sector to deliver them so that they are successfully delivered, rather than creating new and additional failures in the system.

Early signals on how to deal with existing plan making processes

One of local government's key concerns around transition is at what point they should stop undertaking work on existing plans (reviews and plan changes). As things stand, the Minister and the Parliamentary paper have emphasised the need for councils to continue to fulfil their obligations under the RMA. Clarity is needed around when councils should stop investing significant amounts of time and money on RMA processes that may result in planning provisions that aren't brought into the new system. This should include clarifying which, if any, existing planning provisions will be able to be carried across into the new system.

This is important not just for local government, but also for those who hold consents under the existing system. Clarity is needed around how the activities those consent holders are undertaking will be impacted by the changes, including any requirements to comply with new national direction that gets issued or any changes to existing use rights that may result.

Integration of the resource management reform programme with other legislation and work programmes

The resource management reform programme must align closely with:

- other legislation that sets out local government's roles and functions including, but not limited to, the Local Government Act 2002, the Land Transport Management Act 2003, the Climate Change Response Act 2002 and Treaty settlement legislation etc
- other reform programmes that are impacting local government, including the Three Waters Reform Programme and Future for Local Government Review
- other central government work programmes that will impact on local government, including but not limited to the suite of National Policy

Statements including the NPS-FM and NPS-UD, GPS-Housing and Urban Development, Infrastructure Strategy, the National Adaptation Plan and the Emissions Reduction Plan (to name but a few).

It is also important that the NBA integrates with the SPA and CAA. It remains to be seen how well the three pieces of legislation will integrate, and ultimately contribute to the achievement of the Government's reform objectives.

Throughout this submission we identify areas where the exposure draft may not align with other legislation and reform programmes.

Recommendations

We recommend:

1. That the Government prioritises working with Taituarā, LGNZ and the local government sector on the resource management reform programme in a way that is proportionate to the significant implications reform will have on local government.

2. That the Government undertakes a comprehensive analysis of the costs and benefits of the changes it is proposing as soon as possible and makes this available to local government (and others).

3. That the Government significantly increases its focus on arrangements for transition to and implementation of the new system (including a specific assessment of the resourcing that will be needed to support this), and that local government is closely engaged in this work.

4. That the Select Committee directs officials to consider whether a staged approach to implementing a new resource management system would better support the achievement of the Government's reform objectives.

5. That the Government provides local government with clear, early signals on how it should be dealing with existing plan making processes (including reviews and plan changes) and what existing planning provisions will be able to be rolled over into the new system.

Clause 3: Definitions

We acknowledge that the exposure draft does not contain the full list of definitions that will be included in the final Bill. We understand that a number of existing definitions in the RMA will be imported into the NBA, to retain established case law around meanings. We support this approach.

There are a number of issues with the definitions that have been included. This may be a result of the pace with which officials have had to develop the exposure draft. The importance of well-drafted definitions should not be underestimated. As such, we encourage the Government to ensure that it takes time to get the detail right in the final Bill.

This should include working with local government to test the meaning of definitions, and to understand some of the policy issues that can sit behind them. For example, further work should be done with local government and mana whenua to explore how to determine whether the new concept of Te Oranga o te Taiao is being upheld. How, for example, will councils determine whether the intrinsic relationship between iwi and hapū and te Taiao is being upheld?

We observe that:

- There is no definition of 'built environment'. For legislation that is intended to deal with both the natural and built environments we suggest this is a major oversight. While the definition of 'urban form' might provide some steer around the meaning of 'built environment', this definition does seem limited (i.e. the built environment comprises more than urban areas). We recommend that a definition of the 'built environment' is developed.
- The new concept of Te Oranga o te Taiao has not been incorporated into the clause 3 list of definitions. For the sake of completeness, we recommend that it is. We support the Parliamentary paper signal that officials intend to do further work with mana whenua to test and refine the concept of Te Oranga o te Taiao. The Government should also engage with local government on how the concept will work in practice.
- Related to this is the lack of any definitions for 'mana whenua', 'iwi', 'hapū' and 'Māori'. For the sake of completeness and clarity, we recommend such definitions are included.
- The concept of 'ecological integrity' is vague. It remains to be seen how this concept will work in practice. We are also unsure how this concept aligns (or not) with the concept of Te Oranga o te Taiao. (See our feedback on clause 5 below for more detail).
- The exposure draft uses the term 'urban form', which differs from the definitions for 'urban environment' and 'well-functioning urban environment'

in the NPS-UD and 'urban development' in the Urban Development Act 2020. Work needs to be done to ensure consistency across legislation and national direction.

- The exposure draft does not currently contain a definition for 'infrastructure'. Such a definition is needed and must be developed in partnership with local government.
- There is no definition of 'protected customary rights' (referred to in clause 8(i)). For the sake of clarity and completeness, we recommend this is defined.
- The definition of 'cultural heritage' does not include any reference to 'cultural landscapes', despite both terms being referenced in clause 8(h). This inconsistency should be addressed.
- Although the term 'mitigate' is defined, the terms 'avoid' and 'remedy' (referred to in clause 5(2)(c)) are not. These terms should be defined for the sake of completeness.
- Broadly we support the inclusion of the 'precautionary approach'. However, such an approach may be somewhat at odds with an Act that is intended to be 'development-friendly'. It will be interesting to see how the concept applies in practice, and in particular whether applying a precautionary approach (particularly when setting environmental limits) undermines the objective of enabling land use and development. Further work should be done to refine the concept, including clarifying what constitutes "serious or irreversible harm to the environment." It remains to be seen how the requirement to take a precautionary approach will impact local government's ability to take other approaches, such as a dynamic adaptive approach.
- The definition of 'natural hazard' has been brought across from the RMA. We expect that the same definition of 'natural hazard' will be adopted in the SPA and CAA. The reform of the resource management system provides an opportunity to address the current inconsistency in definition of 'natural hazard' across the RMA, the Building Act 2004 and the Local Government Official Information and Meetings Act 1987 (LGOIMA). We recommend that the definition adopted in the new suite of resource management legislation is incorporated into any other Acts in which 'natural hazard' is a defined term.
- Minerals are explicitly excluded from the sustainability provisions of the RMA (section 5(2)(a) refers). The corresponding provision in the NBA is clause 5(1)(b), which requires the environment to be used in a way that supports the well-being of present generations without compromising the well-being of future generations. The definition of 'environment' in clause 3 includes the 'natural environment'. The clause 3 definition of 'natural environment' includes minerals. On the face of it, minerals are within the scope of the new clause 5(1)(b). However, given that this isn't the case in the corresponding RMA provision we raise the question of whether the shift to encompassing minerals in clause 5(1)(b) of the NBA was intended or not. This should be clarified.

It is important that the definitions used in the NBA itself are consistent with definitions used in the NPF (and other legislation). In particular we recommend that officials undertake further work to address any inconsistencies between the definitions listed in clause 3 of the exposure draft and those contained in any existing national direction that may be rolled over into the new NPF.

Recommendations

We recommend:

1. That the Government continues to engage with local government and mana whenua on the development of definitions to be included in the NBA. This should include ensuring consistency across the NBA, SPA, CAA, other related pieces of legislation and the NPF.

2. That a definition for 'built environment' be included in the full NBA Bill. This should be tested ahead of time with local government and should be broader than the current definition of 'urban form'.

3. That officials discuss with local government how the concept of Te Oranga o te Taiao will work in practice.

4. That the Select Committee directs officials to further refine the concept of 'ecological integrity' so that its meaning is clear, including by considering how the concept aligns with Te Oranga o te Taiao.

5. That definitions for 'mana whenua', 'iwi', 'hapū', 'Māori' and 'protected customary rights' be developed in partnership with mana whenua and included in the full NBA Bill.

6. That reference to 'cultural landscapes' be included in the definition of 'cultural heritage' to ensure consistency with clause 8(h).

7. That definitions for the terms 'avoid' and 'remedy' be included in the full NBA Bill.

8. That a definition for 'infrastructure' be developed in partnership with local government.

9. That the Select Committee directs officials to begin work to ensure that the definition of 'natural hazard' in other pieces of legislation is consistent with the definition adopted for the suite of resource management legislation, including the Building Act and LGOIMA.

Clause 5: Purpose of the Act

Taituarā supports the NBA continuing the integrated approach to environmental management and land use planning, as reflected in clause 5 of the exposure draft. Local government is already well-accustomed to such an approach.

At face value, the purpose clause appears to be consistent with objectives 1 and 3 of the resource management reform programme. However, there is no explicit reference to the built environment in clause 5. This strikes us as a stark omission, particularly given the Government's intent that the new system be more enabling of development (Objective 2).

We are also concerned that the current drafting of clause 5 is unlikely to satisfy the Government's objective of a system that is more efficient and less complex (Objective 5).

Lack of focus on the built environment

One of the stated aims of the reform is better enabling development (within natural environmental limits). We are concerned that the current drafting of clause 5 fails to give sufficient recognition to the built environment and doesn't clearly promote enabling development.

Although clause 5(1)(b) does refer to enabling "people and communities to use the environment" the focus appears to be more on resource use than developing the built environment. We recommend amending clause 5(1) to explicitly recognise the importance of enabling urban development within the built environment.

While we appreciate that the SPA is likely to deal with matters relating to urban form and the built environment, we don't envisage that this will be at the level that considers matters such as good urban design principles, quality housing and livable communities. These matters are of critical importance to councils and their communities and should be addressed through the NBA. The wording of clause 5 should be updated to more strongly reflect this (along with amendments to clause 8 that we discuss in further detail below).

Although we are concerned that the purpose of the NBA is not sufficiently clear (see below) it appears that the Government's intent is that development should only proceed if environmental limits are complied with. This creates some risk that the Government won't achieve its objective of a more enabling system. A requirement to strictly adhere to environmental limits has the potential to create a more restrictive system than the one we already have.

We make further comments on the potential for conflicts between environmental limits and outcomes in connection with our feedback on clauses 7 and 8 below.

Clarity of the purpose clause

We are concerned that the current drafting of the purpose clause creates several uncertainties and leaves up for debate what the purpose of the NBA actually is.

From the Parliamentary paper it appears the intent is that the purpose of the NBA is to enable land use and development only if environmental limits are complied with. Currently clause 5 is not explicitly clear that the purpose of the NBA is to enable development to proceed *only if* environmental limits are complied with.

For example, it isn't entirely clear from the reference to "protecting and enhancing the natural environment" in clause 5(1)(a) whether the intent is that development only proceed if environmental limits are met. Further, use of the word "and" to connect environmental limits and objectives and managing adverse effects in clause 5(2) creates some confusion as to whether any of those supporting provisions are prioritised over others (i.e. can an activity that promotes development focused outcomes proceed if it doesn't comply with environmental limits?) We suggest that clause 5(1) be amended to more explicitly provide that people and communities can use the environment only if doing so complies with environmental limits, if this is indeed the intent. That would also require amendment to clause 5(2) to make it clear that complying with environmental limits is to be priortised over promoting outcomes for the benefit of the environment and managing adverse effects.

Recent amendments to the NPS-FM provide helpful clarity around the matters that need to be prioritised in order to manage freshwater and give effect to Te Mana o te Wai. Clause 1.3(5) of the NPS-FM clearly sets out the hierarchy of obligations that Te Mana o te Wai prioritises, being:

1. First, the health and wellbeing of water bodies and freshwater ecosystems.
2. Second, the health needs of people (such as drinking water).
3. Third, the ability of people and communities to provide for their social, economic and cultural wellbeing, now and in the future.

While we acknowledge that these recent amendments to the NPS-FM haven't yet been tested via the courts or widely in the community, they are a useful example of the kind of clarity and clear statement of hierarchy that is needed and could be achieved in the NBA. Such a hierarchy is consistent with the international concept of strong sustainability, which at its core recognises that the economy is a creation of society and societies must exist within environmental limits. Given the Government's recent work to develop this hierarchy of considerations, we are surprised a similar,

clear approach to prioritising matters for consideration doesn't appear in the exposure draft.

Te Oranga o te Taiao

We support the Government's commitment to giving proper recognition to the principles of Te Tiriti o Waitangi and providing greater recognition of te ao Māori including mātauranga Māori in the new system. We support the introduction of the concept of Te Oranga o te Taiao in clause 5(1)(a).

As noted above, we think it is important that central government officials continue to work with mana whenua to refine this concept; ensure that it is appropriately reflected in the balance of the drafting of the Bill; and work through what it will mean in practice. How the concept will apply in practice should also be worked through with local government, given that local government will have significant responsibilities to give effect to this concept (and broader responsibilities to support mana whenua to play a greater and more strategic role in the new system). Local government will need to be very clear as to what the concept means and how it should be upheld.

The current drafting doesn't appear to identify a sufficiently strong link between the concept of Te Oranga o te Taiao and environmental limits. For example, there is no reference to the concept of Te Oranga o te Taiao in clause 7(1), which sets out the purpose of environmental limits, or in the definition of 'ecological integrity' in clause 3. The definition of Te Oranga o te Taiao set out in clause 5(3) includes reference to "the health of the natural environment", which at face value appears different to the concept of 'ecological integrity'. To ensure stronger links between clauses 5 and 7, we recommend that the relationship between Te Oranga o te Taiao and environmental limits be clarified. This may require some revision of the concept of ecological integrity. This should be worked through in partnership with mana whenua.

It is unclear from the current drafting whether Te Mana o te Wai will apply to Part 2 of the NBA. This should also be clarified.

Supporting provisions – environmental limits, outcomes and managing adverse effects

In principle we agree that introducing environmental limits has the potential to improve outcomes for the natural environment. However, whether these environmental limits are effective remains to be seen (we make further comments about this in connection with clause 7 below).

We also broadly support the intent behind shifting from managing adverse effects to promoting outcomes for the benefit of the environment. We agree with the Resource Management Review Panel's (Review Panel) conclusion that the focus of the RMA on managing adverse effects has resulted in insufficient focus on protecting the environment and promoting development. The effects-based approach has meant that there has been insufficient focus on the positive outcomes that can be derived from planning for resource use and development. Clearer and more specific goals around the outcomes the system seeks to achieve in managing the natural environment and providing for urban and infrastructure development will better help to encourage the change that is needed.

Despite our support for an integrated approach to environmental protection and land use and development, we have some concerns about the unprioritised nature of the outcomes set out in clause 8 and how conflicts between these outcomes (and environmental limits) will be addressed. For example, inevitably some housing options will involve potential losses in urban biodiversity, historic heritage and/or other values from built character. The clause 8(j) requirement to remove greenhouse gas emissions from the atmosphere has the potential to come into conflict with the clause 8(m)(iii) requirements relating to protecting highly productive land in rural areas from inappropriate subdivision, use and development.

Given the potential for such conflicts, our view is that the system needs to focus more explicitly on managing trade-offs. Incorporating a requirement to balance trade-offs into clause 5(2) would help to ensure that plans provide guidance around how to manage trade-offs (with input from communities). This would help to ensure that proposals that may not be within environmental limits (depending on how these are formulated) but may be critical to social wellbeing and other outcomes can still be considered and proceed.

We understand that inclusion of clause 5(2)(c) is intended to ensure that any adverse effects not covered by environmental limits or outcomes are avoided, remedied or mitigated. However, we have some concerns that the requirement to avoid, remedy or mitigate adverse effects (on top of meeting environmental limits and promoting outcomes for the benefit of the environment) has the potential to undermine the Government's objective of a resource management system that is more efficient, effective and less complex. We see real potential for repeated, lengthy and costly arguments about whether an activity will deliver outcomes for the benefit of the environment, or an adverse effect that needs to be managed.

