

## In Confidence

Office of the Minister for the Environment

Chair, Cabinet

### Natural and Built Environment Bill and Spatial Planning Bill: Approval for Introduction

#### Proposal

1. On 25 October 2022 Cabinet agreed to final policy decisions on the Spatial Planning Bill and Natural and Built Environment Bill, and noted decisions already made by a Ministerial Oversight Group (MOG).
2. This paper seeks the Cabinet Business Committee's approval to introduce the Spatial Planning Bill and Natural and Built Environment Bill to the House. (The former is also referred to as the SPA Bill, and the latter as the NBA Bill, in reference to the Acts they would become.)
3. Details of policy contained in the Bills was outlined in the paper in my name that was considered by Cabinet on 25 October 2022 titled *Resource management system reform – update on how the reform objectives will be achieved* [CAB-22-MIN-0458 refers].

#### High level of public interest in the Bills

4. There is broad consensus that the resource management system introduced by the Resource Management Act 1991 (RMA) requires reform, which is why I am proposing to introduce the Bills to repeal and replace the RMA. I expect the Bills will generate a high level of public interest, and that there will be a range of views on the proposals in them.

#### Amendments required to the Bills via the select committee process

5. While the work done on the reform has been of high quality, the Parliamentary Counsel Office (PCO) will need to continue to polish the technical quality of the Bills. And as with any major reform, I expect experience will show areas for future improvement.
6. The polishing work may result in a technical Supplementary Order Paper (SOP) being referred to the select committee considering the Bills early in 2023.
7. This SOP may be informed by any recommendations from a system efficiency working group appointed to evaluate the proposed new system from an efficiency perspective.
8. Detailed commencement, savings and transition provisions will be introduced through the select committee process.
9. PCO and the Ministry for the Environment (MfE) have provided the following commentary on the status of the Bills:

- 9.1 The Bills have been prepared for consideration by Cabinet on 7 November 2022, on referral from the Cabinet Business Committee on 31 October 2022. Introduction will be as soon after the Cabinet consideration as is practicable.
- 9.2 To meet this timeframe, some issues will need further work during the select committee process. This will impact the public's ability to scrutinise and provide input on these issues, but the public will still have the ability to engage with the general system design. Issues include:
- 9.2.1 split between primary and secondary legislation, and the appropriate use of secondary legislation as part of the transitional scheme
- 9.2.2 transitional provisions required to move to the new NBA scheme
- 9.2.3 generally refining the workability of the new NBA scheme, including:
- the coherence of the consenting provisions, including with the rest of the system design
  - reflecting the work of a system efficiency working group on how the NBA Bill can be improved from an efficiency perspective
  - adjustments to reduce the risk of avoidable legal challenges
  - alignment with the water services legislation
- 9.2.4 review of drafting to ensure the Bill (when enacted) meets the usual quality standards, including:
- aligning new drafting in the Bill with aspects that have been taken from the RMA
  - ensuring that the Bill is structured in the optimal manner (noting that significant restructuring at select committee is difficult)
- 9.2.5 more specific issues that need to be implemented in the Bill to fully reflect policy decisions.

## **Refinements to the Bills**

### *Freshwater Working Group*

10. The draft NBA Bill provides for establishment of a Freshwater Working Group to make recommendations on matters relating to freshwater allocation under the Act, including on a process for engagement between the Crown and iwi and hapū at the regional or local level in relation to freshwater allocation. This Crown engagement will be a statutory requirement in the NBA, which will come into effect once the Government has responded to a report by the Freshwater Working Group.
11. These processes reflect the Crown's acknowledgement to the High Court in 2012 that Māori have rights and interests in freshwater and geothermal resources.<sup>1</sup>

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<sup>1</sup> *New Zealand Māori Council v Attorney-General* [2012] NZHC 3338, subsequently recorded by the Supreme Court in *New Zealand Māori Council v Attorney General* [2013] NZSC 6 at [145].

12. For further context, the Waitangi Tribunal has published detailed reports on freshwater rights and interests in Stages One and Two of the National Freshwater and Geothermal Resources Claim (WAI2358). It is now progressing Stage Three relating to geothermal resources.
13. Following feedback from iwi representatives, I propose that the working group process relate only to freshwater resources. As the paper considered by Cabinet on 25 October 2022 noted [CAB-22-MIN-0458 refers], any final outcomes will be put into effect by regional planning committees (RPC) when they apply the allocation principles in the NBA.

