Taituarā
Local Government Professionals Aotearoa

Spatial Planning Act (SPA) and Natural and Built Environment Act (NBA) overview

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leadinglearninglinking

Spatial Planning Bill

The Spatial Planning Bill will introduce mandatory spatial planning – this has the potential to be a game changer for the sector and our communities.

Up to fifteen[1] Regional Spatial Strategies (RSSs) will set out the vision, objectives, strategic direction, and priority actions for each region for at least 30 years.

The Strategies must consider areas that require protection and enhancement, areas that are appropriate for development, resource use and land use change, areas that are vulnerable to hazards and climate change, areas of cultural heritage, areas with resources that are of significance to Māori and key infrastructure including the co-ordination of infrastructure between providers.

Regional Planning Committee

RSSs will be developed by Regional Planning Committees with a minimum membership of six. Central government will be at the table, with councils and iwi, hapū, and Māori (a minimum of two Māori appointments). All councils can be represented (at least one appointment per council), but do not have to be. The process for Māori appointments is contained in the Natural and Build Environment Bill, with iwi and hapū running their own processes via a committee set up for this purpose.

The overall composition of the committee is flexible subject to these minimums, however effective representation (urban, rural, regional, district, Māori) and effective and efficient decision making[2], the purpose of local government and populations served are to be considered. Existing relationships with and between iwi, hapū, and other Māori groups also need to be considered. The Local Government Commission receives the proposed composition, considers it in light of the requirements, and confirms it. If composition decisions cannot be reached there is a role for the Local Government Commission in determining the composition. Facilitation support is available from the Crown (funding support for six weeks).

There is a role for the Māori Land Court should iwi and hapū appointments and resolution processes be disputed.

Sub-committees are allowed. Within the Natural and Built Environment Bill there is specific provision for a freshwater subcommittee to be established on the recommendation of the Minister for the Environment.

Retaining local voice and accountability in the regionalised system was a key concern for the sector. In addition to enabling all councils to be represented on the Committee, the Government has taken up the Local Government Steering Group's proposal to include Statements of Community Outcomes and Statements of Regional Environmental Outcomes

[1] Nelson and Tasman will prepare one combined strategy and a combined plan. Cross regional spatial strategies may also be prepared.
[2] Lessons might be drawn from Auckland's experience.

in the Bills. There are concerns that this will not be sufficient to ensure democratic accountability.

The Committee will have a Secretariat to support it to carry out its functions, and the arrangements for the Secretariat are provided for in the Natural and Built Environment Bill (see below).

Implementation of Regional Spatial Strategies

Each strategy will be accompanied by an agreed implementation plan and will influence regional land transport plans and future local government long-term plans.

A key issue is how to guarantee delivery of RSSs. The Taituarā Resource Management Reform Reference Group will be carefully looking at the non-binding nature of the proposed optional implementation agreements.

Strategic role for Māori participation.

Both the Spatial Planning Bill and the Natural and Built Environment Bill provide a greater, more strategic role for Māori participation as well as requiring decision makers (and the strategies and plans in the Bills) to give effect to the principles of Te Tiriti o Waitangi.

Natural and Built Environment Bill

The Natural and Built Environment Bill is the main replacement for the Resource Management Act 1991 (RMA). It will regionalise plan making, replacing over 100 district and regional plans with up to 15 NBE plans that aim to provide an integrated framework for use and development within environmental limits. It is expected that by reducing the number of plans and fronting decisions at the plan-making stage, the system will become more efficient. This is something our Taituarā Resource Management Reform Reference Group will be especially focused on.

The Bill proposes a system of non-hierarchical positive outcomes that will guide strategies, plans and ultimately resource consents, with the intent of resolving conflicts between outcomes at the highest appropriate level. Guidance will be needed on how these conflicts should be resolved, and potentially more should be resolved at the national level than is obvious from the Bill. We note there is still limited (but slightly more) information on outcomes for the built environment.

The Bill also provides for limits and targets (to improve, including "minimum level targets") and management units. This has proven difficult (if not unworkable) at the regional level and will need to be carefully worked through if previous issues with national direction are to be resolved.

While the legislation is touted as moving away from effects-based management to managing for outcomes, the Bill maintains a general duty to avoid, remedy, offset or redress adverse effects on significant biodiversity areas and specified cultural heritage, and introduces a new pathway for "trivial effects".

National Planning Framework

In addition to this, the Bill introduces a National Planning Framework (which will be a regulation under the Act) to give consistent and stronger national direction to the plans and a framework for allocating resources (for example market-based mechanisms – with the exception of freshwater). There are new provisions in the Bill for freshwater allocation, including the Establishment of a Freshwater Working Group and short-term consents during the transition phase.