We also agree with the view expressed by Buddle Findlay in a legal opinion commissioned by LGNZ[3] that the approach of managing all effects (irrespective of

[3] https://www.lgnz.co.nz/assets/Publications/RMA-reforms-A-new-dawn-or-continued-uncertainty.pdf (See Para 12(c)).

their scale or significance) is likely to be continued complexity, and a focus on the minutiae of all effects, ultimately reducing them to 'zero'.

Use of the word 'and' to connect the matters set out in clause 5(2) creates some uncertainty as to whether any of the matters (environmental limits, environmental outcomes and managing adverse effects) has priority over another. Indeed, use of the word 'and' suggests that each of the matters are of equal weighting/importance. This will inevitably lead to conflicts. If the intent is that complying with environmental limits is of primary importance, the drafting of clause 5(2) should be amended to reflect this.

The NPS-FM sets out a National Objectives Framework (NOF) that regional councils must work through with communities and tangata whenua. The NOF requires regional councils to:

1. identify freshwater management units (FMUs) in the region;
2. identify values for each FMU;
3. set environmental outcomes for each value and include those as objectives in a regional plan;
4. set baseline states across each attribute for each value, and set target states to support the achievement of the environmental outcome; and
5. set limits as rules to achieve the outcomes.

If the Government supports the key elements of the NOF process, and in particular the consultation/engagement requirements and stepped process to develop limits, we consider that a similar approach could be rolled into the NBA. Arguably this process would provide more meaningful opportunities for public input into plan making, as opposed to requiring plans to reconcile conflicting limits and outcomes set at the national level. While we acknowledge that this new process is still being worked through and tested, we are surprised that it does not appear that the process is informing the development of the NBA, or that the Government plans to draw on learnings from working through this new process.

In summary, we raise some doubt as to whether the setting of long lists of matters that need to be considered and reconciled with no weighting will deliver a system that is more efficient.

<u>Transition and implementation – practical implications</u>

The introduction of a new purpose clause means that the suite of case law developed under the RMA in relation to its purpose and supporting provisions will largely be lost. We anticipate that there will be a number of costly and time-consuming arguments to test the meaning of the Part 2 provisions of the NBA, and how the

hierarchy of supporting provisions in clause 5(2) applies where there are conflicts. It seems inevitable that such litigation will come at significant cost, to local government.

As part of its resourcing of the implementation of the new system, central government should consider setting aside funding to support local government with early litigation, particularly by participating in hearings to test the meaning of the legislation as an interested party.

The shift from managing adverse effects to complying with environmental limits and promoting outcomes for the benefit of the environment will require a change in planning culture. There will need to be significant investment in building local government's capability, including via training and guidance. Central government resourcing to support such capability building will be essential. Training and guidance has been done poorly by central government in the past, so it should work closely with Taituarā, LGNZ and the New Zealand Planning Institute to deliver appropriate capability building and support.

There will also be a need to educate users of the resource management system (such as consent and designation applicants) of the changes to the system. Local government will likely play a significant role in this, given its proximity to communities who are the primary users of the resource management system. Central government should provide support and resourcing to local government to assist with this important part of the transition to and implementation of the new system.

Recommendations

We recommend:

1. That the Select Committee directs officials to revise clause 5 to include specific reference to the built environment, and outcomes that the Government seeks to achieve with respect to development.

2. That further work is done to refine clause 5 to ensure that the Government's intended purposes are explicitly clear. This should include clarifying whether the Government's intent is that development should only proceed if environmental limits are met.

3. That officials undertake further work to refine the concept of Te Oranga o te Taiao with mana whenua and local government. This should include clarifying the relationship between Te Oranga o te Taiao and the concept of ecological integrity.

4. That the Select Committee recommends that the matters referred to in clause 5(2) be consolidated and prioritised.

5. That the Government commits to setting aside funding to participate in early litigation that tests the meaning of the new legislation (the purpose clause and its supporting provisions and other Part 2 provisions) as an interested party.

6. That the Government works with local government to identify the resourcing and support that will be needed to support the sector to transition to and implement a new resource management system.

Clause 6: Te Tiriti o Waitangi

We support the Government's commitment to giving mana whenua a greater and more strategic role in the new resource management system. We also support the new approach of 'giving effect' to the principles of Te Tiriti o Waitangi, in place of the requirement under the RMA to take those principles into account. We accept the findings of the Review Panel that the RMA has fallen short of fully adhering to the principles of Te Tiriti. The requirement to 'take into account' the principles of Te Tiriti has been wholly inadequate, in that it has allowed those principles to be balanced out against other matters set out in Part 2 of the RMA, and treated as a secondary consideration vis-a-vis other pressures.

Greater involvement in the resource management system for mana whenua is likely to raise expectations and bring focus on other areas of local government's partnership arrangements with mana whenua. Section 4 of the Local Government Act 2002 (LGA) clearly acknowledges that responsibility for Treaty obligations lies with the Crown. A requirement to 'give effect to' the principles of Te Tiriti under the NBA (and greater expectations around local government's partnership with mana whenua more generally) will necessarily lead to some re-consideration of section 4 of the LGA, and the future relationship between mana whenua and local government. We acknowledge that these are matters being considered by the Future for Local Government Review.

The shift from 'taking into account' under the RMA to 'give effect to' under the NBA will require a significant change in planning culture and broader ways of working for local government. Although elevating the threshold from 'take into account' to 'give effect to' is welcomed, local government has at times struggled with the RMA requirement to 'take into account' the principles of the Treaty (as noted above). To ensure that the higher threshold of 'give effect to' is met, central government will need to support and resource the transition to this new approach, including by

providing guidance and training to local government. Without clear guidance, the difficulty local government has had with the current RMA section 8 requirement will continue.

We therefore support the Review Panel's recommendation that direction should be provided on how to give effect to the principles of Te Tiriti. We anticipate a significant amount of litigation risk for local government (and other parties) in connection with clause 6, so guidance would help to put in place some clear parameters around the meaning of 'give effect to'.

Such guidance must be developed in partnership with mana whenua and with input from local government. This will help to ensure that the guidance is clear and workable, but also sufficiently takes account of local variation. Any guidance must acknowledge the time that it takes to ensure meaningful participation by mana whenua in decision-making processes. It must also reflect the varied approaches to partnering with mana whenua that exist – one size does not fit all. This is reinforced by the myriad of obligations and arrangements already in play, including via Treaty settlement arrangements.

The Review Panel recommended that this guidance be set out as national direction. The Minister has expressed a preference for including the direction in the NBA itself (14 December 2020 Cabinet paper refers).[4] Noting that no such guidance has yet been developed, we support including the guidance in the NBA as the Minister prefers. This will give it greater legal status and protection, by making it less amenable to change.

While such guidance will help to alleviate litigation risk, it will not eliminate it. Therefore central government should consider setting aside funding to join any early litigation to test the meaning of clause 6 as an interested party.

We also recommend that the principles of Te Tiriti are reflected in the drafting of the NBA, so that they are generally understood and not up for debate. The principles of Te Tiriti are not fixed. Instead the best expression of the principles of Te Tiriti is generally considered to be from the courts. Without principles being identified and codified we are concerned that persons exercising powers and performing duties and functions under the NBA will not be clear on the obligations they are required to meet. We can also foresee repeated and lengthy arguments around what the principles are and mean if they are not codified.

Identifying the principles of Te Tiriti to codify in the NBA must be done in partnership with mana whenua.

[4] https://environment.govt.nz/assets/Publications/Cabinet-papers-briefings-and-minutes/cabinet-paper-reforming-the-resource-management-system_1.pdf (Refer para 86).

It remains to be seen how well the new resource management system will 'give effect' to the principles of Te Tiriti. This will depend not only on the drafting of the balance of the NBA, but also on the detailed design of arrangements for planning committees and plan making. Co-designing with mana whenua is one very real way in which the Government can give effect to the principles of Te Tiriti. Resourcing to support mana whenua to engage meaningfully in the new system will be critical. This resourcing should come from the Crown, as the Treaty partner. Local government will also need support (including resourcing) to build its capability and capacity to partner with mana whenua effectively and meaningfully. Given the already significant responsibilities local government has for funding the implementation of the Crown's Treaty settlement obligations, central government funding to support local government to build its capability and capacity to partner with mana whenua would be appropriate.

It's not yet clear what the Government's position is on the Review Panel's recommendation around the establishment of a body to oversee and advise on whether there is effective and efficient compliance with clause 6, and other clauses that relate to providing a greater and more strategic role for mana whenua in the system. We would support the establishment of some sort of oversight and monitoring mechanism in principle, particularly to ensure the clause 6 requirement is being satisfied, and to provide direction on where improvements are needed within the system.

For the sake of completeness, we note that one matter to resolve is the definitions that get used throughout the NBA for 'iwi', 'hapū', 'mana whenua' and 'Māori'. These terms should be clearly defined and applied consistently across the legislation (including the SPA and CAA). Consistency with the terms used in the LGA would also be helpful. Clarity around the use, meaning and application of te reo terms will help to address the ambiguity that exists in the current system.

Recommendations

We recommend:

1. That the Government continues to refine clause 6 in partnership with mana whenua and with input from local government.

2. That the Select Committee recommends that guidance on how to 'give effect' to the principles of Te Tiriti be developed in partnership with mana whenua and local government, and that this be included in the provisions of the NBA itself.

3. That the principles of Te Tiriti be codified in the NBA to ensure consistency and certainty. These principles should be agreed to in partnership with mana whenua.

4. That the Government funds mana whenua participation in the new system, as the Treaty partner.

5. That the Government allocates resourcing to support local government to 'give effect' to the principles of Te Tiriti, including via training/capability building initiatives and setting aside funding to participate in early litigation as to the meaning of clause 6 as an interested party.

6. That the Government continues to give thought to the future role for mana whenua in the local government system, including via the Future for Local Government Review, and that such work includes specific consideration of the new NBA requirements relating to Te Tiriti and the role of mana whenua in the planning system.

7. That the Government continues to explore options for developing a body to oversee effective and efficient compliance with clause 6 (and other relevant provisions). This should happen in partnership with mana whenua and with input from local government.

8. That the Government adopts consistent definitions for 'iwi', 'hapū', 'mana whenua' and 'Māori' across the suite of new resource management legislation, and other related legislation (including the LGA).

Clause 7: Environmental limits

Regional councils are currently working through setting limits for water under the NPS-FM and are at different stages in the process. These limits, which relate to quality and quantity, are essentially locally derived limits, based on regional values and outcomes, that give effect to national limits. We recommend that the Government undertakes further work with local government and mana whenua to determine what can be learnt from the NPS-FM NOF/limit setting process and/or rolled over into the setting of environmental limits in the NPF or NBA plans.

We note that there is some concern within the sector as to how much of the significant work that has already been done or is underway with respect to setting freshwater limits will be able to be transferred into the new system.

Notwithstanding this suggestion, we make the following comments on what is currently proposed in clause 7 of the exposure draft.

Clause 7(1): The purpose of environmental limits

As noted above, we broadly agree that environmental limits have the potential to improve outcomes for the natural environment and human health. We reiterate our comments made in connection with clause 5 that it is not clear how environmental limits will contribute to enabling the concept of Te Oranga o te Taiao to be upheld (or not).

Ultimately how effective and workable environmental limits will be remains to be seen. The "devil will be in the detail" of the limits that are yet to be developed. It seems that environmental limits will often need to be set at a systems/cumulative level (for example, no loss of significant areas of indigenous biodiversity; no reduction of the extent of wetlands etc). Because of this, it's not clear how environmental limits will relate to effects assessments and control of activities (i.e. setting standards for individual activities to meet) and making rules via NBA plans that operate within those limits. Further work will need to be done to ensure that environmental limits will work across the parts of the resource management system that they will feed into.

Although it appears that the Government's intent is that development only proceed if environmental limits are complied with (as set out in clause 7(6)), our comments on clause 5 above note our concerns at the potential for conflicts between environmental limits and development outcomes. It is difficult to see how the two relate to one another. We can foresee circumstances where failure to comply with an environmental limit may have unintended, negative consequences, particularly for development. For example, the recent High Court decision on the East/West Link in Auckland[5] demonstrates the potential for the requirement to satisfy environmental limits relating to biodiversity, habitats and ecosystems (clause 7(4)(b)) to come into conflict with outcomes relating to well-functioning urban areas, housing supply and ongoing provision of infrastructure services (clauses 8(k), (l) and (o) respectively). Development focused outcomes will likely be hampered by the focus on strict adherence to environmental limits.

To avoid unintended consequences – particularly with respect to enabling land use and development – and failure to satisfy objective 2 of the reform programme, the Government should consider whether there are circumstances in which there can be exceptions to compliance with environmental limits (for example, could there be

5 https://www.brookfields.co.nz/images//PDF/Royal_Forest_and_Bird_Protection_Society_of_New_Zealand_Inc_v_New_Zealand_Transport_Agency_2021_NZHC_390.pdf

some exceptions to complying with biodiversity limits in areas where there is a need for significant housing development to meet growth pressures), or whether in some cases setting targets as opposed to hardline limits may be more enabling.

The potential for unintended consequences should also be considered in the setting of the environmental limits themselves. While any limits set should satisfy the purposes set out in clause 7(1)(a) and (b), consideration should be given to setting limits at such a level that land use and development would not unintentionally be locked out completely.

Importantly, the NPF should include guidance not only on how to resolve conflicts between the outcomes set out in clause 8, but also guidance on how to resolve any conflicts between environmental limits and outcomes, including where trade-offs may be appropriate.

Finally, further work also needs to be done to resolve the issue of what happens in circumstances where environmental limits are not met to start with. This issue is playing out up and down the country regarding the limit setting process for freshwater. Work also needs to be done to resolve how the shift to a requirement to comply with environmental limits may impact on existing use rights.

Clause 7(2): The process for setting environmental limits

In principle we agree that setting environmental limits at the national level makes sense in the interests of consistency and certainty. However, the NBA does give the Minister a significant amount of power to set environmental limits, which will ultimately be the 'linchpin' of the NBA.

Noting that the NPF is still to be developed, it is important that this sets out a clear process that must be followed by the Minister to set environmental limits. This will enable a level of scrutiny of and accountability for the setting of limits by the Minister. Limits should not be able to be readily changed at the whim of politics. Instead, the process for changing limits should be robust, including requirements that any changes are contextual, evidence-based and reflect the need for adaptive management approaches (particularly in the context of the changing climate).

We also agree that planning committees should have the ability to set environmental limits themselves (as set out in clause 7(2)(b)). This recognises that some limits may be more appropriate at the regional level, and indeed at the local level. The process for a planning committee setting an environmental limit in an NBA plan (yet to be developed) must be clear and workable. To ensure this, it should be developed in partnership with local government and should draw on the NPS-FM process being used by regional councils to set freshwater limits. For the sake of completeness, we

do note that giving planning committees the ability to set limits via NBA plans has the potential to result in the "can being kicked down the road". If a matter is of such importance, it should arguably be addressed via the NPF (with appropriate local or regional variation where necessary).

