



# Talking points: CAB-371 Repealing the Natural and Built Environment Act and the Spatial Planning Act

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**Security level:** In-Confidence

## Purpose

1. Attached are talking points to assist you in discussion with you colleagues in Cabinet on 4 December 2023.
2. The focus of these talking points are the decisions needed to progress the repeal of the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA) as set out in CAB-371 Repealing the Natural and Built Environment Act 2023 and the Spatial Planning Act 2023.

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# Talking points: CAB-371 Repealing the Natural and Built Environment Act and the Spatial Planning Act

## I propose repealing the NBA and SPA

1. In August 2023 the previous Government passed the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) to replace the Resource Management Act 1991 (RMA).
2. I propose to pass legislation repealing the NBA and the SPA by the end of this year. The legislation will have a narrow scope that focuses on the repeal of the two Acts which, for the most part, have not yet started to be implemented.
3. This is the first step in our wider plans for the resource management system in this parliamentary term, as outlined in our coalition agreements.
4. I have been advised that the repeal of the SPA is straightforward. No region has started a spatial planning process under the SPA, and no transitional arrangements are needed.
5. However, there are a limited number of NBA functions that have begun to be implemented. These will need to be addressed in the repeal legislation so that everyone who uses the resource management system has a clear understanding of how their interests are affected by the repeal.
6. The NBA and SPA also made amendments to over 150 other Acts and secondary legislation, including the RMA. We will take a simple approach here – where legislation references the NBA or SPA it will revert to the pre-NBA and SPA wording.
7. All amendments to legislation that does not explicitly reference the NBA or SPA will also be reversed, except for select exceptions. These are set out in Appendix 1 of the Cabinet paper for clarity.

## Retaining the fast-track consenting regime

8. This Government has committed to introducing legislation for a permanent fast-track consenting regime for infrastructure projects within the first 100 days of office. I propose that agencies begin work on options for developing a fit-for-purpose, permanent fast-track regime, which I will bring to Cabinet in early 2024 seeking decisions on its design.
9. In the meantime, I propose maintaining the fast-track regime from the NBA until a permanent regime is developed, as stop-gap to avoid a hiatus with no fast-track regime.
10. The interim regime will need to carry over protections from the NBA that uphold existing rights and arrangements under historical Treaty settlements and other relevant arrangements, including the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.
11. This will allow us to work towards introducing a permanent fast-track regime, while providing assurance to Post Settlement Governance Entities (PSGEs) that their settlement arrangements will still be upheld if that legislation is delayed.

## **Repeal by Christmas will require fast decisions and an expedited process**

12. We will need to work fast to repeal the NBA and SPA by the end of 2023. It will require expedited drafting, engagement, and Parliamentary processes.
13. There will only be time for very targeted engagement with local government, Māori, and key sector stakeholders, focused on general messages about the repeal process.
14. The Cabinet paper contains detail to allow PCO to commence drafting immediately. However, as there will not be time to return to Cabinet for further policy and drafting decisions. I have sought that Cabinet delegates authority to me to make those decisions in line with the scope of the recommendations in the Cabinet paper.
15. I also recommend the repeal bill is passed through the House under urgency and the select committee phase is bypassed.

## **Phased programme to improve resource management, and freshwater planning**

16. Repeal of the NBA and SPA and the creation of a fast-track consenting regime is the first part of this government's three-phase programme to improve resource management in New Zealand.
17. Further targeted legislative changes to the RMA may be progressed as part of an amendment bill that includes introducing a fast-track infrastructure consenting regime.
18. This phase is also an opportunity to start addressing coalition commitments relating to freshwater. Regional councils are developing new freshwater plans now, so we will need to look at the timeframes imposed on councils as a first step. I recommend we make a public statement on this intent prior to Christmas.

## **Local government need clear direction to continue using the RMA**

19. To ensure that local government have the required clarity, we should provide clear messages that RMA processes should continue, and that the government is committed to working closely with the sector as we progress our wider resource management programme.

## **Engagement with Māori**

20. The RMA interfaces with 78 pieces of Treaty of Waitangi settlement legislation to varying degrees of complexity. The Crown needs to uphold its statutory obligations in relation to Treaty settlements, customary rights, and other relevant arrangements.
21. Māori have long expressed dissatisfaction with the operation of the RMA. They will likely object to the removal of provisions in the NBA and SPA that strengthened their ability to be involved in decision-making under the resource management system, which may lead to litigation or action in the Waitangi Tribunal.
22. Doing what we can to ensure relationships are maintained through the repeal process will help set us up for future reform processes, and broader implementation of our 100-

day plan. This will also help mitigate the risk of delay to the repeal process and impact to the Māori Crown relationship from associated litigation.

23. I intend to write to relevant Māori groups notifying them of Cabinet's intention to repeal the NBA and SPA. Officials will support ongoing engagement with groups where necessary through the repeal process.

## Risks


24. There are risks associated with such a fast-paced process, including unresolved matters and errors in the bill, and concern from the public about their inability to input to the process.
25. I consider these risks are acceptable to progress the priorities of this government.

## Next steps

26. I intend to return to Cabinet by 18 December 2023 with a draft repeal bill for introduction to the House.
27. I also intend to bring a further paper to Cabinet in early 2024 seeking decisions on the design of the fast-track infrastructure consenting regime and authority to issue drafting instructions.

## Responses to Potential Questions

### Fast track consenting

- 9(2)(b)(ii) 
- Consents and notices of requirement to designate for listed and referred projects can still be lodged and considered by Expert Consenting Panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020 until 11 8 January 2024.

### Freshwater Planning Process

- The previous government amended the RMA to require regional councils to notify their freshwater planning instrument by 31 December 202

### Nature of Treaty settlement and related obligations

- Almost all historical Treaty settlements contain various arrangements which provide for iwi involvement in resource management processes. These arrangements, along with Takutai Moana and other related arrangements, all need to be honoured and protected through reform.

- Some arrangements, for example statutory acknowledgements, are common across settlements and relatively straightforward to uphold. Other natural resource arrangements are complex, involving multiple touchpoints within existing resource management legislation. Where amendments are required to settlements, this can only be done with the agreement of PSGEs.
- Some settlements also create relationships between iwi and government that place obligations (not statutory) to engage early on matters of mutual importance.
- Some Māori may raise broader obligations under the Treaty of Waitangi – arguing that the significance of the proposal to repeal requires meaningful engagement, and that Māori interests (through the enhanced role for Māori in the NBA and SPA) should be protected.