Taituarā
Local Government Professionals Aotearoa

Natural and Built Environment Bill and Spatial Planning Bill analysis

A briefing for our members on the two resource management bills following their final reports by the Environment Committee.

June 2023

The Natural and Built Environment Bill and Spatial Planning Bill were reported back to the House from the Environment Select Committee on 27 June 2023.

The Environment Committee has recommended by majority that they both be passed. They recommend all amendments by majority. Both the National Party and ACT provided differing – opposing – views. A 'quick' overview of the changes we have noted include:

1. Purpose and system outcomes

In response to submitters the Purpose of the Natural and Built Environment Bill (NBE Bill) has been changed and simplified "to uphold te Oranga o te Taiao". This change is reflected in a corresponding change to the purpose of the Spatial Planning Bill (SP Bill). The revised purpose and system outcome clauses do not create an explicit hierarchy of outcomes that many submitters requested. But the health of the environment must come first, although not all outcomes need to be achieved in all places or at all times.

Changes have been made to the system outcome for well-functioning urban and rural areas. It now refers to 'adaptable and resilient urban forms that provide access for people and their communities to and between social, economic, recreational, and cultural opportunities'. Whether this goes far enough to create liveable environments remains to be seen.

Conflict resolution is expected to occur at the highest level possible – that is, in the National Planning Framework or regional plan.

2. Te Tiriti

No changes were proposed to the Te Tiriti clause – "to give effect". The Select Committee however accepted that the term "area of interest" does not effectively describe the area where the mana and responsibility of iwi and hapū applies. They recommended replacing the phrase "area of interest" with "rohe or takiwā" to better reflect te ao Māori.

3. Regional Planning Committees

While changes have been made there are still concerns surrounding the accountability of Regional Planning Committees (Committees) back to councils and communities.

Nelson and Tasman continue to be treated as one region. The Chatham Islands is also a region.

The phased approach (tranches of councils transitioning to the new system at different times) to implementation has been retained. The 10-year transition period is still envisaged but committees can concurrently develop their Regional Spatial Strategies and Natural and Built Environment Plans.

Each region will have 12 months to set up their Committees - 18 months if dispute resolution is required. This applies to unitary councils too. But they can deem an existing committee to have these functions. The Select Committee has ruled out this applying to other councils despite concerns over unnecessary duplication.

The Minister can extend these timeframes.

The membership of the Committees is as originally proposed. The host council can provide interim support, including funding and the appointment of an Interim Secretariat Director to assist the Committee.

Committees are to aim for consensus decision-making as originally proposed. Quorums must be at least 50 per cent plus one. Voting must be decided by a majority (50 per cent plus one) of the whole membership – not just those present and voting as per the original Bill. The member appointed by the Minister could vote on matters relating to the operation of the RPC.

Committees are required to prepare and publish a draft statement of intent for the upcoming financial year, and submit it to the appointing bodies. The statements should include a three-year forecast of expenditure to assist councils to budget. A new subclause has been included that states the Committee must take into account the view of the appointing bodies when finalising the statement of intent. There is no power for councils to veto the amounts they are being asked to fund but there is a dispute resolution process and the requirement that the director of the secretariat works with local authorities on the resourcing plan for the secretariat have been strengthened.

For unitary councils it is sufficient that the budget for the Committee is included within the annual or long-term plan to avoid unnecessary duplication. Any levy to the Remuneration Authority must be paid by the Committee (that is by the councils). The only funding that sits outside the responsibilities of councils is the Government appointee.

Sub-committees for regional council functions are explicitly provided for and the Minister may direct that these are established. This replaces the original proposal to enable and establish freshwater subcommittees.

Cross-regional planning committees are still provided for in order to prepare a cross-regional spatial strategy for an issue that is common to two or more regions.

It may also delegate its functions, powers, and duties with some exceptions – this has been extended to include a restriction on delegations provided for in existing Joint Management Agreements or Mana Whakahono ā Rohe that were agreed between iwi or hapū and local authorities prior to enactment.

