# Departmental Disclosure Statement

Natural and Built Environment Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry for the Environment.

The Ministry for the Environment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

10 November 2022

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# Part One: General Policy Statement

The Natural and Built Environment Bill (NBE Bill) repeals and replaces the Resource Management Act 1991 (RMA), working in tandem with the Spatial Planning Bill (SP Bill). Once passed, the Bills will be known as the Natural and Built Environment Act (NBA) and the Spatial Planning Act (SPA). A Climate Adaptation Bill will be introduced later to address complex issues associated with managed retreat.

The NBE Bill (sometimes also referred to as the NBA Bill in reference to the Act it will become) provides an integrated framework for regulating both environmental management and land use planning. It enables use and development within environmental limits and targets. It requires both positive outcomes to be achieved, and adverse effects to be appropriately managed.

The NBE Bill is an omnibus Bill as it amends more than one Act. It is introduced under Standing Order 267(1)(a) as the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy to establish a new resource management system.

The new resource management system created by these Bills has been designed to achieve five objectives:

- protect and where necessary restore the natural environment, including its capacity to provide for the well-being of present and future generations
- better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure
- give effect to the principles of te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori
- better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change
- improve system efficiency and effectiveness and reduce complexity, while retaining local democratic input.

Achieving these objectives will address multiple problems with the current resource management system. For example, the NBE Bill is expected to help:

- embed the expansive supply of land and house building opportunities in the places they are needed, to avoid inflated urban land costs
- enable renewable electricity generation, to affordably decarbonise the economy
- address cumulative environmental effects, to halt the slide in environmental outcomes.

## Proposals

### Purpose

The purpose of the NBE Bill updates the RMA's focus on sustainable management. The purpose is to:

(a) enable the use, development, and protection of the environment in a way that:

(i) supports the well-being of present generations without compromising the well-being of future generations; and
(ii) promotes outcomes for the benefit of the environment; and

(iii) complies with environmental limits and their associated targets; and
(iv) manages adverse effects; and

(b) recognise and uphold te Oranga o te Taiao.

The purpose is an intergenerational environmental test for all New Zealanders. It draws on te Oranga o te Taiao, a te ao Māori concept that speaks to the health of the natural environment, the essential relationship between the health of the natural environment and its capacity to sustain life, and the interconnectedness of all parts of the environment.

Importantly, the purpose does not prohibit use and development, but it will affect how use and development is undertaken.

Both limbs of the purpose are intended to work together to encourage and facilitate more environmentally responsible behaviours and choices, and to recognise that the use of resources must be exercised in a way that is consistent with broader environmental and social goals, and that contributes to the maintenance of ecological integrity.

**Outcomes**

The NBE Bill shifts the focus of the current resource management system from managing adverse effects to promoting positive outcomes. Principles will provide further assistance on how decisions to achieve outcomes should be made.

The Bill contains a list of system outcomes that must be provided for. These outcomes will play a different role to the lists of matters in sections 6 and 7 of the RMA. The outcomes are no longer intended to simply serve as matters to be considered in decision-making. Rather, the outcomes will guide national direction, strategies, and plans, which will in turn guide consideration of resource consent applications.

There is no hierarchy among the outcomes, affording discretion for decision-makers in how they are pursued once limits and targets are met. Additional requirements to identify and protect nationally important places will help ensure these matters are appropriately managed.

The hierarchy of various instruments that will be made under the Bill is retained, as described by the Supreme Court for the RMA in *Environmental Defence Society Inc v New Zealand King Salmon Co Ltd* [2014] NZSC 38.

**Adverse effects**

Managing adverse effects will still be an important feature of the new system. The NBE Bill includes a general duty on everyone to avoid, minimise, remedy, offset, or take steps to provide redress for any adverse effect on the environment.

The Bill also provides that any activity creating an adverse effect that is more than trivial on specified nationally important places or highly vulnerable biodiversity areas can only be considered for approval if an exemption applies.

**Te Tiriti o Waitangi**

The NBE Bill requires all persons exercising powers and performing functions and duties under it to ‘give effect’ to the principles of te Tiriti o Waitangi, as is the case under the Conservation Act 1987.

The Bill also aims to provide iwi, hapū and Māori with opportunities to participate at all levels of the RM system.

Among other matters, the Bill will provide for opportunities such as:

- providing for proactive monitoring of te Tiriti performance by a National Māori Entity
- decomplicating the use of current tools within the RMA (Mana Whakahono ā Rohe, Transfers of Power and Joint Management Agreements)
- providing for a minimum of 2 Māori appointed members on regional planning committees (RPC), out of a minimum committee membership of 6.

