

# Submission

**Natural and Built Environments Bill and Spatial  
Planning Bill**

**17 February 2023**



# Waipā District Council Submission on the Natural and Built Environment Bill and Spatial Planning Bill

**By: Waipā District Council**

**17 February 2023**

## ***Introduction***

Waipā District Council (the Council) welcomes the opportunity provided by Parliament's Environment Committee, to provide comment on the Natural and Built Environment Bill (NBE Bill) and the Spatial Planning Bill (SP Bill).

## ***General Comments***

The Council supports the Government's replacement of the out-dated Resource Management Act 1991 (RMA) (1991) with new planning and resource management legislation. The Council acknowledges the significant milestone achieved in finalising these two strongly interrelated Bills.

The Council supports the focus on an integrated and outcomes planning approach. It also supports the prominence of Te Tiriti o Waitangi and a Māori world view in the purpose of both Bills. The introduction of the National Planning Framework to provide integrated overall direction is considered significantly beneficial as is the introduction of spatial planning through the preparation of regional spatial strategies.

The Council is in general support of the Taituarā submission on the two bills, and in particular, the point that Government needs to engage more closely with local government on the reform programme and transitioning to a new system.

## **Key Overall Points**

### **1.1 Role of local government and principle of subsidiarity**

The Council is concerned that following the government's current water reforms, the two Bills represent another step in diminishing the authority of local government over local level matters. This legislation will remove decision making over land use and resource management planning from the local level and aggregate it at a regional level under an independent regional planning committee. Plan making therefore will become more centralised and removed from the local district level. In addition, regional committees will be more answerable to the Minister (in part), and the Local Government Commission than to the local communities who will, however, remain responsible for funding the committee's establishment and operation.

In terms of representation on Regional Planning Committees, our Waikato Region is large and complex in makeup. It comprises several sub-regions with distinct and separate communities of interest. These range from the Coromandel in the north to Taupo in the south and includes one major urban area, the Hamilton metropolitan subregion. It is difficult to see a single regional planning committee attempting to be well

representative of constituent communities and operating efficiently and effectively across all these disparate sub-regions equally well.

Provision is made for the appointment of sub-committees in the NBE Bill (Schedule 8) and the delegation of powers to such sub-committees. Having provision for such sub-committee entities would appear to be a sensible arrangement, particularly in instances such as the Future Proof sub-region where there is already an established and well-supported urban growth partnership entity in place.

## **2.2 Complexity of implementing the proposed legislation**

One of the drivers for replacing the RMA is that it had become a large, complex, and cumbersome statute. The new legislation and interrelationship between the different levels, different bodies and between the two Bills, appears similarly complex (see Figure 1 below).

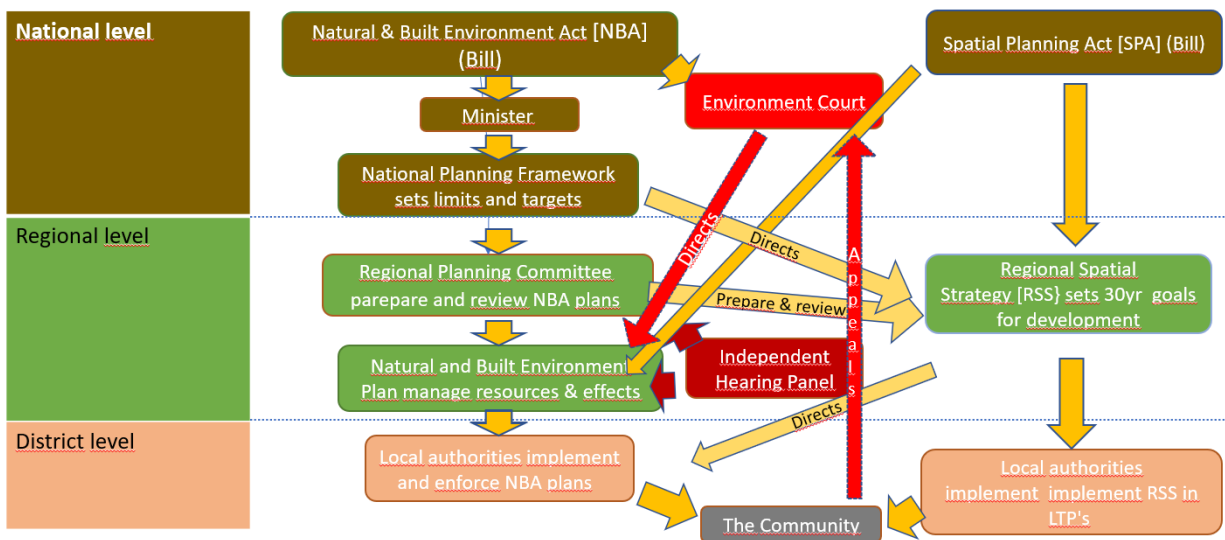
Of concern too, are the apparent lack of placeholders in the new system for the still to added, Climate Adaptation legislation. It is thought likely that the third piece of resource management reform legislation is likely to further increase the complexity of the new system.