The Parliamentary paper references the need to draw on a range of sources to set environmental limits, including science and mātauranga Māori. We agree, and further suggest that limits should be set with input from local government as the implementer of national direction. This will help to ensure that environmental limits are workable, and flexible enough to provide different and appropriate levels of environmental protection for different circumstances and locations. This will be critical to the success of the limits. These requirements should be reflected in the process for setting environmental limits.

The requirements set out in the NPS-UD set ambitious outcomes for cities to deliver on for catering to growth. These requirements also need to be considered when developing environmental limits. Any contradictions between environmental limits and the Government's ambitions for growth may create complexity and confusion in the planning and development process. This should be avoided insofar as possible. We have some concerns around whether there is sufficient up-to-date data and science available to support the setting of environmental limits that will be workable (and subsequently to undertake effects assessments and monitor compliance with environmental limits). Further investment in science and data to support the setting of evidence-based limits and monitoring of compliance with them will be critical to the successful implementation of a resource management system that is predicated on environmental limits.

Clauses 7(3), (4) and (5): Form of environmental limits and matters for which they must be set

Broadly we agree with the list of matters for which environmental limits can be set. However, the environment doesn't necessarily always lend itself to the setting of firm limits – particularly in the context of the dynamic, changing environment.

We consider that there are a number of measurable things that could form the basis of environmental limits including biodiversity, trees, wilding trees, loss of landscape and forestry conversion. Presumably such limits could be prescribed under clause 7(5). Aesthetics and amenity don't appear to feature in the environmental limits as contemplated by the exposure draft, but this should be clarified.

Further clarity is needed around what is meant by 'harm' in clause 7(3)(b). At the moment this is unclear and will likely make the setting of limits difficult and contentious. We are also concerned that clause 7(3) doesn't currently recognise the

challenge in setting environmental limits that will work in the dynamic natural environment that we expect in the future, as a result of climate change. For example, how will limits relating to water quality and quantity be set in such a way that takes account of changes that may result to the natural environment because of climate change?

Not only can we foresee conflicts between environmental limits and the outcomes set out in clause 8 of the exposure draft, we can also foresee conflicts between environmental limits themselves. For example, a legal opinion commissioned by LGNZ from Buddle Findlay suggests that a breach of a water limit may be required to achieve an indigenous biodiversity limit; or to remove a wastewater discharge from water (to avoid the breach of a limit relating to water) a limit relating to quality of soil may be breached.[6]

Therefore, we encourage the Government to address a number of unresolved matters in the balance of the drafting of the NBA and the NPF, including:

- how the limits set out in clause 7(4) integrate with one another;
- what should happen where there are conflicts between limits set out in clause 7(4), and any limits created under clause 7(5); and
- whether there are any priority limits.

We reiterate our earlier comments around the need for the NPF to set out guidance or a framework for resolving conflicts and managing trade-offs between clause 7 environmental limits and clause 8 outcomes.

Finally, it isn't clear whether clause 7(6) will catch the flood defence and drainage activities provided by regional councils. There are a number of water quality issues associated with flood drainage. How this issue will be resolved should be worked through with local government.

<u>The relationship between environmental limits and the SPA</u>

Further work needs to be done to address the relationship between environmental limits and the SPA. It isn't clear, for example, how the setting of limits under the NBA will interact with delineating areas (e.g. for protection) in regional spatial strategies. Clarity is needed around whether or not environmental limits will inform the development of regional spatial strategies, and if so, what the arrangements are in terms of timing for the setting of environmental limits via the NPF or NBA plans relative to the time at which regional spatial strategies get developed.

[6] https://www.lgnz.co.nz/assets/Publications/RMA-reforms-A-new-dawn-or-continued-uncertainty.pdf (Refer para 18).

If the intent is that regional spatial strategies are to be based on environmental limits, we are of the view that the NPF needs to be in place before work on those strategies begins. Otherwise there is a risk that the first generation strategies that get developed will be ineffective and ultimately amount to a waste of time and resource if numerous changes need to be made subsequently.

A matter for clarification in the full NBA Bill

One matter that doesn't appear to have been addressed in the exposure draft or Parliamentary paper is what will happen with the provisions contained in section 12 of the RMA that relate to restrictions on use of the coastal marine area. These provisions impact a range of commercial users and intersect with the Marine and Coastal Area (Takutai Moana) Act 2011. The Government should continue to engage with local government and mana whenua on how these provisions will be incorporated into the new NBA.

Recommendations

We recommend that:

1. The Select Committee directs officials to undertake further work to address the relationship between environmental limits and the concept of Te Oranga o te Taiao.

2. Local government is closely engaged on the development of the process for setting environmental limits (both by the Minister via the NPF and by planning committees), to ensure that the limits will be workable and take account of local variation.

3. A clear process for resolving conflicts between environmental limits be developed. This should include consideration of whether any environmental limits are prioritised.

4. Further work is undertaken to clarify the relationship between environmental limits and outcomes and how any conflicts/trade-offs are managed.

5. The Government undertakes a stock take to identify the data sets that it will need to invest in to enable effective monitoring of compliance with environmental limits. These data sets should be made available to planning committees.

6. That the Government clarifies the relationship between environmental limits and regional spatial strategies, including the time at which the NPF takes effect relative to the time at which work on regional spatial strategies begins.

Clause 8: Environmental outcomes

We broadly support the shift in approach to promoting outcomes for the benefit of the environment. While some national consistency around outcomes may be desirable, we do raise the question of whether a local approach to setting outcomes based on local values (like that set out in the NPS-FM NOF) may be more appropriate. This would better reflect the need for local place-based planning decisions to reflect the needs and values of the communities affected by them, and the variation that exists across New Zealand's cities and districts. We encourage the Government to do further work with local government and mana whenua around the best approach to setting and promoting outcomes for the benefit of the natural and built environments.

The comments that follow relate to what is currently included in clause 8.

Although the list of 16 outcomes set out in clause 8 includes a mix of outcomes for both environmental protection and allowing development, we do note that the balance appears heavily in favour of environmental protection. This seems at odds with the Government's intention to deliver a system that is more enabling of development.

Sections 6 and 7 of the RMA have been criticised for being a long, unprioritised "shopping list" of matters to consider. Clause 8 as currently drafted looks much the same (particularly when coupled with the clause 7 environmental limits). Spelling out a raft of unprioritised outcomes does not necessarily make them compatible or deliverable. Conflicts between outcomes seem inevitable. We agree with the Parliamentary Commissioner for the Environment that, "*if primary legislation can provide no guidance on the priority to be accorded to the many outcomes, officials, politicians – and ultimately the courts, will be left weighing* [them]."[7]

For certainty, and to avoid ongoing litigation, clause 8 needs to clearly state whether there is to be any hierarchy as between the outcomes listed in it or not. This should include considering the wording used in connection with each outcome. For example, directive wording used in the clause 8 outcomes includes "preserve", "protect", "restore", "improve", which contrasts with weaker wording, such as,

[7] https://rmla.org.nz/wp-content/uploads/2020/10/PCE-Salmon-Lecture-RMA-Reform-Coming-full-circle.pdf (See page 11).

"enable", "sustained", "contribute" and "support". Are these different words intended to create any hierarchy as between outcomes or not? This needs to be clarified.

The requirement to take into consideration so many outcomes is at odds with the Government's objective of a system that is more efficient and less complex. We can foresee repeated and lengthy arguments as to whether NBA plans adequately address each of the clause 8 matters. Further, the requirement to consider so many matters ultimately reduces them all to zero, which undermines the objective of a system that is more effective.

Clause 13(1) notes that national direction is required on only 9 of the outcomes listed in clause 8. There is an argument that if a matter is important enough to warrant inclusion in clause 8 it should be addressed in national direction. We question whether the requirement for national direction on only 9 outcomes does sub-consciously indicate which of the clause 8 outcomes the Government deems the most important.

Although it is envisaged that the NPF and NBA plans will help to resolve conflicts between outcomes, regardless of any such guidance it is inevitable that there will be lengthy, costly and time-consuming arguments about how to resolve conflicts between outcomes. Not all conflicts will be able to be anticipated and resolved in advance. In and of itself, guidance on how to resolve conflicts between outcomes will not eliminate litigation.

In principle we accept that the NPF should contain guidance around how the Minister will resolve conflicts between outcomes. However, we do note that the resolution of conflicts between outcomes is open to change with the appointment of each new Minister if clear direction is not provided in the NBA itself. This has the potential to create an uncertain and changing framework.

If resolving conflicts between outcomes is left to planning committees to address via NBA plans, a clear and workable process set out in the NPF for managing trade-offs will be helpful (and should be developed and road-tested with local government). However, where conflicts are left to planning committees to resolve, costly and time-consuming litigation seems inevitable. Without the level of detail that is still to come via the NPF it is difficult to provide any useful comment on whether the NPF will actually help to resolve conflicts as between outcomes.

We support the introductory text to clause 8, which specifies that the environmental outcomes listed must only be promoted by the NPF and NBA plans. This implies that when making decisions on consents or designations, the consent authority need not refer back to clause 8 or try to balance and reconcile competing outcomes. We support such an approach and expand on this point further below in our feedback on

ideas for improving system efficiency and reducing complexity. Notwithstanding our support for the introductory text, the meaning of the terms 'to assist' and 'promote' used in the drafting of clause 8 is unclear.

Although not specified in the exposure draft, we assume that the requirements to promote outcomes for the benefit of the environment will also be applied to regional spatial strategies under the SPA. This must be clarified in the drafting of the balance of the Bill.

Although we are strongly of the view that clause 8 as currently drafted needs rationalising, we make some specific comments on the outcomes it lists below.

Clause 8(d): Outcome relating to biodiversity

Clause 8(d) currently makes reference to indigenous vegetation and habitats of indigenous fauna. Biodiversity should also be promoted outside areas of significant indigenous vegetation and habitats of indigenous fauna. We recommend amending clause 8(d) to provide for the protection, restoration or improvement of all significant areas of vegetation, habitats and fauna.

Clause 8(d) refers to 'restored', which ultimately may not be compatible with the dynamic natural environment. In other words it creates an unrealistic expectation that restoration is possible.

Clauses 8(f) – (i): Outcomes relating to cultural matters

Clauses 8(f) – (i) set out a range of outcomes relating to cultural matters including:

- Clause 8(f) - The relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga.
- Clause 8(g) - The mana and mauri of the natural environment.
- Clause 8(h) - Cultural heritage, including cultural landscapes.
- Clause 8(i) - Protected customary rights.

We note that clause 13 doesn't currently include any requirement for the NPF to include direction on any of these cultural matters. Providing direction on these matters strikes us as one way in which the Government could helpfully provide local government (and others) with guidance on how to give effect to the principles of Te Tiriti o Waitangi, as required by clause 6.

Clause 8(f) refers to 'restored' in relation to the "relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga…" However, it isn't clear what the threshold for 'restored' is. This is

likely to create a level of ambiguity, as 'restored' is likely to mean something different to mana whenua than it does to local government or others. This ambiguity must be addressed.

Clause 8(g) refers to the 'mana' and 'mauri' of the natural environment. We suggest that this outcome should be refined with mana whenua, as we understand that representatives of the Freshwater Iwi Leaders Group and Te Wai Māori Trust raised issues with the use of the term 'mana' in connection with the environment during discussions around the Review Panel's proposed concept of Te Mana o te Taiao. The meanings of 'mana' and 'mauri' must be clarified (if indeed mana whenua are comfortable with these terms being used). This goes to the broader issue of needing to be clear on the meaning of te reo terms that are used throughout the NBA, and working out meanings in partnership with mana whenua.

With reference to clause 8(h), what is meant by 'sustained through active management' and how this is proportionate is vague and should be clarified.

The Government must work in partnership with mana whenua to refine the wording, meaning and policy intent behind each of these outcomes.

Clauses 8(j) and (p): Outcomes relating to climate change mitigation and adaptation

We welcome the inclusion of outcomes relating to climate change mitigation (clause 8(j)) and climate change adaptation (clause 8(p)). We note that clause 8(p) also relates to reducing the risks from and building resilience to natural hazards more broadly. Local government has been calling for clearer mandate to address climate change for some time now.

While clause 8(j) provides a useful overall goal, it is arguably too non-specific and difficult at this stage to understand what the expectations will be around how it is given effect to in NBA plans. This should be addressed via the NPF.

We are not confident that the current clause 8 will adequately address natural hazards and climate change adaptation. Reducing the risks from, and building the resilience of the environment to natural hazards and the effects of climate change is one of many unprioritised outcomes. Our concern is that this makes natural hazards and the effects of climate change simply one in a range of other factors that planners need to juggle. Although we acknowledge the unprioritised nature of the clause 8 list of outcomes, we are concerned that natural hazards and climate change being "tapped on" at the end of the list unconsciously sets it in its place. Without stronger reference to and direction around natural hazards and the effects of climate change we are concerned that the objective of better preparing for adapting to climate change and risks from natural hazards is unlikely to be achieved.

Notwithstanding these comments, clause 8(p)(ii) should be amended to include reference to the resilience of communities (in addition to the environment). To help avoid development in areas exposed to significant natural hazard risk, it could also be useful to make explicit reference to the built environment.

Although managed retreat and climate change adaptation will be dealt with in greater detail in the CAA, we note that local government will need considerable additional funding support from central government (particularly to support managed retreats) if the outcome in clause 8(p) is to be satisfied.

We welcome the requirements set out in clauses 13(e) and (i) that the NPF must set out national direction on both greenhouse gas emissions and natural hazards and climate change. Such direction must closely link with work the Government is doing to develop an Emissions Reduction Plan and National Adaptation Plan. To assist local government to promote clause 8(j), the Government should also invest in consistent tools and frameworks that local government can use to measure, assess and monitor the emissions associated with activities.

Clause 8(k): Urban areas

The concept of 'well-functioning' needs to be defined. This should be backed up with greater detail in the NPF on housing quality, urban design principles and amenity values including design for sunlight (especially in colder parts of New Zealand), privacy, interaction with the public and other matters. Current evidence of housing, particularly that developed in high-growth areas, demonstrates the risk of poor-quality neighbourhood and housing outcomes. Ensuring good urban form and urban design outcomes must be a key part of the NBA, given this is a priority for local government and its communities. This will help to ensure consistency with other work programmes the Government has underway in respect of quality housing, including the GPS Housing and Urban Development.

Amenity values

Despite it being one source of ongoing conflict, we are concerned that the Government appears to have dismissed amenity values entirely. Amenity is important for ensuring good urban form, livable communities and homes that are fit for the future – considerations that we don't think the NBA sufficiently provides for as currently drafted.

Dismissing many aspects of amenity as merely a 'subjective' consideration fails to recognise that many aspects of amenity are shared, are empirically linked to wellbeing outcomes and form part of cultural and social values. Intensification of housing can, for example, lead to an increase in anti-social behaviour. These

potential costs of intensification should be proactively considered and mitigated through strong adherence to best practice urban design principles and good spatial planning. Replacing the concept of amenity with new concepts must not diminish focus on the issues amenity entails. Otherwise, there is a risk that the objective of enticing people to live in certain areas will not be met – people won't want to live in areas unattractive to large segments of the population. Failure to consider aspects relating to amenity may result in poorly considered inner city development causing "flight" to suburbs or areas outside of city limits.

We are also concerned that some elements of amenity are arguably more objective, including shading, recession planes and setbacks from boundaries. Care should be taken not to throw out amenity altogether.