There are now some disqualifying circumstances for membership of Committees - if the person is convicted of an offence punishable by a term of imprisonment of two years or more.

Annual reports must be prepared unless the Committee is part of a unitary council – with the exception of Nelson and Tasman.

The Committee must comply with the requirements of the Local government Official Information and Meetings Act in their own right.

4. The Secretariat

Several changes have been made to these provisions. An existing employee of a local authority can now be appointed as the director of the secretariat. They must consult the Committee on a resourcing plan as well as consult the appointing bodies on the draft resourcing plan. There is a need to collaborate with councils in the region if the director proposes to draw on the skills and expertise of councils and there is a requirement to consider secondments in the first instance (or at least the desirability of them) rather than directly employing or contracting new staff in the secretariat. The director is no longer required to appoint employees, however they and any employees appointed by the director are employees of the regional planning committee.

The director can enter into contracts, leases and other agreements and multi-year contracts (with the approval of the Committee) to commit expenditure that is outside that has been committed or agreed by the councils (using the statement of intent process).

For unitary authorities that are not Nelson City Council or Tasman District Council the unitary authority employs the director. The Committee consults with the CEO of the unitary authority before the appointment, but it appears that the unitary authority must employ the Committee's choice. The unitary authority must provide staff to support the Committee. For Nelson and Tasman the director may appoint any employees, and all employees and the director are employees of the regional planning committee.

The changes are unlikely to address all our concerns regarding employment arrangements under the new system. If, however the Panel's recommendations on the Future for Local Government are pursued in a timely manner then there is an opportunity for some 'regions' at least to have a more streamlined process, particularly if there is a move to more 'unitary' authorities.

5. The Host Authority

The appointment of a host authority must occur "no later than" eight months after councils receive the notification from the Local Government Commission about timeframes for setting up the Committee. A simple majority is enough to give effect to the decision. The regional council remains the default host if no agreement is reached. However, Nelson and Tasman just need to agree this between themselves within the eight months.

The host authority appoints the interim director until a permanent appointment can be made. It is assumed on a quick first reading of the reports that this is true to for unitary councils, but further investigation may be required.

6. Regional Spatial Strategies

A Regional Spatial Strategy (RSS) must be adopted within **three** years of the establishment of the Committee, although extensions to this timeframe of up to six months are allowed. Although a NBE Plan may now be developed concurrently, with the expectation that the RSS will be adopted first.

Chatham Islands does not have to produce a RSS and they don't apply to offshore islands administered by DoC.

Some new process steps are included ostensibly to provide clarity, flexibility and encourage engagement and participation. Hearings are now mandatory and there have been some amendments to enable applications to the Environment Court for declarations on the existence or extent of any function, power, right or duty under the SPA.

Regional Spatial Strategies must be consistent with limits and mandatory targets in NBE plans, water conservation orders and any inconsistency between a RSS and NBE Plan will trigger a review of the RSS. Climate change mitigation must be considered, with specific consideration for renewable energy production, land use change and other measures to support the reduction of greenhouse gas emissions. Matters of national strategic importance can be included, but the RSS only needs to deal with matters of national or regional strategic importance (as opposed to "sufficient significance").

There is no provision for a National Spatial Strategy. The NBE Bill clarifies that the role of the Government representative is to "communicate to the other members of the committee the government's strategic priorities" under the SPA.

The RSS may be reviewed at any time – the nine-year backstop has been removed but essentially still applies as a RSS must be replaced using a process that commences not later than nine years after adoption. A review must happen first, effectively meaning reviews must still be done (and completed) within the nine-year period.