Probably the single largest distinction between the current RMA system and the new system is that the new system is essentially a top – down driven system whereas the current RMA system is by comparison a much more bottom-up process. The new system will get a lot of content direction from the new overall national planning framework. This framework will provide direction to both regional level spatial strategies and regional natural and built environment plans. Local level councils will be required to implement plans and strategies as well as regulate and monitor actions on the ground but will no longer be plan-making regarding land use and the environment.

The Council is concerned that in attending to the failures of lack of national direction in the current RMA system, the new system attempts to be too centralised and remove the flexibility and agility of local decision-making regarding place making and wellbeing issues and replace this with granting wide ranging powers to the Minister for Environment in the central government of the day. The issue is whether the efficiency gain aspirations of the new system come at the cost of loss of equity for local communities.

A related concern is how well, or not local level plan monitoring will feed back into regionally driven policy in Regional Spatial Strategies. While this is addressed in the NBE Bill with the monitoring and review of Natural Built Environment Plans through three yearly state of the environment plans, it is not well addressed in the SP Bill. Furthermore, the proposed system is very reliant on the establishment of environmental limits. To ensure that these are adhered to, and the plans are achieving the appropriate outcomes there needs to be a robust monitoring and reporting framework to ensure that as a minimum the environmental limits are being met.

Figure 1. The key pieces of the proposed new Resource Management legislation and links



### 2.3 Lack of hierarchy in outcomes sought

As several commentators have noted, there is no hierarchy or prioritisation of system outcomes sought in the new legislation. The Bills indicate that the regional planning committees will have responsibility for determining the prioritisation of outcomes at a regional level.

The non-hierarchical nature of the wide-ranging system outcomes (from environmental protection to providing ample land for urban development) is thought to be problematic without a level of direction set nationally at the central government level.

There are already current difficulties with urban planning that remain to be resolved due to a lack of consistency between the outcomes sought between various RMA National Policy Statements. One example is the requirement to provide more than sufficient land capacity for urban growth for at least 30 years into the future under the National Policy Statement on Urban Development, whereas the National Policy Statement for Highly productive Land limits consideration of additional land for urban development to only the next 10 years.

### 2.4 Reliance on National Planning Framework

Key to implementing the new planning and environmental management legislation, will be the new National Planning Framework which will set all important environmental limits and targets for resource use and environmental management. It will be the overall umbrella reference from which everything develops. It will set a high-level framework for both the preparation of Natural and Built Environment Plans under the NBE Bill, as well as the preparation of Regional Strategic Strategies under the SP Bill.

Having a well-considered and appropriate national framework established within six months of the NBE Bill achieving royal assent will be a demanding but crucially important early step in implementing the new resource management and planning legislation. Even though the first iteration of the National Planning Framework is likely to be based largely on existing National Policy Statements and Environmental Standards, it will still have to grapple with resolving existing conflicts of policy that exist under these RMA instruments.

## **2.5 Resourcing implementation**

A major concern for the Council is the expectation in both Bills that responsibility for resourcing the introduction and operation of the new system will fall largely to local government. There are two aspects to this concern.

The first is that the responsibility for funding implementation does not appear to be matched with an accountability for spend back to the Council and its constituent communities. For example, under the SP Bill, the Council will be directed by the Regional Planning Committee to implement the Regional Spatial Strategy through the Council's Long Term Plan. Consequently, the Council and its communities will bear the cost burden of responsibility for implementation, regulation, and monitoring, without having much input into preparation of the Regional Spatial Strategy and Natural and Built Environment Plan. There will need to be a good level of cooperation between the regional and local levels as well as considering variations of affordability and support across districts, to achieve effective alignment between the regional level preparation of plans and strategies and the local level ability to implement.

