

Legislative Statement | Natural and Built Environment Bill

Presented to the House in accordance with Standing Order 272.

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

The NBE Bill was introduced on 15 November 2022 and was referred to the Environment Committee (the Committee) on 22 November 2022. The Committee received and considered 2,945 written submissions and heard oral evidence from 365 submitters on the Bill.

The Committee reported back with recommended changes to the Bill on 27 June 2023 to improve workability. The Committee also restructured parts of the Bill for readability reasons, and recommended minor and technical changes. The Bill was read a second time on 18 July 2023. The Committee of the Whole House (COWH) stage was completed on 1 August 2023.

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

Review of the resource management system

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

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

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

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

Exposure Draft

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

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

New resource management system

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

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

Overview – System Operation



Main features of the NBE Bill and changes made through the committee of the whole House (COWH)

The Bill was amended to provide further flexibility when implementing freshwater farm plans, and make minor and technical amendments to improve workability and consistency. These were considered and debated at the COWH.

The main features of the Bill and key changes made through the COWH are summarised below.

Purpose

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

The Bill also requires that the principles of te Tiriti o Waitangi are given effect to, as is the case under the Conservation Act 1987. The Bill clarifies that the Tiriti clause only applies to the Courts when they are seeking to interpret and apply the legislation, or when the Environment Court is determining a plan as the primary decision maker.

Outcomes

The Bill retains the shift from managing adverse effects to promoting positive outcomes. Legislative principles provide further assistance on how decisions to achieve outcomes should be made.

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

While there is no hierarchy among the outcomes, affording discretion for decision makers in how they are pursued once limits and targets are met, additional direction is included on how outcomes should be provided for.

Limits and targets

Environmental limits will be set at the state of ecological integrity at Bill enactment, preventing further degradation in the natural environment. Limits for human health will be set according to relevant health guidelines.

Minimum acceptable limits must be set to drive improvement of the ecological integrity of the natural environment where it is unacceptably degraded. Once a minimum acceptable limit is achieved, it must be maintained or improved.

Limits will apply across areas known as management units, not specific sites, to achieve 'no-net-loss' of ecological integrity within the management unit. This provides flexibility to resource users while managing cumulative effects. Limits may be set in the NPF by the responsible Minister, or in natural and built environment plans (NBE plans) if required by the NPF. A tightly framed exemptions regime will further enable development. The Bill provides additional flexibility by allowing Crown agencies and requiring authorities to apply directly to the Minister for an exemption.

Mandatory targets to help drive improvement must continue to be set for any aspect of the natural environment that a limit has been set for. Discretionary targets may also be set for other parts of the natural and built environment to achieve the outcomes in the Bill.

Managing adverse effects

Managing adverse effects will still be an important feature of the new resource management system. The Bill includes a general duty on everyone to avoid, minimise, remedy, offset, or take steps to compensate for any adverse effect on the environment from an activity. Technical amendments were made through the COWH to ensure these terms are used consistently throughout the Bill.

The Bill also provides that any activity creating an adverse effect that is more than minimal on specified nationally important places or highly vulnerable biodiversity areas can only be considered for approval if an exemption applies. Exemptions for fishing were added through the COWH to clarify how fishing interacts with biodiversity in these places. This is intended to maintain and clarify the approach under RMA case law, including how it interfaces with the Fisheries Act.

National Planning Framework

The Bill requires an NPF to be prepared as secondary legislation. The responsible Minister must ensure the NPF includes direction on key topics, including the outcomes. The revised Bill expands the list of matters the NPF must provide direction on to include green spaces, in addition to urban trees.

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

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

- framework outcomes – to expand upon the system outcomes in the Bill itself
- environmental limits and targets – to prevent further degradation in the natural environment and drive improvement

- overarching layer – to provide direction on integrated management and resolve conflicts between outcomes.

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

The Bill identifies what the transitional NPF must contain. Following the COWH, the Bill now requires the transitional NPF to be publicly notified within eight months of the Bill being enacted. It also requires a further version containing the remaining mandatory content to be publicly notified by 1 January 2028.

There are also new requirements to prepare an engagement draft of the transitional NPF. This will be provided to Māori groups, Post-Settlement Governance Entities (PSGEs) in accordance with existing Treaty settlement commitments, and local government as key implementers of the NBE Bill. This pre-notification engagement process will provide an opportunity to refine the transitional NPF proposal in readiness to publicly notify it in early 2024 for consideration by a board of inquiry.

Regional planning committees

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

The Bill also improves the process for RPC formation and strengthens local voice by:

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

Natural and built environment plans

The NBE Bill will require the RPC for each region to prepare a single NBE plan that manages the natural and built environment, replacing existing regional policy statements, regional plans, and district plans. This will reduce the number of plans from over 100 in the current system to 16. The Nelson and Tasman regions will produce a combined NBE plan.