Funding to implement strategies has been a concern. The Select Committee recommends that Implementation Plans should note whether key actions already had funding attached or if it would be subject to funding. Implementation plans are also required to set out the amount of work that is underway on an action and who would be responsible for it – the lead – and any conditions or limitations on that responsibility. Interdependencies must be noted. There is a corresponding duty on those with responsibilities to report on actions. Agreement to be a lead is required. A summary of the decisions about funding/investment and priority and sequencing of actions must also be included in the Implementation Plan.

No substantive changes have been made to the clauses on Implementation Agreements.

7. NBE Plans

The purpose of these plans is proposed to include providing for the needs of the community.

Strategic content for them is proposed to mean strategic outcomes and policies that:

"(a) identify the issues of importance to a region or to 1 of its constituent districts
(b) deal with the matters necessary to ensure consistency with the relevant regional spatial strategy
(c) give effect to the national planning framework and indicates how limits and targets are to be achieved."

The strategic content cannot include rules or methods.

NBE Plans must assist in resolving conflicts in accordance with direction in the NPF and include a preferred state of the future environment in the region. As introduced the Bill talked about the 'likely' state of the environment. The preferred state gets considered in decision making – on consents, Notices of requirement etc.

NBE Plans may also include outcomes, policies, and rules (and other methods) for adaptive management, aquaculture areas and environmental contributions. Rules can't conflict with or duplicate NPF rules but they can be stricter.

In response to concerns about non-regulatory methods, plans can include non-regulatory methods provided that the Committee is satisfied that councils will fund and implement the method. This of course does not mean that there will be funding for such things and reduce the use of non-regulatory methods.

NBE Plans must be consistent with the region's RSS, unless there is new information or if there has been a significant change – such as a major environmental or economic event. The Select Committee also recommends that the NBE Plan can be inconsistent if it would conflict with achieving limits and mandatory targets under the National Planning Framework (NPF), if a place of national importance was identified or if the Environment Court had directed a modification etc because the land was incapable of reasonable use.

Specific reference is now made to having regard to the national adaptation plan and emissions reduction plans made under the Climate Change Response Act, as well as the inclusion of other matters such as management plans or strategies prepared under other Acts, which were inadvertently missed from the first draft of the Bill.

The information and science used for RMA plans can be used in developing NBE Plans, to avoid wasted resources.

A 'proportionate' streamlined approach to plan changes is also proposed, where engagement on regional policy issues would not be required.

Enduring submissions and secondary submissions remain, with an expanded scope including provision for a Committee to make its own secondary submission.

8. Consents

Water storage and hydro schemes can have longer term consents – longer than 10 years – and replacement consents, as can key infrastructure projects.

Clarifications on how permitted activity notices (PANs) are used – to remove unnecessary resource consents – have been made. They are not applications (one provides information) and there is no discretion to decline them if all the information is provided and consistent with requirements. Requests for further information are not possible. The NPF or plan is supposed to set out the circumstances where PANs are required – not all permitted activities need one – and what information must be provided. Where a PAN exists or is deemed then a certificate of compliance cannot be issued. For clarification a PAN can permit land uses and is a tool that can be used for compliance, monitoring and enforcement, including cost recovery and plan effectiveness monitoring. The are different requirements within the coastal marine area.

Fast-track consenting is retained, largely for housing and infrastructure, but is not available in a customary marine title area or protected customary rights area without agreement with the relevant group.

The NPF and NBEA plans have to contain consent notification provisions. A number of changes in this area have been recommended. A threshold test for 'affected persons' has been introduced. A person would have to have an interest in the application that is greater than that of the general public and be likely to experience adverse effects that are more than minor when compared to what is anticipated by the NBE Plan or the NPF.

9. Compliance monitoring and enforcement

Maximum penalties have been increased for continuing offences, failing to provide information, protection of sensitive information, directions, abatement notices for unreasonable noise and orders that are not enforcement orders made by the Environment Court. They also increase for will obstruction etc.

The maximum duration of an excessive noise direction is also increased from 72 hours to eight days.

Enforcement action commenced under the RMA can be continued and transitional enforcement provisions have been included to enable new offences and the new penalties can apply.