The second aspect is that during the long period of transition between establishing the new system and still operating under the RMA there will be a duplication of effort and dual resourcing required before the actual switch over occurs. This transition period will carry an additional burden of costs and resourcing required to enable both streams of work to proceed. While there has been an indication that Central Government will contribute support during the transition period, these arrangements are uncertain and remain to be clarified at this stage.

## **2.6 The missing Climate Adaptation Bill**

There has been acknowledgement by Central Government that the Climate Adaptation Bill is only likely to come into effect in 2024. As the missing third piece of resource management legislation, there is concern about the uncertainty this gap introduces and whether further amendments to the resource management and planning legislation will be required once there is greater certainty about the third piece of legislation.

While there are several placeholders in both Bills for climate change and adaptation, what is not yet clear is the relationship and interaction between the three pieces of legislation. Currently the NBE Bill reads as the parent legislation with the SP Bill reading as being a sub-set. Following this pattern, the Climate Adaptation Bill could have a similar role in relation to the NBE Bill. There is a concern that with the introduction of the Climate Adaptation Bill the system may change again, and there will be further complexities as a result of working under three interrelated Acts.

## Specific Comments

NBA Bill Section Clause No.	Comments
<b>Part 1 Purpose</b> <b>Clause 3 - Purpose</b>	<p>This clause will be hard to implement and is likely to be litigated. <b>Request</b> clear hierarchy of sub-purposes i.e. environmental protection is afforded highest priority, land use and development to follow.</p> <p>Cl13 env responsibility applies to every person, not just every person performing a duty in the act. Good in intent but unenforceable. <b>Request</b> - clarification whether cl13 is enforceable under the act.</p>
<b>Clause 5 System outcomes</b>	<p>Cl5 There is no hierarchy in system outcomes for NBE plans. We note that these are all subject and subservient to the national planning framework NES/NPS directions e.g. NPS-HPL. <b>Request</b> a clear hierarchy of outcomes as for the purpose. Also request cl5 include “subject to the National Planning Framework, National Policy Statements and National Environmental Standards...”</p> <p><b>Support the move to an outcomes approach</b></p>
<b>Clause 6 Decision making principles</b>	<p>Cl6. Again, there is no hierarchy of importance. Recognising and providing for the responsibility and mana of each iwi and hapu is probably unworkable as it is currently written as it sets up iwi tensions and confers picking iwi preferences onto the RPC. <b>Request</b> – a clear hierarchy of principles; re-write cl6(3) so it is workable; consider replacing iwi and hapu with “iwi authorities” and require iwi authorities (also in cl 106) to inform the RPC what “responsibility and mana” looks like in practice. <b>Amend</b> cl6(1) to read: “...purpose of this Act, the Minister, every regional planning committee, and every consenting authority, in making decisions...” We consider the principles should apply to consent decision making too.</p> <p>We note that the precautionary principle is codified in Clause 6(2).</p>
<b>Part 2 Duties and restrictions</b>	
<b>Part 3 National Planning Framework</b>	<p>There is concern about the sweeping powers of the Minister (and government) of the day, to set, change, amend, lower, increase or withdraw the environmental limits. While having good national direction is seen as being a major step forward, this should be better balanced by retaining more local level decision making over local level matters than currently envisaged in the new system.</p>

<p>Subpart 11 Preparation change and review of NPF</p>	<p>The first NPF likely to be quite limited and based on existing NPSs and NESs, then become more complete over time. It is likely that there will be teething issues with establishing and implementing the NPF while retaining the existing the RMA system during the transition period. <b>Request</b> - There will need to be clarification of if and how the NPF will apply to RMA plans during the transition period.</p>
<p><b>Part 4 NBA Plans</b></p>	<p>Cl 107. “Have regard” to statement of community outcomes is not strong enough. <b>Request</b> – consider changing “have regard” in cl107(1) to “give effect where practicable, otherwise have specific regard to”</p> <p>Cl108. Apparent drafting issue with people on low incomes. The clause says avoid any effects arising <i>by</i> people of low incomes etc – this might be intended to say effects <i>on</i> those people. <b>Request</b> - amending cl 108(d) to change “by” to “on” and <b>define</b> “people on low incomes” and “people with special housing needs”.</p> <p>Even with a definition of “people on low incomes’ how are they to be determined/known? <b>Request</b> - consider removal of reference to “people on low incomes” in its entirety.</p> <p>Cl112 <b>Request</b> – consider amending to clarify that “an environmental contribution may include land, money, an effects offset action, or any combination “.</p> <p>Cl130. Need to include highly productive land in the rules that have immediate legal effect (to avoid subdivision goldrush). <b>Request</b> – consider amending cl130(4) to include “protects areas of highly productive land” and define HPL.</p>
<p><b>Part 5 Resource Consents</b></p>	<p>Cl54 – the description of consent activities is considered helpful and supported.</p> <p>Cl157 – reference to “marginal or temporary” non-compliance is considered a legal and enforcement nightmare. How long is a piece of string.... <b>Request</b> - defining “marginal or temporary non-compliance”, or provide for the implementing council to have power of final determination without any right to appeal.</p> <p>Cl157 2 is about permitted activities by 157(2) but refers to an application for resource consent? <b>Request</b> - amending reference in clause 157 to “resource consent” to read “application for a marginal or temporary non-compliance”.</p>