NBE plans will implement the NBE Bill on a regional and local scale, give effect to the NPF where directed, be consistent with RSS, provide for the needs of the community, guide consent decision-making, and provide more certainty about consenting, notification, and assessment requirements.

Submissions on an NBE plan will be heard by an Independent Hearings Panel (IHP), broadly following the approach used to develop the Auckland Unitary Plan with appeals to the Environment Court only allowed if the RPC rejects the IHP's recommendations. The submission timeframes better enable the provision of supporting information and provide for a summary of submissions.

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

Resource consents

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

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

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

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

Resource allocation

The new system includes an allocation framework that is designed to move toward a more deliberate and strategic approach to how resources are allocated. The current legal requirement for a first-in first-served approach and the near-automatic renewal of consents held by existing users will no longer be the only option for allocating certain resources.

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

- expand the exemptions to RMA transitional consents and 10-year NBE consents to include all existing hydro-electricity generation schemes, as well as public wastewater and stormwater networks
- include a regulation-making power for the Minister for the Environment to introduce further exemption grounds for nationally or regionally significant infrastructure, and water storage that would deliver better environmental or climate change resilience outcomes

- amend the maximum duration of transitional RMA consents (if granted) from 3 years to 5 years after allocation methods in NBE plans take effect.

Technical changes made through the COWH provide further clarity about the scope of freshwater-related consents and exemptions, and ensure the process is robust.

Consequential amendments to Part 9A of the RMA were also made through the COWH to address implications arising from the High Court decision in *Forest & Bird v ORC*. These amendments will support the transition to the new system.

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

The Bill enables implementation of these provisions to be conducted in a way that is inclusive of a broad set of Māori interests in freshwater, including whānau, landowners and marae.

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

Freshwater farm plans

Freshwater farm plans are a key component of the essential freshwater package currently being implemented that will be incorporated into the new resource management system. Further flexibility for implementing freshwater farm plans is provided following the COWH. The Minister for the Environment (in consultation with the Minister of Agriculture) has discretion to modify the land use area thresholds in Part 6, Subpart 2 of the NBE Bill and Part 9A of the RMA (which determine when a farm must have a freshwater farm plan) and apply them to particular land use types through an Order in Council process.

Fast-track consenting

The Bill proposes to keep and refine the fast-track consenting process for use during the transition to the new system. It sets a clearer two-step process for fast-track consenting (Ministerial referral process, then Expert Consenting Panel consideration) that is more consistent with the now repealed COVID-19 Recovery (Fast-track Consenting) Act 2020. Technical amendments were made to the Bill to improve workability of the process, which commences immediately after Royal Assent.

Designations

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

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

The Bill refines the process for designations, including:

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

Compliance, monitoring, enforcement, and system oversight

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

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

Māori participation

A new National Māori Entity will be established to monitor te Tiriti performance of the system. Once established, the Entity will be able to determine its permanent name. The Bill also establishes a nominating committee to appoint members. The revised Bill clarifies the purpose of the Entity which is to support improvement in the system, alongside its advisory and primary monitoring function. The Entity's role in the NPF is not a replacement for direct engagement with iwi, hapū, Māori.

The RMA interfaces with over 60 pieces of Treaty of Waitangi settlement legislation. All Treaty settlement obligations, Ngā Hapū o Ngāti Porou commitments and existing arrangements under the RMA (Mana Whakahono a Rohe and joint management agreements) relating to resource management will be transitioned into the future system in accordance with principles and processes set out in the Bill. The effect of those existing arrangements will be carried forward, meaning they will not be written up or down.

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

The timing of the omnibus bill(s) will depend on the passage of the NBE and SP Bills and how long it takes to reach agreement on deeds to amend with PSGEs. Because the content of the omnibus bill(s) can only be finalised once the content of the NBE and SP Bills is certain, there will be a delay between the Bills receiving Royal Assent and the omnibus bill(s) upholding Treaty settlements and the NHNP Act being enacted. The Bill provides flexibility for when the RPC composition process can start once agreement has been reached with PSGEs and other groups.

Transition to the new resource management system

The Bill includes detailed commencement, savings and transitional provisions. Further amendments were made through the COWH to ensure it is clear for system users (including councils) which provisions apply and when.

The 'transition' period primarily refers to the time from enactment of the NBE Bill until each of the 16 regions have an NBE plan in place that has legal effect. The transition will occur on a region-by-region basis as Treaty settlements are upheld and RPCs established. Transition to the new resource management system is anticipated to take around 7-10 years following enactment of the NBE Bill.

The RMA will continue to apply prior to NBE plans having legal effect. This includes RMA national direction, regional policy statements, plans, consents, and RMA processes and decision-making. New RMA national direction developed during the transition will consider the desirability of consistency with the NBE Bill. RMA national direction will cease to apply in a region once a decisions version of the NBE plan is released by the RPC (ie, the region's NBEA date).

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