



Briefing 3971: Cabinet Legislation paper - Natural and Built Environment and Spatial Planning Repeal Bill

Date submitted: 11 December 2023

Tracking number: BRF-3971

Security level: In-Confidence

MfE priority: Urgent

Actions sought from Ministers		
Name and position	Action sought	Response by
To Hon Chris Bishop Minister Responsible for RMA Reform	1. Provide feedback on draft Cabinet Legislation paper: Natural and Built Environment and Spatial Planning Repeal Bill: Approval for Introduction 2. Agree additional matters required to finalise the Bill	13 December 2023

Actions for Minister's office staff
<p>If agreed to, forward this briefing to: Hon Nicola Willis, Minister of Finance and Minister for the Public Service; Hon Chris Bishop, Minister of Housing and Infrastructure; Hon Dr Shane Reti, Minister of Health; Hon Simeon Brown, Minister for Energy, Local Government and Transport; Hon Paul Goldsmith, Minister for Arts, Culture and Heritage and Treaty of Waitangi Negotiations; Hon Judith Collins, Minister of Defence; Hon Todd McClay, Minister of Agriculture, Forestry, and Hunting and Fishing; Hon Tama Potaka, Minister of Conservation and Māori Crown Relations: Te Arawhiti; Hon Melissa Lee, Minister for Economic Development; Hon Simon Watts, Minister of Climate Change; Hon Penny Simmonds, Minister for the Environment; Hon Chris Penk, Minister for Land Information; Hon Shane Jones, Minister for Oceans and Fisheries, and Resources</p> <p>Return the signed briefing to the Ministry for the Environment (rmreform@mfe.govt.nz and ministerials@mfe.govt.nz).</p>

Appendices and attachments

1. Draft Cabinet Legislation paper: Natural and Built Environment and Spatial Planning Repeal Bill: Approval for Introduction

Key contacts at Ministry for the Environment

<i>Position</i>	<i>Name</i>	<i>Cell phone</i>	<i>First contact</i>
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Executive Director Spatial Planning Board	Mark Vink	021 176 2243	
Deputy Secretary	Nadeine Dommissie	027 549 7733	✓

Minister's comments

BRF-3971: Cabinet Legislation paper - Natural and Built Environment and Spatial Planning Repeal Bill

Key messages

1. This briefing seeks your feedback on a draft Cabinet Legislation (LEG) paper to introduce the Natural and Built Environment and Spatial Planning Repeal Bill to the House, and seeks your agreement to additional matters required to finalise the Bill.
2. The Bill will give effect to Cabinet's decisions to repeal the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) [CAB-23-MIN-0473].
3. The Bill will also give effect to Cabinet's decision to amend the RMA to extend the notification date for planning instruments to give effect to the National Policy Statement for Freshwater Management 2020 (NPS-FM) by three years until 31 December 2027 (pending Cabinet approval on 11 December 2023).
4. We have identified some additional matters that need to be addressed in the Bill. We recommend you agree to seek Cabinet decisions via the LEG paper for the following:
 - i applying Part 2 (purpose and principles) of the Resource Management Act 1991 (RMA) to decision-making roles and functions in relation to NBA fast-track consenting
 - ii formally concluding engagement processes on the transitional National Planning Framework (the NBA's equivalent of national direction)
 - iii clarifying that no compensation is payable to any person as result of the repeal of either the NBA or SPA.
5. With repeal of the SPA, the role of the Spatial Planning Board needs to be addressed. The LEG paper will reflect your decision in *BRF-3968 Opportunities for spatial planning*.
6. The LEG paper has been approved for late lodgement on Friday 15 December 2023 for consideration by Cabinet on Monday 18 December 2023. If approved, the Bill would be progressed through the House under urgency between 19 and 21 December 2023.
7. Officials will provide you with talking points for the Cabinet meeting on 18 December 2023, and for the House stages. We will also provide a legislative statement to support introduction of the Bill.

Recommendations

We recommend that you:

- a. **provide feedback** on the draft Cabinet Legislation (LEG) paper by Wednesday 13 December 2023
- b. **note** we will provide an updated paper for your comments, finalisation, and signature for you to circulate to your Ministerial colleagues
- c. **agree** to circulate the draft LEG paper and attachments to your Ministerial colleagues (for feedback by 5pm Thursday 14 December 2023), once we provide an updated version incorporating your feedback.