Clause 8(l): Housing supply

Reference to providing choice to consumers in clause 8(l)(i) has the potential to conflict with other outcomes. The outcome of providing consumer choice may support an argument for rezoning rural land to enable housing development to occur, but this could conflict with other outcomes relating to maintenance of rural productivity, landscape values and loss of opportunities for medium or high-density housing in urban areas.

To manage issues related to demand for lifestyle blocks and large lot residential activity we also support the inclusion of reference to "efficient use of land" in the list of matters under clause 8(l). This would help to achieve better outcomes for quality medium-density housing and avoidance of urban sprawl.

Given the Government's objectives around quality, affordable housing that delivers positive wellbeing outcomes for communities (including their health), we also suggest that this should be better reflected in the drafting of clause 8(l).

Other matters relating to the built environment

Notwithstanding our concern around the long list of matters to be considered under clause 8, we believe the Government should look at ways to strengthen the outcomes relating to the built environment. It should re-consider some of the matters that were set out in the Review Panel's report, including:

- enhancement of features and characteristics that contribute to the quality of the built environment;
- sustainable use and development of the natural and built environment in urban areas including the capacity to respond to growth and change;

- availability of development capacity for housing and business purposes to meet expected demand; and
- strategic integration of infrastructure with land use.

Including such matters would better reflect the intent that the NBA covers both the natural and built environments and would help to ensure consistency with other work programmes the Government has underway in respect of quality housing, including the GPS Housing and Urban Development.

Clause 8(m): Outcomes in relation to rural areas

Reference to reverse sensitivity should be included in clause 8(m). It is not just the protection of productive rural land but the activities around that land that need consideration.

Clause 8(o): Outcome relating to the provision of infrastructure services

We note a small drafting error in clause 8(o)(ii), namely that renewable energy is not generated. The clause should instead refer to allocating access to resources that contain energy (and can be converted into electricity).

Monitoring the clause 8 outcomes

Greater investment in science and data will help to ensure evidence-based monitoring of each outcome and inform any policy changes that are needed to better promote the outcomes.

Recommendations

We recommend:

1. That the Select Committee directs officials to undertake further work to consolidate and prioritise the outcomes set out in clause 8.

2. That amenity values and other outcomes relating to the built environment be better reflected in clause 8.

3. That officials address the inconsistencies and/or drafting issues referred to above.

Clauses 9 – 17: National Planning Framework

Clauses 9 and 10: Establishment and purpose of the NPF

We support the Government's proposal to introduce consolidated national direction in the form of an NPF. We also support the Government's plans to resolve conflicts between existing and new forms of national direction via the NPF. However, as already noted, it is difficult to provide meaningful feedback on the NPF without seeing more detail.

The Government intends to increase its use of mandatory national direction. This will help to provide consistency and certainty on matters of national significance, and where consistent national approaches are desirable. This will in turn help to reduce the costs associated with repeated and lengthy plan development processes, which often re-litigate matters relating to environmental bottom lines and resolving conflicts between competing priority areas up and down the country.

We understand the form of the NPF is still to be decided. Broadly, we support the various signals that have been provided by both the Review Panel and the Government around creation of a single document and exploring options for an online tool or portal. Ultimately, the NPF needs to be accessible and an integrated, easy to navigate tool. Regardless of form, great care needs to be taken in its drafting to reduce legal arguments around its interpretation. We strongly encourage broad engagement with local government and experienced resource management practitioners on how to achieve this clarity.

We agree with the intent of clause 10(c) that there may be some matters for which consistency is desirable in some, but not all, parts of New Zealand (such as biodiversity, responding to growth pressures and cultural matters). Related to this, we make further comments below about the importance of the Minister and central government officials working closely with local government on the development of the NPF.

How successful the NPF will be, and how much it will help to achieve certainty and national consistency, remains to be seen. For example, it remains to be seen whether the NPF will adequately address the issue of how to resolve conflicts between the lengthy list of unprioritised, and potentially competing, outcomes set out in clause 8 (although in principle we agree that such guidance should be included).

Clause 9(2)(a): Developing the NPF

Clause 9(2)(a) states that the NPF must be prepared and maintained by the Minister in the manner set out in Schedule 1. Given Schedule 1 is yet to be drafted, the

process for developing and amending the NPF is not clear. The NBA gives the Minister significant power to set the direction of travel of the system via the NPF, which potentially further undermines the objective of local democratic input into the resource management system. Indeed, without the NPF the NBA is largely hollow legislation. This makes scrutiny of and accountability for the preparation and maintenance of the NPF critically important.

It will be important to ensure that there are not constant changes to the NPF that necessitate ongoing costly and time-consuming changes to NBA plans (and regional spatial strategies). While the NPF must be flexible enough to be updated to reflect changing circumstances and conditions, legislation should provide some parameters around the circumstances in which it can be changed. This would avoid national direction changing frequently with political cycles and provide certainty in environmental protection.

Local government involvement in the development of the NPF

It is not clear whether local government will play a role in developing the NPF. There needs to be proper engagement with, and input from, local government on both the creation of new national direction and the evaluation and alignment of existing national direction. This is critical given local government's role in giving effect to national direction.

Working with local government on the development of the NPF will help the Minister to:

- ensure that the NPF will be workable
- understand conflicts between national direction, for example the likely conflict between urban development and freshwater limits
- identify new national direction that should be prioritised for development on the basis that it will most assist with preparing NBA plans (and regional spatial strategies)
- identify which national direction will work well across Aotearoa, and where national direction may not be preferable or preferable for only some parts of New Zealand (as per clause 10(c)). For example, it strikes us that national direction on reducing the risks from natural hazards would be helpful across the country, but that national direction on biodiversity or some cultural matters may not work well for all local communities, given significant local variation
- resolve the relationship between national standards and any regional (local) standards contained in NBA plans.

We therefore recommend that a specific requirement that the Minister consults with local government on the development of the first NPF (and any subsequent amendments made to it) be included in Schedule 1.

MfE's capacity to develop the NPF

We also have concerns around the Ministry's capacity to develop the first NPF, including reviewing and aligning existing national direction and developing a significant amount of new national direction. Developing the NPF is a significant piece of work that should begin in earnest now. But given the significant amount of work still to be done on designing the balance of the NBA, and the SPA and CAA, it is unclear whether MfE has the capacity.

Consideration should be given to whether there should be more in-depth involvement of experts and key stakeholders in the development of the NPF (including local government, as outlined above). Consideration should also be given to whether a suitably qualified panel of experts, commission or board of inquiry could be appointed to oversee the development and maintenance of the NPF.

Timing and sequencing

Questions around timing and sequencing must be addressed. Local government needs clarity around when work on the NPF is going to begin and when it is anticipated it will take effect. Local government needs to know the Government's intentions around whether the NPF will be in place before work commences on developing NBA plans (and regional spatial strategies), or whether the expectation is that these will be developed concurrently with the development of the NPF.

Our view is that the NPF should be in place before work on NBA plans and SPA strategies begins. This will ensure that first generation plans and strategies are consistent with the NPF, effective and avoid the need for costly and time consuming subsequent changes to reflect the NPF.

Depending on timing and sequencing, local government also needs clarity around whether existing plans will need updating to reflect the NPF, and particularly any new national direction, or not. Early signals on existing national direction that the Minister intends to change, and how this should be dealt with while the transition to the new system is underway, would be useful.

<u>Clause 11: NPF to be made as regulations</u>

We support the NPF being made as regulations (clause 11). Making the NPF as regulations provides some scope for scrutiny, including via review by the Regulations Review Committee and the ability for Parliament to disallow such an instrument

where certain criteria apply. This seems particularly important given the significant amount of power the Minister has to set national direction.

Making the NPF as regulations will also allow for necessary updates to be made with relative ease and speed. However, we reiterate our comments above about the need for the process for amending the NPF, and circumstances in which this can happen, to be clearly set out in Schedule 1 of the NBA.

Clause 12: Environmental limits

In addition to our earlier comments on environmental limits, we make the following points:

- Use of the word 'if' in clause 12(1)(b) appears to give the Minister discretion to determine whether or not environmental limits can be set through NBA plans. As already indicated, we think it is appropriate for planning committees to have the ability to set regional (or local) environmental limits.
- We are concerned at the potential for the setting of qualitative limits, as per clause 12(2)(a). Qualitative limits and their definitions are likely to create considerably more uncertainty, leading to costly arguments. They also have the potential to be vague and therefore more difficult to demonstrate compliance with than quantitative limits.
- We agree that limits should be able to be set at different levels for different circumstances and locations (clause 12(2)(b)). This should help with ensuring environmental limits are set in such a way that they don't unintentionally undermine the ability to use and develop land, or the promotion of the outcomes set out in clause 8. The Government should explore in further detail whether the setting of targets may be more appropriate in some circumstances.
- Clause 12 should address how environmental limits are to be dealt with in existing plans (or not) while the transition to new NBA plans is underway.

Clause 13: Topics that the NPF must include

We broadly agree with the topics listed in clause 13 but reiterate our earlier comments around the lack of any national direction on cultural matters, and whether the matters for which national direction must be provided indicate (subconsciously or not) the outcomes that the Government considers most important.

When developing the NPF, the Government needs to assess the consistency of national direction (new and existing) with other Government work programmes and initiatives that will impact on local government, communities, and resource management functions. For example, national direction should reflect the

Government's work on things such as the Emissions Reduction Plan, National Adaptation Plan, Infrastructure Strategy and GPS Housing and Urban Development. It would also be useful to ensure alignment with the Building Code, especially in regard to the management of natural hazards and minimum standards to achieve to enable built development to proceed.

Clause 13(3) should be amended to include the need for provisions in the NPF that address how to resolve conflicts among the environmental limits set out in clause 7, and how to manage trade-offs between environmental limits and outcomes.

Clause 15: Implementation of the NPF

We broadly agree with the matters set out in clause 15. To help with satisfying these requirements, developing the new NPF in such a way that parts of it can be easily inserted into NBA plans (particularly where the NPF changes) would be useful.

Directive provisions of the NPF should not ever have to be given effect to through plan changes using a public plan change process. This would likely lead to different provisions in different plans, and therefore create the potential for litigation. This is one thing the NPF is seeking to avoid or limit.

Monitoring of implementation of the NPF

On implementation more broadly, how well the NPF is given effect to will depend in large part on the plans that get created under clause 19, and in turn how these are given effect to. To assess this, there will need to be investment in an effective monitoring system, including investment in data and science to enable evidence-based assessment of compliance with the NPF's provisions.

Clause 16: Application of the precautionary approach

We broadly support the codification of the precautionary principle and agree that taking a precautionary approach to the setting of environmental limits does make sense. However, this should be balanced against the point we've raised earlier around the need to ensure that environmental limits are not set so stringently that the unintended consequence of development being precluded results. Application of the precautionary principle further reinforces the need for environmental limits to be set at different levels for different circumstances and locations as per clause 12(2)(b).

Recommendations

We recommend that:

1. Schedule 1 of the Bill include a specific requirement that local government be consulted with on the development of the NPF, and subsequent amendments made to it.

2. Further thought be given to establishing a panel of experts, commission or board of inquiry to oversee the development and maintenance of the NPF.

3. The Government provide early signals on the timing of the implementation of the NPF, and how this will align with requirements to produce NBA plans and regional spatial strategies. This should include any signals around changes to national direction that will necessitate changes to existing planning provisions.

4. The Government revisits the proposal that environmental limits can be set qualitatively.

5. New and existing national direction closely aligns with other Government work programmes, including the Emissions Reduction Plan and National Adaptation Plan.

Clause 18: Implementation principles

Broadly we agree with the intent of the implementation principles set out in clause 18. However, we have some concerns around vague drafting. We also believe that the principles fail to adequately reflect the need for a carefully managed transition to the new system, and a system that is more efficient and less complex.

Our main concern is with the unprioritised nature of the principles, and the inconsistent use of terminology throughout clause 18. For example, clause 18 refers to 'promote', 'recognise and provide for', 'ensure' and 'have particular regard to'. Further work needs to be done to consider the meanings of these different terms and clarify whether any hierarchy is intended.

Clause 18(b)

We recommend that the drafting of this principle is worked out in partnership with mana whenua. In practice, we can foresee issues with application of the principle across regional NBA plans, by regional planning committees, given that the matters

listed (and in particular mātauranga Māori) will vary significantly and will be enhanced by the different iwi and hapū within a region.

Further work on the meaning of this implementation principle should be considered in conjunction with further work to refine Te Oranga o te Taiao.

Clause 18(c)

The current drafting of this principle is somewhat vague. While in principle we support the intent of public participation that is "important to good governance" and "proportionate to the significance of the matters at issue", what these concepts mean in practice is unclear. There will be many and varied interpretations of what they mean. We suggest that once the processes for plan making, including opportunities for the public to have input into and/or appeal decisions are clarified, that this principle should be updated to accurately reflect the opportunities for public participation that the system will provide.

We also recommend that this principle (or a separate principle) addresses the issue of ensuring that there are appropriate opportunities for communities to participate in plan making processes. There are some concerns that the current system is difficult for lay people to navigate, and often favours the views of experts over and above community voices. This should be addressed in the new system.

Clauses 18(d) and (e)

We are supportive of the inclusion of principles that address te ao Māori. Whether they are given effect to will depend in large part on the governance arrangements that get worked out for planning committees, what mechanisms there are for partnering with mana whenua, and how mana whenua are resourced to meaningfully participate in and shape the new system.

Mana whenua representation on planning committees will require discussions between the Government and iwi leaders to identify effective co-governance solutions should there be more mana whenua representatives in a region than the number of seats available. Appropriate mechanisms will be needed to support mana whenua to have input into the new system beyond planning committee representation (particularly in respect of plan making processes).

We have some concerns with the inclusion of clause 18(e). The current drafting suggests that iwi and hapū are responsible for protecting and sustaining the health and wellbeing of te Taiao and makes no reference to the role that other decision-makers must play in partnership with mana whenua. The current drafting creates a risk that local authorities may offload their responsibilities, which we don't envisage is the intended outcome.

Principles relating to timely and efficient processes and transition from the current system to the new system

Currently there is no implementation principle that goes to the Government's fifth objective for the reform of the resource management system around efficiency, effectiveness and reduced complexity. We strongly recommend that the Government includes a principle addressing the need for timely, efficient and proportionate processes that is akin to section 18A of the RMA.

There is also nothing in the implementation principles to reflect the very real need that there will be for a period of transition away from the existing system to the new system. The transition will take time, will need to be carefully planned and adequately resourced. This includes work to address how the reform of the resource management system integrates across other local government roles, functions and planning documents, including long-term plans. Work will also need to be done to consider how existing consents and designations, and consent and designation applications, get dealt with in terms of timing and transition to the new system. Such a principle should be reflected in clause 18.

Recommendations

We recommend:

1. That the Government works in partnership with mana whenua to further refine implementation principles that address the role of mana whenua in the new system.

2. That clause 18(c) be amended to accurately reflect the arrangements that get decided upon for public participation in plan making processes. We also recommend that this clause specifically addresses the need for appropriate opportunities for public input into plan making processes.

3. That additional principles relating to timely, efficient and proportionate processes; and the transition to the new resource management system are inserted into clause 18.