#### *Housing outcome*

14. The outcome relating to well-functioning urban and rural areas has been strengthened in the version of the NBA Bill now presented to Cabinet. The National Planning Framework (NPF) and NBA plans must provide for housing supply that is substantially above anticipated demand; is not unduly constrained by restrictions that lead to inflated land prices; and contributes to housing choices, including affordable housing.

#### *Environmental responsibility*

15. The MOG agreed to clarify what was always intended, that all New Zealanders have relationships with, and responsibilities to look after, the natural environment. The Bill now includes clause 13(1) on environmental responsibility to reflect this matter.
16. The MOG also agreed to include principles supporting Te Oranga o te Taiao. This will be in the form of recognising and providing for the responsibility of each iwi and hapū to protect and sustain the health and well-being of te Taiao. This provision has now been moved to clause 13(2) under environmental responsibility.
17. Clause 163 makes clear that this provision would not necessarily require a consent applicant or a consent authority to consult any person about an application for a resource consent. (NBA plans are expected to make clear who should be notified when a notifiable consent application is made.)

#### **Compliance**

18. The Bills comply with the following:
  - 18.1 the principles of the Treaty of Waitangi
  - 18.2 the disclosure statement requirements (Appendices One and Two).
19. MfE is working with:
  - 19.1 the Ministry of Foreign Affairs and Trade on assessing the Bills against relevant international standards and obligations
  - 19.2 the Privacy Commissioner on assessing the Bills against the principles and guidelines set out in the Privacy Act 2020.
20. The Ministry of Justice is vetting the Bills against New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 and will produce a compliance report ahead of the Bills being introduced.

21. The Bills contain minor non-compliance with the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee (LDAC).
22. In that regard:
  - 22.1 further detail for resource allocation principles (in clarification of the core allocation principles in the NBA drawn from the Randerson Report) can be added via the NPF
  - 22.2 this is similar to national direction under the RMA and can include significant policy content
  - 22.3 Parliamentary authority would be required for some issues such as pricing or tradeability of permits.
23. Engagement with LDAC will continue.

### **Consultation**

24. The Environment Committee undertook an inquiry on an exposure draft of key aspects of the NBA Bill in 2021 and reported back its findings to the House in November 2021. Its report and recommendations informed subsequent MOG decisions.
25. During the reform process, Ministers and officials have engaged with local government, Māori, sector stakeholders, and other interest groups on policy issues that have informed drafting decisions. Those engaged with include Local Government New Zealand, the Local Government Steering Group, Freshwater Iwi Leaders Group and Te Tai Kaha, the private sector, environmental NGOs, and other interest groups.
26. The Randerson panel (on whose report the reform is based) engaged with local government, Māori, the private sector, environmental NGOs and other stakeholders during its investigation into the resource management system. The Panel also ran a public submission process.
27. Prior investigations and reports on the resource management system included substantial contributions from Local Government New Zealand, the Waitangi Tribunal, the Environmental Defence Society, Property Council and Northern EMA, and Infrastructure NZ.
28. The following agencies were provided the draft Bills and a draft of this paper to provide feedback: Crown Law; Department of Conservation; Department of Corrections; Department of Internal Affairs; Land Information New Zealand; Ministry of Business, Innovation and Employment; Ministry for Culture and Heritage; Ministry of Education; Ministry of Health; Ministry of Housing and Urban Development; Ministry for Primary Industries; Ministry of Transport; New Zealand Defence Force; Oranga Tamariki; the PCO; Te Arawhiti; Te Puni Kōkiri; and Treasury. The Department of Prime Minister and Cabinet was informed.

### **Bills binding on the Crown**

29. The Bills bind the Crown, except in the circumstances set out in clause 12 of the NBA Bill.

### **Creating new agencies or amending law relating to existing agencies.**

30. The NBA Bill will create a new national Māori entity. It will be a public entity as defined in section 5 of the Public Audit Act 2001, with the Auditor-General as its auditor. Sections of the Crown Entities Act 2004 will apply to the entity. The entity will be an organisation for the purposes of the Ombudsmen Act 1975 and the Official Information Act 1982.