Yes | No

- d. **agree** that the Bill will formally close off the engagement process on the transitional National Planning Framework started under Schedule 5, Part 4, Clause 36(a) of the NBA, and disestablishing the Board of Inquiry that was set up under Schedule 5, Part 1, Clause 11 of the NBA

Yes | No

- e. **agree** that the Bill will enable Part 2 of the RMA to apply to decision-making roles and functions where Part 1 of the NBA currently applies in relation to NBA fast-track consenting, to better integrate with the existing regulatory framework under the RMA

Yes | No

- f. **agree** that the Bill include a 'no compensation' clause to clarify that no compensation is payable to any person as result of the repeal of either the NBA or SPA.

Yes | No



- g. **note** officials will provide talking points for the Cabinet meeting on 18 December 2023 and the House stages, provide a legislative statement to support introduction of the Bill.

Signatures



Jo Gascoigne
General Manager
Resource Management System

11 December 2023



Mark Vink
Executive Director
Spatial Planning Board

11 December 2023

Hon Chris Bishop
Minister Responsible for RMA Reform

Date

BRF-3971: Cabinet Legislation paper: Natural and Built Environment and Spatial Planning Repeal Bill

Purpose

1. The purpose of this briefing is to seek your:
 - i feedback on the draft Cabinet Legislation (LEG) paper to introduce the Natural and Built Environment and Spatial Planning Repeal Bill and address the role of the Spatial Planning Board
 - ii agreement to additional matters that need to be addressed in the LEG paper and Bill
 - iii agreement to circulate the Cabinet paper for ministerial consultation.

LEG paper update

2. Cabinet has committed to repealing the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA), returning to the Resource Management Act 1991 (RMA) in the interim, and developing new resource management legislation. The legislation needs to make it easier to develop new housing and infrastructure and enable our primary industry sector and better balance environmental protection.
3. On 4 December 2023, Cabinet agreed [CAB-23-MIN-0473] to pass legislation repealing the Natural and Built Environment Act 2023 (NBA) and Spatial Planning Act 2023 (SPA) by Christmas 2023.
4. A draft LEG paper is attached (Appendix One). The paper seeks Cabinet's approval to introduce the Bill to the House by 19 December 2023, to be progressed through Parliament under urgency between 19 and 21 December 2023.
5. The Bill reflects Cabinet's decisions on:
 - i transitioning and saving some parts of the NBA that are already in use to enable an orderly repeal
 - ii reversing consequential and other amendments made by the NBA and SPA to other legislation (with some limited exceptions)

- [REDACTED]
- iii retaining NBA fast-track consenting until a permanent fast-track process is developed.
6. The LEG paper and draft Bill also reflect the decisions to be sought by Cabinet on 11 December 2023 to amend the RMA to extend the notification date for planning instruments to give effect to the National Policy Statement for Freshwater Management by three years to 31 December 2027.
 7. We are working with the Parliamentary Counsel Office to finalise the drafting ahead of Cabinet on 18 December. The draft LEG paper contains some placeholders while this occurs – these will be resolved in the final version we provide to your office for lodgement.

Additional decisions required to finalise the Bill

Closing off engagement on the National Planning Framework

8. The LEG paper includes a recommendation that Cabinet agree to minor and technical changes in the Bill to formally close off the engagement process on the transitional National Planning Framework (NPF), and disestablish the Board of Inquiry that had been appointed to hear submissions and make recommendations on the transitional NPF.

Decisions needed on application of RMA Part 2 to fast-track consenting process

9. As agreed by Cabinet, the Bill retains the NBA's fast-track consenting provisions until a more fit for purpose fast-track consenting process is developed in the new year.
10. Under the NBA, before an NBA plan was in place, the Expert Consenting Panel were to use RMA planning documents to make decisions. This approach means that the substantive decisions made on applications for resource consents and designations were made in accordance with Part 2 of the RMA (purpose and principles), RMA provisions and relevant planning instruments. Whereas the Minister's decision to refer or not to an Expert Consenting Panel would be made under the NBA.
11. Aspects of Part 1 of the NBA (including the purpose statement and the Te Tiriti o Waitangi/Treaty of Waitangi clause) apply to Ministerial decision-making in relation to decisions to refer an application to the Expert Consenting Panel during the transition period. To a varying extent, these clauses in Part 1 of the NBA also apply to the Environmental Protection Authority (EPA) and Expert Consenting Panel when acting in accordance with the NBA fast-track consenting provisions. This approach is no longer applicable, given the repeal of the NBA.