Local government's capacity within the resource management system

Our comments that follow on the requirement for NBA plans and the shift to regional planning committees are premised with comments on local government's

current capacity in the resource management space. These comments should be read in conjunction with our following comments on clauses 19 – 25 and Schedule 3.

The shift in approach to planning that the Government is proposing is significant and will require a considerable amount of time and resource to implement. Local government is already experiencing significant difficulty attracting and retaining the capacity and expertise it needs to carry out its existing resource management functions. Many councils are experiencing ongoing recruitment churn, which has significant time and financial implications. This issue is particularly acute for rural and provincial councils. We understand that MfE and the private sector are facing similar capacity issues.

We accept that some of the current resourcing challenges may be helped through the creation of more efficient and joined up processes and structures. However, the work involved in transitioning to the new system (coupled with existing work pressures, for example in relation to implementing the new NPS-FM and NPS-UD requirements and working through second generation plans) will place considerable strain on an already stretched workforce.

The Government's determination to shift to the new system demonstrates it doesn't fully understand the extent of local government's current capacity and capability challenge. We are also concerned that the disruptive change that will result from a complete overhaul of the existing system will undermine the progressive momentum that is building through implementation of the NPS-UD and NPS-FM and won't allow sufficient time to properly implement and measure the effectiveness of these new initiatives.

Exacerbating local government's capacity and capability challenge is the number of employees leaving the sector to take up the multiple new roles that are being created within central government agencies to service the Government's ambitious reform programmes. Typically the pay and employment conditions that central government agencies are able to offer far exceed those that local government can offer. This adds to the challenge for local government of retaining existing talent. It will also ultimately hurt the resource management sector as a whole, as local government is the main training ground for developing skills in successful plan making. In local government, planners gain experience in all stages of plan making from engaging with communities on issues and opportunities through to engaging in Environment Court hearings on plan content. Local government is going to need to be able to access and retain quality staff in order to deliver the new system central government wants.

All these factors are going to ultimately impact on the quality of and length of time that the transition to the new system takes.

Clauses 19 – 21: Requirement for natural and built environments plans

The proposal to shift from over 100 planning documents to "about 14"[8] regional NBA plans is not an insignificant undertaking. While we agree in principle that a single, regional plan could be easier for regular users of plans (especially resource management consultants that work across the country), it isn't yet clear whether navigating those plans will be any less complex, particularly as we aren't yet entirely clear what the contents of NBA plans will be and look like (see below for further comment). The need for local flavour (as well as addressing regional matters) in NBA plans means the plans may be necessarily large, and therefore difficult to navigate.

The complexity of developing new NBA plans that will take account of multiple (and potentially competing) regional interests should not be under-estimated. There is significant local variation within regions themselves – think only of the differences between areas like Christchurch and Timaru; Queenstown, Clutha and Dunedin; Tauranga and Ōpōtiki; Wellington and South Wairarapa, and their communities. These differences are wide-ranging, covering a breadth of factors including (but not limited to) socio-economic conditions; urban vs rural communities; different land uses; variation in population sizes; high growth vs stagnant communities; and varying levels of political power and influence, to name but a few.

We are concerned that the requirement for NBA plans has the potential to diminish the role and voice of local communities in plan making (although acknowledge that the extent to which this proves to be the case depends in large part on decisions yet to be made). Smaller territorial authorities are concerned that their views may be outweighed in the new process and planning committee structure by those of larger, metropolitan territorial authorities. Tier 1 local authorities are concerned that they may be outnumbered on planning committees by smaller, rurally focused territorial authorities and regional councils, and worry that this may lead to a greater focus on wider regional issues and less focus on critical urban growth management. We have some doubts as to whether a regional approach will adequately address varied local concerns and needs at an appropriate level of granular detail.

How effective a plan is in delivering outcomes for local communities will depend in large part on how well it is implemented. There is likely to be some opposition by local government and its communities to funding the implementation of NBA plans that they have very little input into the development of, and that don't adequately address local views. This risk needs to be addressed through the arrangements for

[8] https://www.parliament.nz/resource/en-NZ/PAP_111932/566adf88416a4cac23b7f5fe7c2aa5f89e61b742 (Refer para 45).

planning committee membership and opportunities for constituent local authorities and communities to have input into plan making processes.

We are concerned that the Government is striving to create a new system that is more efficient yet doesn't appear to have done much to look back on other planning models that could be learned from and adapted. We strongly encourage the Government to work closely with Auckland Council and Christchurch City Council to understand the plan making processes that were adopted for their Unitary Plan and Replacement District Plan respectively. We understand that both local authorities are willing to share insights into how these processes worked, including what worked well and what didn't.

It also strikes us that the new Freshwater Planning Process could first be tested to inform the development of a new NBA process. Although this process isn't yet well-tested, we understand that the Otago Regional Council will soon go through it. Learnings from Otago Regional Council's (and others') experience should inform the development of the new NBA process.

Scale of NBA planning

If regional 'mega' plans are still favoured after consideration of the matters raised through the Select Committee process, there are several practical issues related to regional boundaries that will need to be worked through carefully. Simply adopting regional council boundaries may not be as simple an option as it seems. For example, arrangements for Taupō District Council will need to be worked through, given that the district is split between four different regions (Waikato, Bay of Plenty, Hawke's Bay and Manawatū-Whanganui). Although most of the district's land area sits within the Waikato Region, the people of the Taupō District associate with various communities of interest and regional groupings (particularly depending on context). Further work will need to be done with Taupō District Council to come up with a solution that doesn't end up being more complex than the current plan making process.

We note that the Parliamentary paper refers to the creation of "about 14 plans" (at para 45). This suggests that the Government is perhaps doing further work on what the arrangements are for unitary authorities in the new system. Any decision to treat unitary authorities as something other than regional units, and to put in place bespoke arrangements, must be made in partnership with them.
We understand that several Tier 1 authorities will be raising via their submissions the issue of whether a one-size-fits-all approach of one NBA plan and regional spatial plan per region is appropriate. Tier 1 local authorities are concerned that the shift to a focus on regional issues will result in less focus on urban growth management,

leading to further issues in terms of providing adequate housing and resolving growth issues.

We understand that some Tier 1 authorities will be encouraging the Government to consider allowing planning to happen at inter-regional, sub-regional and local levels. We understand some Tier 1 authorities are of the view that planning should be able to happen at a Tier 1 level (with separate regional level planning for non-Tier 1 local authorities) so they're able to resolve significant urban growth challenges, without these challenges being diluted by a focus on wider, regional issues. We understand these councils are suggesting that consistency between NBA plans for Tier 1 urban environments (such as Tauranga and Hamilton) could be achieved through collaboration and strict implementation of national planning standards via the NPF.

As part of its work to consider the appropriate scale/regional boundaries for the NBA plan making process, the Government should also consider whether existing bodies working on regional spatial planning (such as that in the Wellington/Horowhenua region) could be appropriate bodies to oversee the development of an NBA plan.

We encourage the Government to continue to work with local government to address the complex issues and options that exist, and to ensure planning is able to occur at the appropriate scale.

It's not yet entirely clear to us how work on the reform of the resource management system is integrating with work on the reform of three waters services. Work should be done to consider how any regional boundaries used for NBA plan making and the multi-regional boundaries adopted for the proposed new Three Waters Services Entities will integrate. This work should acknowledge that the most effective approach to environmental management is catchment based.

Transition – prototype and model plans

The transition to the new model of 14 regional NBA plans (or thereabouts) will need to be carefully planned and resourced. We understand the Government is giving thought to developing a prototype NBA plan, followed by working with one or two regions to develop a model plan. We can see some value in developing prototype and model plans. However, the existence of a prototype plan isn't necessarily going to help regional communities resolve localised conflicts that will inevitably arise as plans are developed, or help planning committees to develop relationships that will be critical to the success of plan making processes. The Government should also be careful to avoid creating expectations that NBA plans can be developed using a 'copy and paste' approach.

We encourage the Government to assess the extent to which the existing National Planning Standards could help here, and whether creating prototype and model plans may ultimately be an exercise in duplication. In any event, the National Planning Standards will need to be updated to reflect the new plan making requirements.

On the creation of model plans, our view is that a clear set of criteria for selecting which regions will be involved in this process needs to be developed. Regions where existing relationships between local government agencies and mana whenua are strong should be prioritised for the development of model plans. Regions where significant investment and progress towards having effective planning frameworks has already been made should be avoided. The Government needs to be cognisant of the considerable amount of work local government has underway (business as usual work and responding to the Government's various reform programmes) when selecting regions to work with.

The Government must work with local government and mana whenua representatives to set a realistic timeframe for creating a model plan, which should take account not only of the already significant workload local government and mana whenua have, but also the additional time that will be needed to come to grips with and work through an entirely new plan making process, including establishing necessary relationships and secretariat arrangements.

The Government will need to provide considerable support to those regions that it works with – including technical and financial support, and people on the ground to guide plan making processes, help manage workloads and provide clarity on areas of uncertainty, as people come to grips with the new legislation.

In addition to making model plans available, the Government should provide guidance on the plan making process that each region works through. This should detail the process adopted, steps taken, issues encountered and resourcing involved in the development of the plan. Any variations between the processes that the model plan regions take should also be referenced. This will help to provide local government and mana whenua with practical insights into what is needed to give effect to the requirement to produce an NBA plan. To avoid the model plans being viewed as something that can be 'copied and pasted' we consider that guidance of this kind should be viewed as more of a priority.

<u>Transition – timing</u>

Clause 19 of the exposure draft states that "There must at all times be a natural and built environments plan (a **plan**) for each region." However, what is not yet clear is the point in time at which regions will be expected to have an NBA plan in place. This

needs to be clarified. Related to this is a need to clarify the point at which councils should not be undertaking any further reviews of their existing planning documents or accepting any requests for private plan changes.

The Government should not lose sight of the significant work that many local authorities have undertaken on second generation plans and policy statements that are still relatively new. Thought needs to be given to how the provisions of these plans are or aren't rolled into new NBA plans, or whether there is scope to delay transfer to the new system in those regions where there are still relatively new planning provisions.

Schedule 2: Process for making NBA plans

We note that there is still a considerable amount of detail to be worked through in respect of the process that must be followed for making an NBA plan. It remains to be seen whether the planning committee approach will result in more agile and efficient plan making. Given the varied and potentially competing interests and views that planning committee members will represent and must reconcile, we envisage that plan making by planning committees will be complex and time consuming. This will be particularly so if relationships between members of planning committees are not strong.

By way of initial feedback on the plan making process, we note:

- While a consistent approach to plan making will help to achieve certainty and consistency, the approach needs to be flexible enough to take account of local variation and circumstances. In particular, the plan making process must recognise that different regions will be at different stages of maturity in terms of the relationships that exist between constituent local authorities and that local government has with mana whenua. The process also needs to reflect the different ways in which mana whenua groups operate with each other and councils across the country.
- The process should clarify the sequence of plan making, including when an NBA plan gets made relative to the timing of a regional spatial strategy being made and the NPF coming into force. Reasonable timeframes for preparing NBA plans also need to be set.
- Thought needs to be given to how to retain current system efficiencies that result from being able to progress different plan changes in parallel but managing them in different stages.
- There are several matters relating to submissions and appeals that need to be resolved.

Timeframes for preparing NBA plans

Consideration needs to be given to realistic end-to-end preparation time for NBA plans. Local government's experience is that full plan reviews typically take around 6 – 9 years. This contrasts with more efficient and streamlined topic or area specific 'rolling review' plan changes, which can typically be delivered in a shorter 1 – 3-year timeframe. In determining a realistic end-to-end timeframe for preparing a NBA plan, the time delays that will result from consolidating plan making functions into a single committee and secretariat and getting those new structures up and running will need to be factored in. It is not going to be quick or easy for new organisational structures and ways of working to be established and bed in.

Input from constituent local authorities into plan making

It remains unclear whether constituent local authorities will continue to have a policy making or technical role in respect of NBA plan making. What direct input will each constituent local authority have into the NBA plan for their region prior to its referral to an independent hearings panel (IHP)? At this stage, the exposure draft only sets out the types of support that it is envisaged a secretariat will provide to the planning committee.

To ensure that NBA plans adequately reflect and provide for matters of importance to constituent cities and districts, we favour an arrangement that allows for councils to continue to provide some policy and technical input into plan making. This will help to ensure that the deep technical planning expertise and community knowledge that local government has developed under the current system, and which is critical to effective resource management planning, is not lost. This specialised expertise sits across both regional and city and district councils.

It is also unclear whether constituent local authorities will retain any responsibility for consulting with their communities on matters to inform the development of NBA plans by planning committees. While we see some merit in constituent local authorities undertaking engagement with their own communities on behalf of planning committees (particularly given proximity to those communities and pre-existing relationships), we have concerns around some local authorities being reluctant to lead community engagement if for example they aren't represented on their region's planning committee or disagree with matters on which the planning committee is seeking feedback. These comments should be read in conjunction with our feedback on clause 23(2), which sets out a planning committee's functions.

Without clarity on working arrangements and plan making processes it is also unclear what governance support the local government representatives of planning committees will need from their constituent local authorities. While we expect there

will be a role for a local authority to play in supporting their planning committee representative throughout the plan making process, the detail still needs to be worked through.

The question of whether a planning committee can direct a constituent local authority to undertake work on its behalf to support the plan making process also needs to be resolved. If the planning committee can do this, some parameters around the types of work planning committees can request be undertaken, and guidance around reasonableness of timeframes for expecting work to be completed or meeting reasonable costs for undertaking work, would be helpful. Without such guidance we can foresee potential for unwieldy ways of working and unexpected and unmanageable pressures being added to constituent local authorities' existing workloads.

What roles constituent local authorities continue to play (or not) with respect to plan making need to be worked out in detail in partnership with local government. These decisions will have significant implications for existing employment arrangements (including the potential for significant changes to existing roles, and possible redeployments, secondments or redundancies) and councils' operational budgets.

Public input

The work to clarify roles and responsibilities in respect of public consultation as between planning committees and constituent local authorities should also address the scope of any engagement that happens with the public ahead of NBA plans being notified and referred to an IHP. The scope of matters that can be considered by an IHP should also be clarified, noting that presumably matters already provided for in the NPF and regional spatial strategies will likely be out of scope.

Having opportunities for genuine and meaningful engagement with communities will be particularly important if certain districts and mana whenua groups are not represented on planning committees, given the need for NBA plans to reflect and meet the needs of the communities they're intended for. We accept that this should be balanced against the need for plan making processes that are efficient and not overly complex.

We reiterate our earlier comments around the need for appropriate opportunities for public participation and the need to ensure that public views are not unreasonably outweighed by the views of technical experts.

Independent Hearings Panels

Clause 23(2)(b) indicates an intention that an IHP hears submissions on an NBA plan once it has been notified and makes recommendations that the planning committee must then approve or reject. While there is no further detail around the role an IHP will play, given the multiple, competing interests likely to be represented in a planning committee's membership, we see merit in the proposal to refer draft plans to an IHP. (Although this is unlikely to alleviate the potential for conflicts in making decisions on the IHP's recommendations at the planning committee level).

Further work will need to be done to clarify how the IHPs are resourced and supported, including how they are supported by secretariats and constituent local authorities (or not).

Again, we encourage the Government to look closely at Auckland Council's and Christchurch City Council's experience with their IHP processes.