	<p>cl 164 need to clarify expectation of councils recovering costs for iwi. <b>Request</b> – amending cl164(2) to read “The consent authority may, <u>at their sole discretion</u>, recover...,”</p> <p>We note clause 204 – discretionary activities must be publicly notified unless the plan or NPF states no notification.</p> <p>Cl206, need to confer power to council to determine “public interest”. <b>Request</b> – amending cl206(a) to read: “it is appropriate to notify any person who in the opinion of the consenting authority, represents wider public interest”.</p> <p>We note, cl223 is the new s104. <b>Request</b> – amending the clause to include a hierarchy under subclause 2.</p> <p>Cl284 <b>Request</b> – amending to specify that minor corrections can also be made to consent conditions.</p>
<p><b>Part 6 Water and contaminated land management</b></p>	<p>Although our consents to abstract water and / or discharge treated wastewater and stormwater are consented via regional council there is no indication of when a water conservation order under this legislation can be raised and when regional / district council would have to take effect of it (even if associated regional to district council consents still in term).</p> <p><b>Request</b> – clarification of when water conservation order can be raised and when it would take effect.</p> <p>Clause 397 suggests a water conservation order needs to be reflected in plans. This wording is vague and assumed to indicate that the regional council plan is the one most influencing district level water use via associated consents.</p> <p>Sub-part 2 – farm plans may affect district level planning and development direction in rural areas.</p> <p><b>Request</b> – clarification of how farm plans and NBA plans will align particularly in our case regarding aspirations for improvements around peat lakes which will require potential cross farm improvements especially in terms of drainage.</p>
<p>Subpart 4 Contaminated land</p>	<p>425 – <b>Request</b> – clarification of what help district councils can be when the EPA consults with councils and the powers we have therein.</p>
<p><b>Part 8 Matters relevant to natural</b></p>	<p>Cl563 “trivial” adverse effect will be legally contested.</p>

<b>and built environment plans</b>	<b>Request</b> - replacing “trivial” throughout the Bill (clauses 7, 64, 559 and 563) with “minor” which is established in both practice and law.
Subpart 1 Designations	499 – would a future water entity require to apply to be a network utility operator as to becoming a requiring authority.  <b>Request</b> – check terminology especially where TLA and water entity may jointly need to apply for growth cell infrastructure development (e.g. 503 c).  The process to acquire under the Public Works Act already contain aspects of intended use, demonstration of no viable alternatives etc. <b>Request</b> – Check cl 525 with Public Works Act for any overlaps or conflict in clauses and requirements.
<b>Part 9 Subdivision and reclamation</b>	
Subpart 1 Subdivision of land	Cl569 subdivision on land. <b>Request</b> – amending clause to extend the term of a lease to 99 years to provide an easier pathway to leasehold housing tenure without triggering the need for a subdivision consent.
<b>Part 12 General</b>	Cl 822 they have inadvertently? removed “actual” from “actual and reasonable costs” that we can recover (noting that “actual” is included in schedule 7 cl77 for independent plan change requests). <b>Request</b> – amending clause to read “actual and reasonable”.
<b>Schedules</b>	
Schedule 3 Principles for offsetting and redress (biodiversity and cultural heritage)	<u>Schedule 3</u>  Clause 2(b) refers to “socially acceptable options”. <b>Request</b> – clarification as to what this term means or its removal. It can differ depending on societal groups.  Clause 2 sets out limits to offsetting and instances whereby biodiversity values cannot be offset. <b>Request</b> – consider whether a prohibited activity status should apply in these instances.  Clause 6 <b>Request</b> – amending to use stronger wording and <u>require</u> any biodiversity offset to <u>must</u> be in the same ecological district.