12. We recommend you seek Cabinet's agreement that the Bill should apply Part 2 of the RMA to the referral decision the Minister makes, and to the extent that NBA Part 1 applies to the other matters set out above. This will better integrate with the existing regulatory framework under the RMA and improve certainty.
13. Part 1 of the NBA included a stronger Treaty clause and specific outcomes and decision-making principles relating to Māori rights and interests that would have informed the Minister's referral decision and other decisions by the EPA and Expert Consenting Panel. 9(2)(g)(i)
- The Schedule 2 NBA provisions, which were designed to ensure that the integrity, intent, and effect of Treaty settlements and other arrangements, and rights and arrangements under the Ngā Hapū o Ngāti Porou Act 2019 are upheld, are also being retained.
14. The LEG paper is currently drafted to reflect this recommendation (refer paras 14-16 and recommendation 3).

'No compensation' clause

15. The LEG paper also recommends that a 'no compensation' clause be inserted in the Bill. No compensation clauses are standard in these circumstances and clarify that no compensation is payable to any person as result of the repeal of either the NBA or SPA.

Role of the Spatial Planning Board

16. With repeal of the SPA, the role of the Spatial Planning Board (the Board) needs to be addressed (*refer: BRF-3968 Opportunities for spatial planning*). The draft LEG paper will reflect your decisions in that briefing.

Treaty of Waitangi/Te Tiriti o Waitangi analysis

17. We have previously provided Treaty analysis for repeal of the NBA and SPA (*refer: BRF-3951*). We also provided advice on Māori freshwater rights and interests (*refer: BRF-3974*) including the freshwater working group and related NBA provisions.

¹ For example, some settlements provide for nominations to be made to panels hearing resource consent applications. These are relevant to the membership of Expert Consenting Panels.


[Legally privileged]

9(2)(h)

Other considerations

Consultation and engagement

22. Officials have informed Local Government, Post-Settlement Governance Entities, customary marine title groups, groups who are yet to agree a historical Treaty settlement with the Crown and other Māori groups where appropriate, of the proposed repeal, what it will mean for them, and the process to be taken.
23. Engagement with Local Government has indicated a desire from this sector for clear information about the repeal, to help manage the transition, and to work closely with the Government as new policy is developed.
24. Feedback from Māori entities has reinforced the need to uphold Crown's commitment to the Treaty of Waitangi, including Māori rights and interests in freshwater and Treaty settlements.

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25. Feedback from iwi and hapū at place has signalled the need for significant investment in building capability and capacity for Māori to participate effectively in the repealed resource management structure. Iwi and hapū have also communicated a need to ensure that the repealed structure be more efficient and less complex than the current process, and nervousness about perceived winding back of gains made in the NBA.
 26. Agencies that were informed of the Cabinet paper *Repealing the NBA and the SPA* have also had an opportunity to provide feedback on the LEG paper.

Risks and mitigations

27. There are some complexities in the repeal process. There is a risk in moving fast that some matters will be left unresolved and may cause immediate issues for local authorities implementing the RMA, as they will need to determine the impact of the repeal on their operations, and apply the saving and transitional provisions immediately prior to the statutory Local Government shut down period from 20 December – 10 January.
28. These risks can be partially mitigated by continuing to engage with Local Government and providing information about the Bill once it has been introduced.

Financial, regulatory and legislative implications

29. Financial, regulatory, and legislative implications of repeal were outlined in previous advice (refer BRF-3951).
30. If you decide to disestablish the Spatial Planning Board, Orders in Council will be required. The Minister for the Public Service would issue drafting instructions to give effect to decisions made by Cabinet on the LEG paper.

Next steps

Finalising the LEG paper

31. Please provide officials with any feedback on the draft LEG paper by Wednesday 13 December 2023. We will then provide an updated paper for your comments, finalisation, and signature to enable the paper to be circulated to your Ministerial colleagues for short turn-around feedback by 5pm Thursday 14 December 2023
32. The paper will then need to be lodged with the Cabinet office on Friday 15 December 2023 for consideration on Monday 18 December 2023. We will provide you with talking points for Cabinet.

Parliamentary process

33. Officials will also provide supporting information, including talking points, for the House stages. We will also provide a legislative statement to support introduction of the Bill, and accompany you through the House stages. Note the legislative statement must be circulated to the Clerk, and to the leader, whip, or relevant spokesperson of each party before being presented (Standing Order 272(4)).
34. Subject to Cabinet's agreement on 18 December 2023, you can introduce the Bill to the House by 1pm on 19 December 2023. You can move an urgency motion for the Bill when it is introduced. The motion can be moved without advance notice, and is not debated by the House, although you must inform the House why the Government wishes to take urgency (Standing Order 57).
35. Alternatively, an urgency motion may be moved including all business the Government seeks to progress by 21 December 2023. We will work with your office on whichever option is preferred.



Appendices

Please see appendices as attached via email to the Minister's office.