It is not clear whether a constituent local authority can submit on an NBA plan once it has been referred to an IHP, and whether the option of submitting is open to all constituent local authorities, or only those not represented on a planning committee (if the final decision around membership is that not all local authorities are represented). Given that some local authorities may not be represented on their region's planning committee, and the likely removal of a large degree of localised control over plan making processes, we tend to be of the view that councils should be able to make submissions to the IHP. However, this has the potential to create conflicts of interest. For example, local government representatives that sit on planning committees may choose to reject recommendations made by the IHP if these don't align with the views raised in their council's submission. How does this get managed?

Work will also need to be done to clarify decision-making arrangements in respect of adopting or rejecting IHP recommendations. For example, how many members of a planning committee need to accept a recommendation of the IHP for it to be adopted? Thought also needs to be given to how to address the issue of planning committees making decisions on the recommendations of the IHP without hearing all the evidence. We can foresee challenges, particularly on New Zealand Bill of Rights Act 1990 grounds.

The Review Panel recommended that MfE carry out an audit of an NBA plan prior to its notification and referral to an IHP. The Review Panel's view was that this would not be to exercise approval powers over the plan, but to provide an opportunity for system stewardship (essentially an audit of the plan's alignment with the

requirements set out in the NBA and NPF). This recommendation hasn't been reflected in the exposure draft.

Noting the significant amount of drafting still to be done, we recommend that the Government rejects this recommendation. Adding in a requirement for an audit will slow down the plan making process, which is inconsistent with the objective of a system that is more efficient and less complex. We struggle to see what value an audit will add, when presumably the matters the Review Panel envisaged would be considered by an MfE audit could be considered by an IHP (and indeed should be). We also have concerns about the capacity that MfE has to undertake audits in a timely manner, and whether MfE officials would have sufficient understanding of local circumstances in order to be able to provide useful feedback on draft NBA plans. Central government representation on planning committees is a more efficient mechanism through which the Government can help to ensure alignment of plans with NBA requirements.

Appeals

One of the issues still to be resolved is the extent to which decisions on NBA plans can be challenged. Local government has, for a number of years now, been calling for the removal or restriction of de novo Environment Court appeals (i.e. merit-based appeals) on the basis that this would help to speed up the plan making process and that policy decisions (particularly those relating to place) should sit with communities (and the people that represent them). We recommend that the new system allows appeals only on points of law, and that merit-based appeals are removed in their entirety. There is precedent for this having happened in connection with the Auckland Unitary Plan and Christchurch's Replacement District Plan. The new Freshwater Planning Process arrangements in respect of appeals should also be looked at (discussed in further detail below).

Where challenges are brought against NBA plans, who the defendant is will need to be clarified (i.e. what role will constituent local authorities have to play in defending appeals lodged against planning committee decisions?) This will in large part depend on the type of committee that gets adopted (for example, a joint committee of all local authorities in the region or a committee of the regional council with prescribed membership, duties, powers and obligations).

Related to this point is the need to clarify whether a constituent local authority can appeal a decision made by a planning committee or not.

Recommendations

We recommend that:

1. The Government undertakes a stock take of existing capacity gaps in the resource management sector, particularly for local government.

2. Final decisions around the scale of/boundaries for NBA plan making are made in partnership with local government.

3. The Government undertakes further work to identify how NBA plan making boundaries and three waters service entity boundaries will integrate.

4. The Government continues to work with local government to clarify the contents and design of NBA plans. This should include determining the extent to which existing planning provisions can be rolled across into new NBA plans.

5. The Government engages directly with Auckland Council and Christchurch City Council representatives to ensure that insights on their Unitary Plan and Replacement District Plan making processes (respectively) inform the development of the new NBA processes.

6. The Government considers first testing the Freshwater Planning Process to inform the development of new NBA planning processes.

7. Officials develop, in consultation with local government, a clear set of criteria for identifying which regions would be selected to develop model plans.

8. The Government provides early signals around timing and transition requirements to local government. Local government needs early signals as to when it should cease undertaking further reviews of existing planning documents.

9. Officials work closely with local government representatives around the decisions yet to be made on what roles and functions related to plan making continue to sit with constituent local authorities.

10. The Government limits rights of appeal to the Environment Court by removing merit-based appeals.

Clause 22: Contents of plans

While clause 22 provides a useful steer on what will need to be included in an NBA plan, there is still a considerable amount of legislative design and detail to work through.

Local government is not yet clear whether NBA plans will essentially consolidate existing district plans (i.e. district plans being brought together to form individual district chapters in the plan) or whether there will be a fundamental re-write and condensation of existing district planning provisions (the metaphorical starting with a blank canvas). Given that NBA plans will ultimately impact on individual property rights it is difficult to see how they could dispense with a district plan-style process of setting out 'grid by grid' levels of detail for each district. While bringing existing district plans into a single NBA plan is likely the most simplistic approach and would allow individual districts to retain a level of control over planning decisions, this will not necessarily result in plans that are any less complex, shorter, or easier to navigate than what we have currently.

Our sense is that if NBA plans are to properly address both regional and local matters they will, by necessity, be large plans. The larger the plan the longer each part of the plan making process will take, and the less likely communities will be to engage in it.

Clause 22 appears to codify the approach set out in *King Salmon* that national direction gives effect to the purpose of the NBA, and that national direction is in turn given effect to through NBA plans. We support codifying that approach.

Relationship between NBA plans and regional spatial strategies

We note from the drafting of clause 22(1)(d) that the relationship between NBA plans and regional spatial strategies is still to be clarified. We consider that a requirement that NBA plans 'be consistent with' or 'give effect' to regional spatial strategies (or similar legal weighting) is appropriate. Regional spatial strategies should be treated as the higher order planning document (given they are likely to identify areas suitable for development and that should be protected from development), and the contents of them should not be able to be re-litigated by the planning committees working on NBA plans.

Once the relationship between NBA plans and regional spatial strategies is clarified, the Government should give thought to whether a Future Development Strategy, as required under the NPS-UD is necessary. In the interests of achieving system efficiency and reduced complexity, we consider that Future Development Strategy provisions could largely be subsumed within regional spatial strategies.

Clause 22(1)(e): Matters of significance to regions and districts

We are pleased that clause 22(e) appears to give regions and districts the ability to promote outcomes in addition to those provided for in clause 8 (provided their NBA plan promotes the outcomes listed in clause 8). One of the key concerns that local government has voiced around the shift to regional plan making is whether there would be sufficient recognition of the local variation that exists across the districts that make up regions – particularly larger regions, and even smaller ones. However, we note that regions and districts adding their own outcomes into NBA plans has the potential to create even more conflicts between outcomes.

As already indicated, we question whether the setting of outcomes based on local values (and then environmental limits) could be left to communities themselves, as per the requirements of the NPS-FM NOF.

How well matters of significance to individual districts are reflected in NBA plans will depend on a number of factors, including how much detail is included in a plan, what the membership of planning committees looks like, the role that constituent local authorities play in NBA plan making (including technical, policy and public engagement roles) and the opportunities that there are for public input into plan making. This all points to a need to resolve what the process for identifying matters significant to each district is.

Clause 22(2) requirements

Currently clause 22(2) specifies that an NBA plan *may* set objectives, rules, processes, policies or methods, and identify any land or type of land in a region for which a stated use, development or protection is a priority. To provide certainty, reduce the scope for argument around contents of plans and to reduce inconsistency across the country (and indeed potentially regions, if the design of NBA plans is such that there is a chapter for each district in a region) we recommend that clause 22(2) is amended to provide that an NBA plan *must* include the specified matters. This would be consistent with sections 62, 67 and 75 of the RMA.

If use of the word *may* was in part intended to allow a reduction in the amount of content that a NBA plan includes, we suggest the better approach would be for the Government to work with local government and mana whenua to rationalise the list of things that must be included in a NBA plan.

We assume that the intent is that NBA plans will include resource allocation plans. We recommend that this is clarified in the final drafting of the Bill.

Existing plan provisions

As noted above, one of the key matters for central government to resolve with local government is how much detail can be brought across from existing planning documents to new NBA plans. Local government needs clarity around whether there will be any ability to carry across provisions that have been developed through existing plan making processes, and indeed whether these provisions can be brought across without re-opening them up for debate. Or, is the intention that planning committees start with a 'blank canvas'?

While in principle developing NBA plans presents a good opportunity to rationalise and consolidate existing planning provisions, the Government should not lose sight of the significant amount of time and money that has been spent by local government (and its communities) over the years on plan making and review processes, and the considerable amount of public, other local authority and Environment Court input that there has been into these processes. Especially for medium and high growth cities, it would be disappointing to lose the recent investment and progress that has been made to reach agreement on important issues (including ways of adding capacity for housing) through lengthy and expensive mediation or court processes by reopening these matters.

Iwi management plans

The Parliamentary paper sets out an expectation that iwi management plans will be used in the preparation of NBA plans. This is not yet clear from the drafting of clause 22.

We recommend that the complete NBA Bill makes the requirement to use iwi management plans in preparing NBA plans explicit. The Bill should be clear around the legal weight as between NBA plans and iwi management plans.

It would be useful to have an understanding of how many iwi management plans have been lodged with councils and any new resourcing that will be required to address any gaps.

The full Bill should also clarify the relationship between NBA plans and the various pieces of Treaty settlement claims legislation. It should also clarify what will happen in respect of any existing Mana Whakahono a Rohe arrangements.

Alignment with other local government plans

We note that the creation of new NBA plans is likely to necessitate changes to a number of existing local government planning documents, including but not limited

to long-term plans, land transport management plans, infrastructure strategies, biodiversity strategies etc. This part of the transition to the new system will involve a significant amount of time, resource and expense for constituent local authorities.

We note that there may be some political opposition to the level of investment that individual local authorities will need to make to give effect to NBA plans, given their lesser role in plan making. This will be particularly so for any councils not represented on planning committees (if that is the decision that gets made).

Recommendations

We recommend that:

1. The Government involves local government in decisions on the contents of NBA plans. This should include decisions as to how existing planning provisions get dealt with in the new system.

Clauses 23 – 25: Planning committees

The proposal to establish regional planning committees will fundamentally change the way in which resource management planning is delivered in Aotearoa. Although the Review Panel was at pains to emphasise that it was not making recommendations about the need for reorganisation of local government, at face value the shift to regional planning committees (coupled with the proposed creation of four multi-region Three Waters Services Entities) foreshadows a fundamental reorganisation of local government. We acknowledge that such matters are being considered by the Future for Local Government Review.

Our major concern is that the shift to a regional planning committee model has the potential to significantly reduce opportunity for local input into decision-making, particularly given that planning committees are unlikely to be accountable to constituent local authorities. We are concerned that the interests of constituent districts may not be adequately represented on planning committees (if at all) and that the opportunities for the public to engage in plan making processes may reduce significantly – either in reality or as consequence of the shift to larger bureaucracies and larger plans. As noted above, concerns around inadequate opportunities to have input into plan making are shared by small, rural territorial authorities and large, Tier 1 authorities.

Although the processes for plan making (including public input) are still to be worked through, we have some reservations about how likely communities are to engage with a regional decision-making body as opposed to their constituent local

authority. In addition to our concerns around communities' willingness to engage with large and complex planning documents, there is a risk that communities will lack confidence in a regional body's ability to adequately understand or properly consider their specific local concerns and circumstances. The Government should keep this in mind when working through what role constituent local authorities will play in supporting planning committees with policy making and public engagement to inform the development of plans.

Thought could also be given to whether sub-regional committee structures (or indeed planning at scales other than region-wide) may help to ensure appropriate local input, although we acknowledge that this may add a further layer of complexity into an already complex system. Local government should be involved in such discussions.

Clause 23(2): Planning committee functions

Clause 23(2) gives planning committees significant functions, including making and maintaining NBA plans; approving or rejecting recommendations made by an IHP following its consideration of submissions on NBA plans; and the setting of environmental limits for a region. Such a degree of responsibility should be coupled with accountability to the communities that are affected by these decisions. Taituarā is therefore firmly of the view that the local government representatives on planning committees must be elected members. We will return to this in our feedback on Schedule 3 below.

While clause 23(2) refers to planning committees "making" NBA plans, we doubt that the role of planning committee members will be to write NBA plan provisions. Indeed, based on the drafting of clause 5(2)(c) in Schedule 3, it seems more likely that this function will sit with the secretariats that support planning committees. The drafting of clause 23(2) should be clarified to more clearly define the role of planning committee members as being to "make decisions" on NBA plans.

Clause 23(2) specifies that planning committees are responsible for "maintaining" plans. However, it's not entirely clear what this means. For example, it's not yet clear whether planning committees will be responsible for implementing plans, by making decisions on consent or designation applications, managing plan changes (including private plan change requests) and carrying out compliance, monitoring and enforcement functions (CME), or whether some or all of these functions will remain with constituent local authorities.

The local government sector can foresee that some of these functions may shift to regional bodies, particularly CME functions (to ensure that regional plans are being given complied with). The Government must work with local government to

determine where the functions that make up the resource management system will sit.

We support retaining the status quo as much as possible. For example, depending on the final design of NBA plans it would likely make sense for a constituent territorial authority to maintain responsibility for overseeing a plan change process that relates only to their district. However, we acknowledge that there is likely to be some political tension around local authorities (particularly territorial authorities) implementing plans over which they have little control in the making of.

Ultimately, given the long "shopping list" of things that the NBA will require the new plans to address, the task of planning committees needs to be clearly defined and prioritised. Otherwise, we can foresee problems for planning committees around reconciling the range of different angles that members will raise.

Further comments on the membership and support of a planning committee are provided below. Given the significant amount of detail that remains to be worked out, our overarching comment is that the Government must partner with local government on this work. These decisions will have significant implications for local government and will likely result in fundamental changes to the way local government works.

Clause 24: Considerations relevant to planning committee decisions

Broadly we agree with the requirements set out in clause 24 that planning committees must comply with when making decisions.

We make the following specific comments:

- There is no reference in clause 24(2) to the need for planning committees to have regard to IHP recommendations. This seems to be an oversight, given clause 23(2)(b) says that one of a planning committee's functions is to approve or reject recommendations made by an IHP after it considers submissions on an NBA plan. Clause 24(2) should be amended to specifically provide that planning committees must have regard to the recommendations of the IHP when making decisions on an NBA plan.
- Given the potential for public input into plan making processes to be diminished, we recommend that clause 24(2)(b) is amended to provide that planning committees may consider social impact assessments to help inform their decisions. This would help to ensure that planning committees have proper regard to the impacts that their decisions will have on people and communities.

- With respect to clause 24(2)(d), we recommend that a framework is developed (and contained in the NPF) to support planning committees to determine whether conflicts should be resolved by NBA plans or on a case-by-case basis via consents and designations.
- We support planning committees being required to apply the precautionary approach under clause 24(3). This seems particularly important in circumstances where plan making decisions may be underpinned by less evidence obtained directly from affected parties/communities. This reinforces the need for planning committee decisions to be evidence-based, which could be more explicitly required by clause 24.
- As already noted, we support the codification of the decision in *King Salmon* – namely, that the NPF gives effect to the purpose of the NBA, and that NBA plans must in turn give effect to the NPF. The presumption must be that plans give effect to the NBA so that consent decisions can be made without having to have recourse back to Part 2 of the NBA when considering applications. For the avoidance of doubt, we recommend that clause 24(4) be amended to explicitly provide that the NPF furthers the purpose of the Act.
- The NBA doesn't yet appear to include anything around penalties for failure to include national direction in NBA plans. There have, for example, been issues around the New Zealand Coastal Policy Statement being translated into district planning rules. Penalties for failure to incorporate national direction into NBA plans may help to avoid similar issues being repeated.