The National Planning Framework (NPF) can set limits and targets. Some limits are mandatory e.g. air, indigenous biodiversity, coastal water, estuaries, freshwater and soil. Limits on other aspects of the natural environment may be set, and there may be exemptions (if approved by the Minister). These limits may be set directly in the NPF, or the NPF may require that they are set out in NBE plans. Targets are either set directly in the NPF or prescribed to be set out in NBE plans made under the NBA.

The NPF can also apply the effects management framework, provide for standards and methods, processes and exemptions. It may give directions to Regional Planning Committees or local authorities on monitoring and reporting, or direct a plan to use an adaptive management approach. It may also direct NBE plans to make rules that will affect existing rights and land use consents when there is harm to the natural environment or risks associated with natural hazards, climate change, or contaminated land.

The NPF is required to provide direction on each system outcome and direction to help resolve conflicts. Without a draft NPF being produced alongside the Bills, it is impossible to assess how successful it will be on these matters.

The NPF will be rolled out in stages. At this stage we think the first iteration will largely consolidate and reconcile existing policy statements and standards (and include the recent medium-density residential standards for housing) with additional content on infrastructure and natural hazards. It is unlikely that mātauranga Māori will be incorporated. This appears to be a lost opportunity.

It will be critical that the first and next iterations involve significant local government input and co-design, and it is a negative that a draft NPF has not been published alongside the Bills to enable alignment and scrutiny.

Plans

NBE plans will be developed by the Regional Planning Committee (minus the central government representative). Plans must give effect to the NPF and be consistent with the Regional Spatial Strategy. Plan evaluation reports will occur earlier and be simpler than existing section 32 RMA reports and plans will be audited by the Ministry for the Environment.

An Independent Hearing Panel (IHP) will hear submissions on an NBE plan and make recommendations to the Regional Planning Committee on the proposed plan. If the Regional

Planning Committee agrees, appeals are limited to points of law. If it does not, merits-based appeals can occur.

Plans can be more restrictive than the NPF (as can bylaws if the NPF expressly allows this).

Despite the provision for Statements of Community Outcomes (SCOs) and Statements of Regional Environmental Outcomes and representation on the Committee (including the reference to section 10 of the LGA) there are concerns that local democracy is not sufficiently provided for.

Secretariat

To assist the Committee and Independent Hearing Panel the Bill provides for a Secretariat, with a director appointed by the Committee.

The director must appoint employees to carry out the functions of the Secretariat and both the director and these employees are legally employees of the host council, although the Bill makes it explicit that the host council must be treated as having delegated their employment rights and obligations. That said, the host council is responsible for ensuring that the director's legal obligations in that role are met.

We will obtain specific legal advice on this point to clarify legal obligations, liabilities, and the practical effect of this arrangement.

The Secretariat is empowered to enter contracts etc within the scope of an agreed budget.

The host council is chosen by the councils in the region in consultation with iwi and hapū and must provide administrative support for the Committee and Secretariat, including financial management.[3] A simple majority of councils can make the decision about the host council, with the default being the regional council if there is no decision. The matter is simpler for unitary authorities and in the case of Nelson and Tasman they need to agree the matter between themselves.

Funding

Funding for the Committee and the Secretariat comes from the councils in the region jointly. The Committee prepares its budget (a draft statement of intent, SOI) and submits it. The SOI must provide funding for Māori participation in the development, implementation, and monitoring of the regional spatial strategies and plans. The councils must work together in good faith to agree the amount of funding and the share each will pay. There is a dispute resolution process (using a Ministerially appointed independent person) if agreement cannot be reached. The councils cannot direct how this funding will be spent, nor can they reduce an agreed budget.

We are working with LGNZ to get legal advice around funding arrangements, including where funding is required from councils to defend appeals (where the council may also be the appellant).

[3] Note the host must be a council at this stage.

Functions of councils

Councils will have an important role in ensuring local voices are heard by producing Statements of Community Outcomes and Statements of Regional Outcomes. Councils will also contribute to Plan development both through membership on RPCs but also providing resource and expertise to the RPC's process.

The functions and areas of responsibility of regional councils (section 30 of the RMA, new clauses 643 and 644) and territorial authorities (section 31 and clauses 645 and 646) remain broadly the same, with the necessary amendments to reflect the preparation of SCEOS, SREOS and participation with the RPC. Unitary authorities of course get both sets. There may be some difficulties in seeing these areas of responsibility sitting with councils, when the content of the plans has been developed by a different body (the RPC) and non-regulatory tools need to be embedded in other council processes (such as the Long-Term Plan). An example might be environmental education which is traditionally resourced through the LTP process.

With the RPC responsible for policy decisions and others responsible for implementation there is an inherent tension. This is less complicated in the unitary council structure.

We suspect pan-regional issues will also be complex.