	<p><b>Request</b> – consider whether there should be a way of including any time lags as referenced in clause 8 into the biodiversity offset calculation.</p> <p>Clause 14 is strongly supported as there has previously been disputes over loss and gain calculations, so transparency is encouraged.</p> <p><b>Request</b> – The inclusion of a standardised national calculation approach would be useful.</p>
<p>Schedule 7 preparing changing and reviewing NBA plans</p>	<p><b>Note</b> - Part 11, clause 4 appears to have a spelling error – “Naori”</p> <p>Part 12, refers to “if an engagement agreement is reached...”</p> <p><b>Request</b> – clarification of what happens to the plan change process if an agreement cannot be reached? Are there provisions that address this scenario?</p> <p>Clause 31.</p> <p><b>Request</b> – the addition of details regarding whether there is a transparent process for identifying ‘directly affected ratepayers’ if doing a proportionate plan change that is being limited notified.</p> <p>Clause 72 includes a provision like those existing in the RMA. Under 72(1)(b)</p> <p><b>Request</b> – clarification of what is day 1 if an authority decides to deal with a request as if it were an application for a consent, in terms of the consent timeframes? Is it the date on which the council makes the decision? Or does the applicant need to formally lodge a resource consent?</p>
<p>Schedule 8 Membership and operation of regional planning committees</p>	<p><b>Request</b> - clarification of who the Regional Planning Committee is accountable to for Natural and Built Environment Plans under the Natural and Built Environment Bill? Under the Spatial Planning Bill, the Minister is authorised by the Prime Minister or a warrant, but the same is not clarified under the Natural and Built Environment Bill.</p>
<p>Schedule 10 Information required to support a resource consent application</p>	<p>Clause 4 regarding additional information required in an application for subdivision consent.</p> <p>Clause 6(1)(g) monitoring details to be included as part of the application, including how and by whom.</p> <p><b>Request</b> – whether there are going to be external parties available to undertake monitoring of consents and are these going to be</p>

	<p>accredited organisations to ensure monitoring is done effectively and to a specified standard? Without good monitoring of consents there is the potential that any set environmental bottom lines are not going to be adhered to.</p> <p>Clause 7 <b>Request</b> – clarification regarding alignment of urban design principles with the matters outlined.</p>
--	---

SPA Bill Section Clause No. <i>(Insert clause number or write “general” for high-level comments)</i>	Comments
Subpart 1 Requirement	<p>Covers the need, scope and content but doesn’t say or address, who prepares these strategies. That is rather addressed in the Natural Built Environment Bill Section 7.</p> <p><b>Request</b> – consider improved cross-referencing to address the aspect of who prepares regional spatial strategies in the Spatial Planning Bill. For example, there is more detail in this regard in sections of the NBE Bill such as Part 10 subpart 3 – functions of regional planning committees in clause 642 and local authorities in clause 643</p>
Subpart 2 Scope and Content	<p>Must be consistent with and give effect to the national planning framework which means that having the national planning framework in place is the first requirement for the reforms and suggests that the Spatial Planning legislation is subservient to the NBA.</p> <p><b>Request</b> – Although the content of regional spatial strategies is wide and covers land use, environmental protection, hazards, climate change, major infrastructure, and cultural heritage (and Te Ture Whaimana in our region). It is recommended that consideration be given to including social and economic wellbeing aspects too as the current content doesn’t really speak to the needs or aspirations of the communities of a region.</p> <p>It is considered likely that particularly in the Waikato Region, it will be beneficial to have sub-regional spatial strategies that better address communities of common interest and their infrastructure and well being needs.</p>
Subpart 4 Implementation of	<p><b>Request</b> – better clarification of the role of local authorities who will be responsible for implementation of regional spatial strategies but</p>

regional spatial strategies	are not currently well addressed in the Bill. Currently the Bill only addresses implementation at the regional level. By comparison the Natural and Built Environment Bill provides a much greater level of detail regarding the role of local authorities in implementation.
-----------------------------	--



**TE AWAMUTU - HEAD OFFICE**

101 Bank Street, Private Bag 2402, Te Awamutu Ph 07 872 0030

**CAMBRIDGE - SERVICE CENTRE**

23 Wilson Street, Cambridge Ph 07 823 3800

[f](#) /WaipaDistrictCouncil   [@](#) /Waipa\_NZ   [t](#) /Waipa\_DC