Clause 25: Power to set environmental limits for region

We reiterate earlier comments around the need for the process that a planning committee must follow to adopt an environmental limit for their region to be clearly set out in the NPF. This process should be developed in partnership with local government and mana whenua to ensure that it is workable.

Recommendations

We recommend that:

1. Clause 23(2) be amended to clarify that the role of planning committees is to make decisions on NBA plans (i.e. not make NBA plans).

2. Clause 24(2) be amended to specifically provide that planning committees must have regard to the recommendations of the IHP when making decisions on an NBA plan.

3. Officials engage closely with local government on resolving which resource management functions continue to sit with constituent local authorities.

Schedule 3: Planning committees

There is considerable detail around the membership of planning committees and how they will be supported that still needs to be worked out. This detail must be worked out in partnership with local government and mana whenua. This should build on other work such as the implementation of the fast-track Freshwater Planning Process.

Clause (1)(c): Membership of planning committees – local government representation

Local government representatives – the role of elected members and officers

Taituarā is firmly of the view that the local government representatives on planning committees must be elected members. Elected members are accountable to the communities that elect them, and so should be responsible for making decisions about use and development of the environment that are likely to involve weighing competing interests and making values-based judgements. The role of an elected member is to make policy decisions based on professional advice.

We are not convinced that it is appropriate for local government officers, who are ultimately unaccountable to their communities, to be responsible for making such decisions. Putting officers on planning committees would fundamentally undermine their role to provide technical and professional advice. Having staff responsible for making decisions that will significantly impinge on private property rights is unlikely to satisfy a local authority's duty to be a good employer, particularly given the potential for significant criticism from elected members and communities if a planning committee makes a decision that is unpopular.

Council staff are well-accustomed to providing elected members with evidence-based policy and technical advice upon which to base decisions. Equally, elected members are accustomed to making decisions based on advice council staff (and members of the public) provide them with. The new system should continue this approach. This will require working through what mechanisms there are for supporting the local government representatives that are appointed to planning committees – both via the planning committee secretariat and via constituent local authorities.

We accept that the local government election cycle will create ongoing changes to the membership of planning committees. However, with good structures in place to ensure that the members of planning committees are well supported, we think that the potential for change in membership of planning committees shouldn't be overly problematic. Indeed, councils themselves manage to deal with significant work programmes despite elected member turnover. Consideration will need to be given

to what transition arrangements can be put in place for situations where members of planning committees need to change following local government elections.

Notwithstanding our view that elected members are the most appropriate representatives to be appointed to planning committees, there are a number of considerations that will need to be worked through, including:

- How to address power imbalances across local government representatives. For example, how do you manage the likelihood that the views of local government representatives from more populated, large urban areas with significant rating bases and political capital will have more sway than the views of representatives from smaller, less-populated districts? Equally relevant is the concern of Tier 1 authorities that a focus on region-wide issues may dilute focus on the need to address urban development and growth issues in their area. Ensuring equitable opportunities for constituent local authorities to contribute to decision-making will be important.
- How does a local authority decide who its representative on the planning committee will be? What is the process for nominating and/or appointing that person?
- How much time a planning committee member's role is likely to take up isn't yet clear. We can envisage that the role will take up a significant amount of time. This may be unpalatable to some elected members who may prefer to have broader input into the wide range of issues and opportunities facing their communities. This needs to be clarified.
- The issue of whether planning committee members are paid, who pays them and how much they get paid needs to be resolved. For example, would a local government representative continue to receive a salary from their constituent local authority? This may raise issues if planning committee members are receiving different levels of remuneration for their work.
- Thought should be given to whether planning committee members are able to delegate their role to another elected member.
- There may be a need to address elected members' gaps in skills and knowledge as they relate to resource management issues. The Government shouldn't assume that all elected members will have the base knowledge and understanding needed to undertake the role. The Making Good Decisions Programme will need to be updated to reflect the new system.
- When territorial authority elected members swear their oath when they take office, they swear to act in the best interests of the district they represent. This will likely be at odds with the requirement for those members of planning committees who are representatives of territorial authorities to act in the best interests of the region their district is part of.

- How to manage existing tensions between local authorities needs to be addressed. Under the current resource management system there is a history of local authorities appealing one another's plans.

These issues should be worked through local government.

We recommend that the Government explores with local government whether something like a technical advisory committee could be set up to support and provide advice or make recommendations to the planning committee, or whether it would be sufficient to provide such advice via the planning committee's secretariat. As noted above, we also recommend that the Government continues to work with local government to clarify what role each constituent local authority will continue to play (or not) in the new system with respect to providing policy advice, technical advice, public engagement and plan making.

Number of local government representatives

The current drafting of clause 1(1)(c)(i) of Schedule 3 suggests that planning committees may comprise one representative from each local authority within or partly within a region. However, the Parliamentary paper suggests that in larger regions there may not be a representative from every constituent local authority. This appears to be driven by a view that the larger the planning committee, the more difficult it may be for it to make decisions effectively and efficiently.

We have some sympathy for these concerns (particularly given objective number 5 of the reform programme). The idea that a larger bureaucracy making a significantly larger plan will be more efficient or effective does run counter to plan making experience. The larger the group involved in any project, the more time that needs to be spent on coordination and resolving disputes across that group. This will be an even greater concern in those regions where there are not strong pre-existing relationships between the members that will be appointed to a planning committee.

Notwithstanding these comments (and our earlier comments regarding the need to resolve the issue of the scale at which planning is undertaken), size in and of itself may not be the biggest issue. There are examples of large decision-making bodies working effectively and ultimately making decisions. Auckland Council, for example, has been able to make a vast number of significant decisions (including in respect of its Unitary Plan) with a governing body of 21 members.

What perhaps is more important is ensuring that each constituent local authority (and ultimately its community) has some means of appropriately contributing to the development of an NBA plan, and in particular the parts of the plan that will impact significantly on their locality and communities. Ensuring appropriate local democratic

input into plan making is not only consistent with the Government's objectives, but consistent with the basis upon which local government operates in Aotearoa.

We acknowledge that there may be mechanisms other than direct representation on planning committees that could be adopted to provide local authorities and their communities with meaningful opportunities to contribute to NBA plan development. Indeed, we acknowledge that one representative from each constituent local authority is unlikely to be the most effective means through which the many and varied circumstances and views of a constituent district and its communities can be addressed. That's why it's critical that in designing the makeup, membership and roles of functions of planning committees the Government shouldn't lose sight of the need to also develop mechanisms for effective and meaningful public input into plan making processes.

How effectively a constituent local government representative is able to contribute to the work of its regional planning committee will depend in large part on both the content of NBA plans, and what roles and functions constituent local authorities continue to perform. If, for example, NBA plans end up being largely a consolidation of existing district plans, and constituent local authorities continue to have responsibility for their component parts, it may be that councils are comfortable with decisions that have more of a regional focus or application being made by a smaller group of local government representatives. All this needs to be worked through in detail with local government.

There is likely to be a need for some variation in terms of size of planning committees across the country. For example, in regions like Northland, Taranaki or the West Coast (each comprising one regional council and three territorial authorities) it would seem entirely practicable and plausible for all three territorial authorities and the regional council to be represented on their regional planning committee. In larger regions like Waikato (one regional council and eleven territorial authorities) and Canterbury (one regional council and ten territorial authorities) working out the number of local government representatives is going to be more complex. A larger planning committee will likely be needed in larger regions.

While at this stage we do not have any particular view on the appropriate size of planning committees, or number of local government representatives that should be appointed, we urge the Government to continue working on this with local government, along with arrangements for input into plan making processes by constituent local authorities and their communities. The Government should keep in mind the need for variation in size of planning committees across regions depending on their size.

Given the significant variation that exists across regions, it seems unlikely to us that a one size fits all approach to the membership, makeup and size of planning committees will be workable. It strikes us that attempting to come up with a consistent approach that will work across the country may be a futile exercise for the Government to embark on.

Instead, we suggest that region-by-region conversations with local government and mana whenua representatives could be a more effective means of exploring and agreeing on arrangements that will work for each region. There is nothing to preclude different arrangements for each region being reflected in the balance of the drafting of the Bill. Indeed this may ultimately be a more effective approach (particularly for achieving local government's buy-in) than seeking to find a single solution that is unlikely to work for all.

We also recommend that the Government builds into Schedule 3 a provision that allows for a review of planning committees at a given point in time after their establishment. Such a review should include consideration of their size and scale at which they are operating, and how this is or isn't satisfying the Government's objectives of an efficient and less complex resource management system that provides for appropriate local democratic input. Such a review would also allow the Government (and local government) to re-consider whether planning committee arrangements need to change if any changes to the organisation of local government do occur off the back of the Future for Local Government Review.

Clause 3: Membership of planning committees – mana whenua representatives

We envisage that similar issues to those noted above will need to be worked through with mana whenua. Giving effect to Te Tiriti requires central government, local government and mana whenua representatives to come together to identify appropriate membership models for planning committees.

Experience shows that mana whenua considers equal membership on local government committees to be optimal to ensure equity of voice. We strongly encourage the Government to ensure that it avoids a situation whereby the number of local and central government representatives on a planning committee significantly outweighs the number of mana whenua representatives.

One of the key issues we encourage the Government to give greater consideration to is not just the number of mana whenua representatives, but a broader understanding of how mana whenua are approaching work on a regional basis. We understand, for example, that mana whenua partners in Wellington have prioritised taking more of a focus on working in their own catchments and have shifted away from working as a regional collective. We are concerned that the Crown's proposed shift to a more

centralised system may be at odds with the views of iwi and hapū. Slowing down the reform process to allow for more genuine and meaningful engagement with mana whenua will help to better understand their current thinking and approaches and ensure that there is less disconnect between their views and the changes the Government is proposing.

A further issue that needs to be resolved is how entities created under Treaty settlements will be represented. Mana whenua must be involved in these discussions.

Clause 2: Membership of planning committees – Minister of Conservation's representative

In principle we are comfortable with the proposal for central government participation in planning committees. However, if central government is to play a more active role in regional planning (including through the committees responsible for preparing regional spatial strategies) work needs to be done to improve working relationships between central and local government.

One way to help ensure a constructive working relationship is by ensuring that the Government's representative on each planning committee has a good understanding of the region they will be supporting, and the varied local circumstances of the cities and districts that make up the region. The Government's representative will also need to have a good understanding of the provisions of the NBA.

For this reason, we are not convinced that a representative of the Minister of Conservation is the most appropriate person to represent the Government on planning committees. Input from the Minister and Department of Conservation into resource management planning is largely historic and a legacy element. Given the breadth of issues that planning committees will need to consider, including concerns relating to infrastructure and housing development and climate change, we suggest that a representative of another central government agency may be more appropriate. We envisage that the Minister and Department of Conservation will continue to have input into the NPF, and so suggest that a representative with a broader purview of central government work programmes would be more appropriate.

Central government funding towards the NBA plan making process would also help with building strong relationships. We make further comments on this below.

The scope of the central government representative's input into plan making should also be resolved. While we can see value in central government having involvement in some regional decision-making, it will be important to ensure that this isn't at the

expense of local communities being able to influence and make the decisions that will directly affect them.

Finally, we raise the issue of whether in time there will need to be representation from the new Three Waters Services Entities on the planning committees. This may help to ensure that there is alignment between resource management and water service delivery functions.

Links with joint committees working on regional spatial strategies

We understand that the Government is exploring options for setting up joint committees to deliver regional spatial strategies, as recommended by the Review Panel. Acknowledging the considerable amount of work that is still to be done, we have a number of questions as to the relationship between the NBA planning committees and the spatial planning committees, including:

- Will the members of both committees be the same, or will there be some difference in membership? (We anticipate that there will be some differences, particularly given the likelihood that a broader range of central government agencies will seek to be involved in spatial planning).
- Will both committees be supported by the same secretariat, or will a different secretariat be established for each committee? How will funding arrangements be the same or differ if each committee is supported by a different secretariat? How will mana whenua be involved in any secretariat arrangements?
- What, if any, mechanisms will be put in place to enable the two committees to engage with one another on matters of mutual interest (if separate committees are established)?
- Notwithstanding that the relationship between NBA plans and regional spatial strategies is still to be resolved, who will provide oversight in respect of whether NBA plans are consistent with/giving effect to (or whatever legal weighting is adopted) regional spatial strategies?

Clause 4: Appointment of planning committee chairperson

It is difficult to form a view on either who the appropriate chairperson of a planning committee would be, or what process should be adopted to appoint one, when there is still a lack of clarity around the final membership of planning committees, and the committees' roles and functions. It is also difficult to form a view without knowing precisely what role the chairperson will play.

These details should be worked through with local government and mana whenua.

Clause 5: Planning committee secretariat

Clause 5(2) sets out the various functions that a planning secretariat will perform. These functions appear to extend beyond simply supporting the coordination and delivery of meetings, and include providing policy advice, commissioning expert advice, and drafting planning provisions. It seems likely that the roles of the secretariats will be wide-ranging and extensive.

Based on the current drafting of clause 5(2) it isn't clear whether secretariats can develop technical advice in-house, or whether they will play any role in engaging with communities on the development of the plan. It is also unclear what role the secretariats will play with respect to partnering with mana whenua. These points should be clarified.

Indeed, one critical point that doesn't yet appear to have been addressed is what role mana whenua representatives will play within the secretariats themselves. We anticipate that mana whenua will expect to be part of the planning committee secretariats regardless of what form or structure they ultimately take. Central government resourcing of this should be a key part of the Government's implementation programme.

It's not yet clear what the Government's thinking is around the organisational and management structure of these secretariats. Would a separate organisation be created, or would the secretariat be housed within a regional council? It's also not clear who would employ secretariat staff. Would staff currently employed by constituent local authorities be seconded or redeployed to the secretariat, or would they be employed by an entirely new employer? Would staff need to be housed centrally, or could they be spread throughout the region in their constituent local authorities? What happens if staff are unwilling to relocate?

Regardless of the organisational structure that gets chosen, work will need to be done to address management and technical leadership arrangements and to ensure that secretariats have appropriate capability and capacity. For example, if a secretariat was to sit within a regional council, additional capability and capacity for policy matters that regional councils don't typically work on will be needed. If secretariats sit within regional councils, we can foresee issues around achieving appropriate representation of territorial authority interests.

A key issue is working out what the new arrangements will mean for existing local government officers' employment contexts. Work needs to be done to clarify what changes there will be to existing roles, whether people may be redeployed into new roles and what, if any, roles may be made redundant. If the intent is that secretariats are made up of staff seconded from constituent local authorities, work will need to

be done to clarify secondment arrangements. This will need to include addressing remuneration and employment conditions. We can foresee issues if these are inconsistent across staff that get seconded from constituent local authorities.

Work will also need to be done to clarify the employment arrangements for any mana whenua representatives that are appointed to secretariats.

Other operational matters that will need to be worked through include establishing good policy development and evaluation processes, corporate arrangements and processes, working out where secretariats are located and whether and how they travel throughout regions, and addressing health and safety matters (among other things). There will also be work to clarify and build relationships as between joint committees, constituent local authorities, the IHP and the regional spatial planning committee (if the membership of this committee is different).