### **Allocation of decision-making powers**

31. The NBA Bill gives decision making powers to:
- 31.1 local authorities
  - 31.2 regional planning committees (RPC)
  - 31.3 boards of inquiry for proposals of national significance
  - 31.4 expert consenting panels for decisions through the fast-track process.
32. Appeal rights to the Environment Court on the new NBA plans are narrowed, and on consent decisions remain largely unchanged. Appeal rights to higher Courts on matters of law remain largely unchanged.
33. Powers to resolve disputes as to composition of RPC will be provided to:
- 33.1 the Local Government Commission to resolve disputes on the composition of RPC, including the number of local government and Māori representatives
  - 33.2 the Māori Appellate Court if agreement on Māori representatives cannot be reached.

### **Associated regulations**

34. The most significant regulation required to give effect to the NBA Bill is the NPF, which will be made by Order in Council. The NPF will be the new equivalent of national direction made under the RMA (ie National Policy Statements and National Environmental Standards).
35. The NBA Bill also requires a number of associated regulations to give effect to its provisions (eg administrative and procedural regulations, and transitional arrangements).
36. The NBA Bill also provides for emergency response regulations to manage emergencies.
37. The SPA Bill contains regulation-making powers on technical, procedural, and administrative matters.

### **Other instruments**

38. RPC are the stewards of plan-making under the new system and prepare RSS and NBA plans. Public submissions on these plans will be heard by Independent Hearing Panels. Rules within plans have the status of secondary legislation. PCO will not

draft or publish NBA plans. Publication requirements for RPC and local authorities are covered in the NBA Bill. RSS will not be secondary legislation.

### Commencement of legislation

39. The Bills will come into force on the day after the date of Royal Assent.
40. However, provisions relating to the appointment of RPC members (and subsequent RSS and NBA plans) will commence for particular regions at dates specified by Order in Council.
41. Detailed commencement, savings and transitional provisions will be introduced through the select committee process after the Bills are introduced.

### Parliamentary stages

42. I propose that the Bills be introduced as soon as is practicable, be referred to the Environment Committee, and be passed by 30 June 2023.

### Proactive Release

43. I intend to proactively release this Cabinet paper and supporting briefing on the MfE website.

### Recommendations

The Minister for the Environment recommends that the Committee:

1. **note** that the Spatial Planning Bill, and the Natural and Built Environment Bill (NBA Bill), hold category 4 priority on the 2022 Legislation Programme (to be referred to a select committee in 2022)
2. **note** that the Bills will create a new resource management system, and repeal and replace the Resource Management Act 1991 (RMA)
3. **note** that the Parliamentary Counsel Office will make any adjustments required to the Bills before their introduction, and will continue to polish the Bills thereafter
4. **note** that the polishing work may result in a technical Supplementary Order Paper (SOP) being referred to the select committee considering the Bills early in 2023
5. **note** that the technical SOP may be informed by recommendations from a system efficiency working group
6. **note** that detailed commencement, savings and transitional provisions will be introduced through the select committee process
7. **agree** that the purpose of the Freshwater Working Group in the NBA Bill is to make recommendations on matters relating to freshwater allocation under the Act, including on a process for engagement between the Crown and iwi and hapū at the regional or local level
8. **note** that the housing outcome has been strengthened to ensure that the National Planning Framework and NBA plans must provide for housing supply that is substantially above anticipated demand; is not unduly constrained by restrictions that

lead to inflated land prices; and contributes to housing choices, including affordable housing

9. **note** that a new clause on environmental responsibility specifies:

9.1 every person has a responsibility to protect and sustain the health and well-being of the natural environment for the benefit of all New Zealanders

9.2 all persons exercising powers and performing duties and functions under the Act must recognise and provide for the mana and responsibility of each iwi and hapū to protect and sustain the health and well-being of te taiao

10. **agree** to authorise the Minister for the Environment to make further minor and technical drafting changes to the Bills prior to introduction, in line with the decisions taken by Cabinet

11. **approve** the Spatial Planning Bill and the Natural and Built Environment Bill for introduction

12. **agree** that the Bills be introduced as soon as is practicable

13. **agree** that the Government propose that the Bills be:

13.1 referred to the Environment Committee for consideration

13.2 enacted by 30 June 2023.

Authorised for lodgement

Hon David Parker

Minister for the Environment

**Appendix One: NBA Bill Disclosure Statement**

Available at: <https://disclosure.legislation.govt.nz/bill/government/2022/186/>

PROACTIVELY RELEASED



**Appendix Two: SPA Bill Disclosure Statement**

Available at: <https://disclosure.legislation.govt.nz/bill/government/2022/187/>

PROACTIVELY RELEASED