The Environmental Protection Authority can start enforcement action against a regional council for breaches.

The insurance ban is also clarified.

Enforcement action that results in a conviction or court order must be published in a register. Previously it was unclear if all enforcement action needed to be recorded in the register.

When developing a compliance and enforcement strategy there is an expectation that iwi authorities and groups that represent hapū will be involved. How mātauranga Māori and other specialist input will be integrated into compliance monitoring also needs to be included. A local authority's own monitoring and compliance also needs to be addressed.

10. Transition

Royal assent will now trigger more of the commencement dates for the new legislation's provisions, however regional transition dates will effectively trigger their application. The region-by-region transition dates will be contained in secondary legislation, once the upholding of Treaty Settlements has been agreed. Legislation will need to be enacted.

The establishment of Committees is still anticipated to occur after agreement has been reached but it can proceed even if amendments to the relevant Treaty settlement legislation have not been enacted. The provision to enable a Committee to be established even where agreement has not been reached – after at least two years following Royal assent – has been retained.

Most plan provisions will become operative from the date of the decisions version of a plan and Plan changes – there are exceptions for comparative and market-based resource allocation methods in first plans – and changes to Regional Policy Statements (RPS) cannot be inconsistent with a proposed (notified) Regional Spatial Strategy.

Councils will not be able to progress plan and RPS changes under the Resource Management Act once a committee in their region had adopted a RSS – unless fixing an error or addressing an emerging or urgent issue. Full plan reviews are not recommended once Royal Assent is given – a consequential change to the RMA would be required.

The Select Committee proposes that resource consents – including fast track provisions – come into force on Royal assent. Decisions on consents and designations are still made under the RMA.

11. Water Services Entities

The need to integrate with the Water Entities and their empowering legislation has been recognised and infrastructure providers need to be involved early in the development of Regional Spatial Strategies.

12. Local voice

When it came to concerns about losing local voice, the Bills as reported back continue to provide for statements of community outcomes and statements of regional environmental outcomes – and Committees "must have particular regard to" them. This is despite submissions greater weight has not been given to them. Councils can review how their statements and local voice has been included and the Regional Planning Committees must give reasons for their decisions. The statements remain optional and many councils have raised concerns about whether they will be worth doing.

The purpose of the statements of regional environmental outcomes and statements of community outcomes have been tweaked. The former is to express the values of the communities of the region and their aspirations for the use, development, and protection of

the natural environment. The latter now includes place making - to express the values of the community and its aspirations for the use, development, and protection of the environment; and the maintenance and enhancement of a community's sense of a place. Potentially this ties in well with the proposal to create shared plans for wellbeing recommended by the Future for Local Government Panel.

These statements need to be provided as soon as reasonably practicable after a director is appointed to the secretariat.

The Committee must explain how they have drawn on these statements in their evaluation reports and when councils review the RSSs and NBE plans prior to notification they can provide comment on how committees have used and reflected them.

Hearings on regional spatial strategies are now mandatory and timeframes for submissions on NBE Plans have also been extended.

13. Ministerial powers

The Minister's powers remain very wide ranging and directive. A Crown observer can be appointed – if criteria are met – to assist Committees to resolve or address issues and make recommendations to the Minister. A new clause notes that the Committee could respond to the recommendations made by the Crown observer. The Committee can still be dissolved and a commission appointed, with all the powers of a Committee. If the Committee is reconstituted the Minister has the power to require the appointing bodies to make new appointments.