Allowing sufficient time to address these many matters and get secretariats up and running will be critical. Central government support with this, including resourcing, should be a key part of the Government's implementation programme.

Regardless of the arrangements that get decided upon, work must be done to clarify what roles and functions continue to sit with constituent local authorities.

Funding the secretariat

Clause 6 of Schedule 3 of the exposure draft suggests that the current intention is that local authorities fund planning committee secretariats.

We can foresee some challenges with this approach. Local authorities and their communities are likely to be reluctant to fund plan making processes that they have little control over, and plan making bodies that are unaccountable to them. This may make it difficult for local authorities to guarantee sufficient funding being allocated through their long-term plans. Some communities have already spent considerable amounts of money on plan making, which is typically an unpopular spend item, and may be reluctant to spend more. Careful thought needs to be given to how to deal with situations where communities don't support the level of funding that is needed from their constituent local authority to enable the secretariat to function.

If the intention is that local government funds the secretariats, there is still a considerable amount of detail to be worked out, including the proportion of funding that each local authority provides; whether funding would be provided by all local authorities in a region or only those represented on a planning committee (if the final decision is that not all local authorities are represented); the frequency with which funding would be provided; and what the funding would cover.

If the after the Select Committee process is finished the view remains that local government should be responsible for funding secretariats, it does strike us that the most straightforward option would be for funding to come via regional councils. However, this would likely then lead to a conclusion that secretariat functions should sit within regional councils. Further work needs to be done to explore whether this is the most suitable option, and to identify what role each constituent territorial authority continues to play in plan making to ensure appropriate representation of individual districts and cities.

Regardless of the approach taken, local government will need early signals around the arrangements for funding secretariats so that necessary funding can be factored into long-term plans and discussed with communities.

These challenges ultimately justify further work being undertaken around what role central government should play in funding secretariats. Central government funding would help to allay some of the challenges we can foresee if local government is responsible for funding secretariats. It would help with getting planning committees and their secretariats up and running more efficiently. Central government funding would also help with establishing the relationships that will be necessary for an effective system from the outset, by alleviating some of local government's concerns around the tendency for central government to impose further requirements on councils without additional financial support.

There is considerable public benefit in getting the new planning system right. Central government funding would help to ensure that the new system delivers the objectives the Government is seeking, particularly if its view is that these objectives will be best achieved via regionalised plans, as opposed to a case-by-case consent approach.

Schedule 3 is currently silent on the issue of who funds planning committees (for example, who pays local government and mana whenua representatives to participate in planning committee governance arrangements?) This needs to be addressed in the balance of the Bill, along with further details around how secretariats get funded.

We are strongly of the view that mana whenua participation in planning committees and secretariats should be funded by the Crown as the Treaty partner. Central government funding will enable iwi and hapū to build their own capacity to actively participate in the new system.

Recommendations

We recommend that:

1. All decisions as to the membership and makeup of planning committees be worked through in partnership with local government and mana whenua. The Government should give thought to working through these issues on a region-by-region basis.

2. The Government reconsider the proposal that its representative on planning committees be a representative of the Minister of Conservation.

3. All decisions as to the set-up, organisational structure and working arrangements for planning committee secretariats be worked through in partnership with local government and mana whenua.

4. The Government considers funding the planning committee secretariats. Funding arrangements should be worked out in partnership with local government.

5. Central government funds mana whenua involvement in planning committees and secretariats as the Treaty partner.

System efficiencies

The Select Committee's Terms of Reference ask it to "*collate a list of ideas (including considering the examples in the parliamentary paper) for making the new system more efficient, more proportionate to the scale and/or risks associated with given activities, more affordable for the end user, and less complex, compared to the current system.*"

We make a number of specific recommendations throughout this submission that address this point and set out some further thoughts below.

As already noted, based on what's currently included in the exposure draft we're not convinced that the reform objective of improving system efficiency and effectiveness and reducing complexity will be met. Consistent issues with the current system relate to costly and time-consuming processes, and we are not sure that adding further layers of matters to consider will minimise these concerns in the new system. But judgements on how well this objective is met (or not) will be easier to make once the balance of the drafting of the Bill is available, there is clarity on how it integrates with the SPA and CAA, there is more detail around the NPF and the arrangements for transition and implementation are clearer.

The NPF has the potential to significantly reduce complexity and support a more efficient and effective system, particularly by removing the scope for debate on issues that should be resolved at a national level. However, whether this proves to be the case remains to be seen. The devil will be in both the detail of the process for setting the NPF, and the direction that it contains.

Reform of the resource management system

If one of the Government's key objectives is efficiency, we are not convinced that a complete overhaul of the resource management system is the most efficient approach it could take. History tells us that the transition to and implementation of the RMA was complex, problematic and took a significant amount of time. As already noted, we have concerns about the existing workforce's capacity to deal with the significant amount of reform that is proposed.

If the Government wants a system that is more efficient, we are strongly of the view that it should re-visit its decision to undertake a complete overhaul of the system this Parliamentary term. Instead, taking a "bite-sized chunks" approach (as detailed earlier in the introductory section of this submission) could better achieve not only the objective of efficiency, but also a system that is more effective.

Integration of the component parts of the new resource management system

To reduce complexity and improve system efficiencies, the NBA and NPF must provide clear direction without requiring recourse to Part 2 of the NBA for every decision. This principle is partially included in the exposure draft in clause 24(4). Similarly, clause 25(2)(c) allows for the NPF to direct changes to an NBA plan without using a public plan change process (meaning it can be done without recourse to Part 2 of the NBA).

We suggest that this principle is expanded and applied to all levels of the system, including to regional spatial strategies, which we understand will sit between the NPF and NBA plans. Practically, this would mean that if an area is identified for urban development under a regional spatial strategy, then that can be included in an NBA plan without having to refer back to Part 2 of the NBA. This would allow a regional spatial strategy to direct an NBA plan to include and zone new growth areas without resorting to public plan change processes. This would help to achieve a more efficient and less complex system.

The role of the Environment Court

One of the key ways in which the system could be made more efficient, less complex and affordable for the end user is by clarifying the role of the Environment Court.

Given the significant role that the Environment Court plays in the current system we are somewhat surprised that there isn't any thinking on the role it plays reflected in the exposure draft or the Parliamentary paper.

As already noted, one of local government's key concerns is the policy making role that the Environment Court plays in the current system. Plan making (and place-making) decisions should be made by the communities that will be affected by them, not the Court. We suggest that appeals on planning decisions should be limited to challenges on points of law only. This would help to ensure that planning decisions don't get unreasonably held up by repeated, time-consuming and costly merits-based appeals, which ultimately undermine a planning system that is underpinned by democratic, local input.

The new Freshwater Planning Process limits rights of appeal, depending on whether a regional council accepts or rejects a recommendation of the freshwater hearings panel. If a recommendation is rejected, a merit-based appeal to the Environment Court is permitted. If recommendations are accepted, appeals are limited to appeals to the High Court on points of law. This process, and learnings from it, should be looked at in the development of the NBA.

Another issue appears to be the current variation in approaches taken by Environment Court Judges across the country. Currently Judges seem to have a significant amount of discretion to determine whether matters get referred to mediation or go to a hearing. Requiring greater consistency of approach across the country, and some clearer parameters around how processes will run would help to reduce the potential for the inefficiencies that result from the uncertain and variable way in which some matters are dealt with by the Court.

<u>The consenting process</u>

The Government appears to be of the view that loading the front end of the resource management process (i.e. developing good, comprehensive plans) has the potential to drive efficiencies at the consenting end of the process. The extent to which this proves to be the case remains to be seen. It will depend in large part on final decisions that the Government makes around the extent of the "shopping list" of matters that plan makers must consider and how plan making happens. The time that it will take to develop comprehensive plans that will support efficient consenting processes should not be underestimated, particularly if some of the issues around how to resolve tensions within regions and ensure an appropriate level of local input into plan making are not addressed.

However, whether the consenting process is efficient ultimately depends on the consenting mechanisms that get included in the full NBA Bill. Some options for making the consenting process more efficient include:

- Considering whether limited notified consent applications could be considered by some means other than a full hearing. For example, thought should be given to whether an informal mediation could be led by the consent application processing officer with the applicant and any objectors. The purpose of the mediation could be to determine whether the applicant could make any concessions in light of concerns raised. If concessions were made, plans could be amended, with the consent officer making a final determination on the application based on feedback received. Such a process wouldn't require the calling of any evidence or any formalities.
- Exploring alternative notified consenting processes. This could include removing an applicant's and submitter's ability to request a hearing commissioner to determine notified applications (as currently provided for by section 100A of the RMA). This would free councils up to process notified applications by some means other than a formal hearing, reducing processing time and costs for all parties, with councils retaining the decision-making function rather than delegating it to a third party.
- Looking at options for the establishment of one national, centralised online consent application portal. This would do away with councils needing to record every application stage in MfE's monitoring spreadsheet, which is laborious and time-consuming.
- Developing a national set of template consent conditions that can be tailored locally. A 'go to' reference document of this kind would help councils to issue consents more efficiently.
- Exploring options for implementing a consistent, national approach to consenting fees. This would help to deliver consistency and reduce complexity. There is precedent for such a national approach in Victoria and the United Kingdom. These examples should be looked at.
- Exploring the option of developing a set of centrally prepared good design guidelines. Councils are preparing their own guidelines now in light of the NPS-UD, but we understand that there is a considerable amount of overlap in the principles councils are developing. One set of guidelines (with the ability to tailor them to local circumstances where appropriate) would be a more efficient approach.

All of these options (and others) should be explored in partnership with local government.

We understand from the Parliamentary paper that there is an intention that NBA plans make greater use of permitted and prohibited activities and reduce the number

of discretionary activities. The Government needs to work through the range of activity statuses that are provided for in the NBA in much further detail with local government. We understand that currently there are different views within the sector as to the appropriate range of activity statuses.

Use of digital tools

We understand that as part of its work on transition and implementation the Government is giving thought to whether greater use of digital tools could help to improve system efficiencies and effectiveness and reduce complexity.

In principle we support greater use of digital tools. However, for greater use of digital tools to satisfy the objectives of efficiency, effectiveness and less complexity, the following factors will need to be kept front-of-mind:

- Any work that the Government does around developing a digital strategy/plan should be informed by an evidence-based understanding of the digital tools that local government is already using to deliver its resource management functions, and the issues with and gaps in these tools.
- Ensuring that there is integration across systems, including tools for e-planning, consenting, property systems and CME will be critical. For example, efficiencies could be driven by creating a digital tool that would enable parts of the NPF to be easily inserted into NBA plans.
- The Government should not lose sight of the cost implications for local government of changing to new systems, particularly where councils have already made significant investments into digital tools and SAS (software as a service) agreements.
- Arrangements for transitioning from existing tools and software to any new tools will need to be carefully planned. These should take into account any existing contractual arrangements that local government has around digital tools and SAS.
- Digital access and literacy will need to be addressed as part of any shift to greater use of digital tools. Capability and capacity building (including guidance and training) needs to be properly resourced by the Government to avoid creating inequities.
- Clear signals around any changes that will need to be made to existing digital tools/expectations around use of digital tools will need to be provided to local government early to assist with planning, budgeting, and making transition arrangements.

Central government funding of new digital tools and implementation of them will be critical. This will help to ensure widespread uptake and consistency across the country, which will be key to driving efficiencies.

Monitoring the shift to the new system

Mechanisms for measuring how effective the new NPF and new NBA plans are will be important. Strong monitoring will help to ensure that the Government is aware of and able to address any issues with the new system, particularly as they relate to efficiency and effectiveness.

Recommendations

We recommend:

1. That the Government considers whether a staged approach to reforming the resource management system may better deliver the outcomes it is seeking to achieve.

2. That appeal rights to the Environment Court be limited, and that clear parameters around how Environment Court processes will be run be included in the full NBA Bill.

3. That the Government continues to engage with local government on options for creating a more efficient resource consenting system, including working through an appropriate range of activity statuses to include in the NBA, and exploring alternative notified consenting processes.

4. That any shift to greater use of digital tools and platforms be resourced by central government to ensure consistency and uptake.

Appendix 1: Eight Principles of Effective Implementation

1. ***Start early*** - officials should not start thinking about what to do about implementation the day after enactment of the legislation. While the roll-out of implementation support programmes necessarily follows enactment (which in turn follows development of policy advice), the design and development of the implementation programme should start earlier. Elements of this should be concurrent with policy and legislative processes. Indeed, it is difficult to see how a rigorous assessment of policy options can be undertaken without identifying the costs and practicalities of implementing them.
2. ***Work with the stakeholders*** - for any legislative initiative impacting on local government there will be a range of groups with a stake in successful implementation. This includes not only the national sector organisations such as Taituarā and LGNZ but also related professional organisations, and a variety of occupational institutes and associations. Engagement with these stakeholders can contribute a lot towards achieving effective implementation.
3. ***A separate process*** - Taituarā has been pleased to see the increasing willingness of central government to engage with local government during the policy development process. While engagement with local government on implementation is likely to involve many of the same stakeholders, it should be set up as a separate project.
4. ***A single shared plan*** - Taituarā and other sector stakeholders will often see it as part of their role to support the implementation of new legislation by local authorities (they may for instance have existing good practice guidance they will need to revise). If the actions of central government agencies and local government sector organisations are not coordinated, then there are risks that some work on some issues will be duplicated or may fall between the cracks. A single agreed common plan of action around the implementation process avoids these risks and is likely to lead to the most effective use of the available resources.
5. ***Use existing tools and technology*** - stakeholder organisations will generally have established and effective channels of communication with their constituents within local authorities. They may already have tools and guidance material that are widely known, recognised and used within local authorities. Government agencies should be encouraged to use these as much as possible, rather than establishing competing channels and tools.
6. ***Clarity about audiences and needs*** - there are a range of audiences, spanning elected local authority members, managers, and hands on practitioners in the specific affected areas of work. Their needs and the best means of addressing them are likely to differ. For instance, we would argue that the technology developed by our Legal Compliance Programme would often be the best available technology for meeting the needs of managers and practitioners, but it does not address the needs of elected members.

7. ***Linkage to Select Committee process*** - if work on developing guidance material as part of an implementation programme is started early enough there are opportunities for this to feed back in a positive way into the Select Committee process. This reflects our experience with development of legal compliance programme modules. The detailed work undertaken to identify the practical means of complying with legislation sometimes highlights technical shortcomings in the legislation that is being worked on – gaps and disconnects, inconsistencies and contradictions, and areas requiring clarification. If the effort is made to start this work early, there is the opportunity for these sorts of issues to be addressed prior to enactment.
8. ***Life-cycle approach*** - once legislation is enacted there is a necessary ongoing maintenance task for the administering department. New issues may arise, areas of uncertainty or contradiction may come to light, and provisions may be interpreted in unexpected ways by either practitioners or the Courts or both. The ability of a department to respond effectively and properly maintain the legislation depends on the strength of its systems for feedback from users. Engaging openly with stakeholders on implementation can assist this by establishing the foundation of relationships that support open information flows into the future.

Taituarā

Professional excellence in local government

Taituarā — Local Government Professionals Aotearoa

Level 9, 85 The Terrace, Wellington
PO Box 10373, Wellington 6143

T 04 978 1280
E info@taituara.org.nz
W taituara.org.nz