Councils will retain their current consenting, compliance monitoring and enforcement roles, for now at least. While not referred to in the Bills there is the potential for some or all of these roles to move to a permanent regional hub or a future Environmental Protection Agency structure. Given the significant changes that lie ahead for local government (three waters and local government review and potential reform), the significant investment that is needed to transform the resource management system, and current capacity constraints the institutional structures, functions and funding for the future would, ideally, be addressed holistically (potentially post the developed of all Regional Spatial Strategies as initially suggested in the Taituarā submission on exposure draft).

Consents

As has been widely signalled there are four activity categories proposed – permitted, controlled, discretionary and prohibited and rules for determining which category applies (clause 154). Types of consent appear the same (land use, subdivision, coastal permit water permit, discharge permit). There are alternative consenting pathways for proposals of national significance and communications, energy housing, transport, water and other central and local government assets. There is no longer a need to hold a hearing on a notified consent.

Processing timeframes have changed.

- Non-notified consent without hearing is 20 working days.
- Non-notified consent with hearing is 50 working days.
- Limited notified consent without hearing is 60 working days.
- Limited notified consent with hearing is 100 working days.

- Publicly notified consents without hearing is 60 working days.
- Publicly notified consent with hearing is 130 working days.

There are interim limits within the overall processing timeframe. There are excluded periods too. There are a number of clauses that detail the mechanics (of notification, approvals, mediation, hearings etc) that will be reviewed as soon as possible. As for conditions, adaptive management conditions are explicitly proved for. At first glance several RMA provisions have been rolled over. Financial contributions are now "environmental contributions". Alternative Dispute Resolution is provided for (mandatory if required by a plan or voluntary).

A rule in a proposed plan has immediate legal effect if the rule protects, or relates to, water, air, or soil (for soil conservation); protects areas of significant indigenous vegetation; protects areas of significant habitats of indigenous animals; protects cultural heritage or provides for, or relates to, aquaculture activities. The Environment Court can set a different date, as can a Regional Planning Committee. All other rules take effect after decisions are made and are treated as operative if the time for making submissions or lodging appeals on the rule has expired (and there are no submissions, opposing submissions or appeals are determined or withdrawn (or dismissed). This may cause issues for councils running parallel plans. Something that could cause further issues for councils will be that, where a rule has immediate effect, applicants will need to apply for all consents required and will not be allowed to bundle consents across the RMA and NBA.

There are a couple of alternative processing pathways included in the Bill. In addition to retaining the direct referral to the environment court, proposals of national significance can be consented in a process akin to the COVID-19 fast-track consenting process.

Designations

Designations will be available through a two-stage process. Firstly, securing the spatial footprint through a notice of requirement, then secondly, Construction and Implementation Plans will identify and authorise the works. Requiring authority eligibility will also now include fire and emergency services and port operators.

Allocation Framework

The NBE proposes an allocation system where RPCs must set allocation approaches for freshwater and may set allocation approaches for geothermal resources, discharges to air, discharges to coastal water or the taking or use of heat or energy from open coastal water using the principles of sustainability, equity, and efficiency. While a range of allocation methods will be available only non-market based mechanisms can be used for freshwater.

Short transitional consents will be issued while the new system is being implemented to mitigate the risk of allocations being locked in for the long term. Post-transition the maximum consent duration will be 35 years.

Compliance, Monitoring, and Enforcement

The reforms also propose changes which will enable better compliance monitoring and enforcement. This includes prohibiting the use of insurance for infringement fines, allowing

an applicant's compliance history to be considered, and broadening cost recovery provisions which will now allow:

- Costs to be recovered for compliance monitoring of permitted activities.
- Substantial increase in financial penalties.
- Increased range of offences subject to fines.
- Statute of limitations extended to 24 months.
- Regulators to apply to have a consent revoked.

Councils will also be required to publish a compliance, monitoring, and enforcement strategy which will outline how they will deliver their functions, duties, and powers.

System Monitoring and Oversight

Councils will continue to monitor the efficiency and effectiveness of processes, plans and consents. Each RPC will be responsible for developing a regional monitoring and reporting strategy to coordinate the work of local councils and will be required to produce a five-yearly assessment.

A new National Māori Entity will be established to provide proactive monitoring of Te Tiriti o Waitangi performance. In addition to this, the ongoing operation and effectiveness of the system will be monitored and reported on by government, and the Parliamentary Commissioner for the Environment will review the government's reporting on system performance.

Implementation of the new system

Transitioning to the new system will be a significant undertaking, especially in light of the capacity constraints the sector is already facing. As such, the Government is proposing to implement the reforms in three tranches. Select model regions will begin transitioning immediately and it is expected that lessons and templates from the model regions will be shared with later tranches. Given the pace of transition however the opportunity for a learning system is likely to be reduced.

For those regions who will transition later, the Government expects that current RMA plans will continue to be amended to incorporate national direction and respond to changing circumstances. This could drain already stretched resources and we will review the Bills with a view to submitting ideas to reduce the burden.

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