14. Other

- Some definitions have been changed to improve clarity. The new term 'trivial' now refers to minimal – the equivalent of *de minimus*.
- Various changes have been made to better make the connection with climate change and between climate change and natural hazards (and risk). 'Avoid' has been put back into the range of options.
- Intergenerational wellbeing has been re-introduced.
- The Māori Authority comes into being on 1 March 2024, with a slightly revised purpose to uphold the mana of iwi, hapū, Māori.
- Mana Whakahono ā Rohe provisions have been tweaked to make explicit that councils can still be parties to them as well as Committees (or on their own) – the critical part being there needs to be at least one party must be an iwi authority or group representing hapū.
- Interim limits have been removed, and the range of entities that can seek an exemption to a limit have been expanded to Crown agencies and requiring authorities. The impact of recent natural disasters must also be considered in setting minimum acceptable limits, recognising the severe impacts recent events have had on the natural environment.

- Matters that must be disregarded have been clarified, for example the restriction on considering adverse effects arising from the use of land by people on low incomes has been modified to make it explicit that this restriction only applies to housing and the restriction has been reframed. Similarly, the point about signage and advertising has been clarified.
- New provisions to allow for better protection of urban trees.
- Natural and green infrastructure can be classified as a 'public work'.
- The weight given to te Oranga o te Taiao statements has been increased to a matter that Committees 'must have particular regard to'. These statements have also been defined as 'any statement prepared by an iwi or hapū of a region to express their view on how te Oranga o te Taiao can be upheld at the regional and local levels'.
- Concerns around designations and consenting appear to have been partially addressed to avoid duplication. Territorial authorities will process Notice of Requirements / Construction Implementation Plans outside of the plan making process due to their site-specific nature. Hearings need not be held. The work must be reasonably necessary. Requirements around co-location of infrastructure have been removed. The public good test for requiring authorities has been refined. Designations would not be made for the coastal marine area. Territorial authorities must consider – have particular regard to – RSSs. Transitional arrangements for Notice of Requirements lodged but not confirmed before the region has a NBE Plan are also provided for.
- Changes have been made to exclude or limit the liability of judges.
- Financial contributions continue to be redefined as 'environmental contributions' – requiring a consequential change to section 102 of the Local Government Act. It is proposed they can be used to minimise adverse effects and achieve positive outcomes (not just positive effects).
- The NPF provisions remain largely the same meaning the first RSSs will be developed without the full content envisaged for the future system and will be based on existing national direction with the inclusion of an infrastructure chapter. Natural landscapes and features that qualify as places of national importance would be identified in the NPF, but because this information doesn't exist currently places of national importance will not be identified in the first NPF. They will also need to be 'exceptional'.
- Geoheritage is explicitly included within the category of outstanding natural features.
- Only existing national limits will be included in the first iteration of the NPF.
- Transfers of functions, powers and duties from the Committee or councils need only give effect to section 82 of the Local Government Act rather than use the Special Consultative Procedure, although this could still be used.
- Delegations relating to council involvement in planning decisions have been removed as a general tidy up – as councils are no longer involved to the extent they were under the RMA.

And the NBE Bill has been reordered to improve flow and readability… but it is still very long.

15. What is not addressed

The complexity of running two regimes at the same time and the costs of the transition and implementation of the new system were never going to be addressed in the legislation but they remain a significant concern. Whether the system will be quicker and more efficient remains a question too.

The missing Climate Change Adaptation Act is also a concern, but recent weather events will likely trigger interim solutions.

The sequencing of the reforms remains an issue, while we await the outcomes of the Future for Local Government Review and whether the recommendations of the Panel will be embraced by a future government. It is anticipated that the Select Committee's amendments will be adopted and the legislation will be enacted as reported back, making the decisions of local government about how it reacts to the Panel's recommendations all the more pressing.

16. For further information

This is only a preliminary analysis of the Select Committee's reports on the Bills. For those interested in a full analysis of the Bills please join our Webinar: What happened to the RMA? with the Simpson Grierson on 26 July 2023.

For further information on the Reports and Bills please see the Final Spatial Planning Bill Report and the Final Natural and Built Environment Bill Report.

NB at the time of writing the Report on the NBE Bill hadn't been uploaded to Natural and Built Environment Bill (selectcommittees.parliament.nz).

Taituarā

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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