**Allocation of resources**

The NBE Bill includes an enabling framework for allocating resources, with specific provisions for freshwater, in natural and built environment plans (NBE plans).

Three principles of sustainability, equity, and efficiency will guide the development of allocation methods in NBE plans for freshwater resources. These principles may be applied to other resources, or be required through the National Planning Framework (NPF).

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.

**National Planning Framework**

The NBE Bill provides for all the functions of existing RMA national direction instruments, as well as some new functions to be consolidated into the NPF which will be made as secondary legislation.

The NPF will provide directions on the integrated management of the environment in relation to matters of national significance and matters requiring national or sub-national consistency.

The NPF will be rolled out in stages to support timely implementation of the future system. The first NPF will transition the policy intent of existing RMA national direction, as well as the medium density residential standards enabled through legislation in 2021 to assist with addressing housing supply demand and promoting urban development.

The first NPF will also contain new content on infrastructure (developed by the Infrastructure Commission/Te Waihanga) and natural hazards. Additional content will be added to the NPF over time.

*Environmental limits*

The Minister must set limits in the NPF for air, indigenous biodiversity, coastal water, estuaries, freshwater and soil, and may also set limits on other aspects of the natural environment. The purpose of limits is to prevent the ecological integrity of the natural environment from further degradation, and to protect human health. They may be set directly in the NPF, or the NPF may require that they be set out in NBE plans.

Limits are set as a minimum biophysical state for a management unit, or as the maximum amount of harm or stress to the natural environment that may be permitted in a management unit. For example, a limit in relation to air quality could specify a threshold concentration for a specific contaminant in an airshed, and the NPF or NBE plans must direct what actions need to be taken to prevent a breach of the limit.

The NBE Bill allows the Minister to direct time-limited exemptions to limits for ecological integrity if requested by an RPC. Any exemption must be justified by public benefits and

designed to result in the least possible net loss of ecological integrity that is compatible with the activity. The Minister may not direct exemptions where ecological integrity is unacceptably degraded or where it would lead to an irreversible loss of ecological integrity.

*Targets*

Targets are either set directly in the NPF or prescribed to be set out in NBE plans made under the NBA. Minimum level targets must be set if the Minister is satisfied that an area of the natural environment is unacceptably degraded. The Minister also has discretionary powers to set targets for achieving environmental outcomes prescribed in the NBA, the NPF or in an NBE plan. Targets must be measurable, have a specified time limit for their achievement, and be designed to assist in achieving an outcome.

*Other content*

The NPF will be required to include:

- direction on each system outcome
- direction to help resolve conflicts between outcomes
- strategic directions (for example, on the key long-term environmental issues and priorities)
- content specifying how the effectiveness and implementation of the NPF will be monitored
- direction on non-commercial housing and papakāinga on Māori land, enabling development capacity well ahead of expected demand, enabling infrastructure and development corridors, and enabling renewable electricity generation and its transmission.

The NPF may give direction and specifications relating to regional spatial strategies (RSS) and NBE plans. This includes the ability to specify structure and form, direct the inclusion of specific provisions, and include requirements as to electronic accessibility and functionality. This will help make plans easier to use.

The NPF may direct consent authorities to review consents and permits within a specified time, include conditions that must be imposed on consents, and set notification requirements.

The NPF may give directions that provide further detail on the meaning of the resource allocation principles (sustainability, equity, and efficiency) and on allocation methods that must be given effect to through NBE plans to allocate specified resources.

Any direction through the NPF on an allocation method must be issued having regard to the allocation principles.

**Spatial planning**

The SP Bill aims to help co-ordinate and integrate decisions made under relevant legislation, through requiring the development of a long-term RSS in each region of the country.

Further details on the SP Bill and spatial planning are provided in the general policy statement for that Bill.

**Regional planning committees**

The NBE Bill requires RPC to be established in each region, comprising members from local government, Māori, and central government (though central government members only participate in relation to RSS).

RPC will be established as committees of all councils in the region. They will be stewards of RSS and NBE plans under the new system. An RPC will prepare RSS and NBE plans covering every local authority in the region, with local authorities retaining responsibility for implementing and administering NBE plans. This enables a reduction from over 100 RMA plans to 15 NBE plans under the NBA.

An RPC has separate legal standing from its constituent authorities and organisations for the purpose of commencing, or being a party to, or being heard in legal proceedings.

The composition of an RPC will be agreed following a regionally led process (with the Local Government Commission deciding if agreement is not reached). This is intended to allow each committee's composition to reflect its region's specific circumstances. All local authorities in the region will have direct representation on RPC where that is their preference. Māori will appoint a minimum of 2 members.

RPC will have a minimum of 6 members and will not have an upper size limit. Some bespoke arrangements may be required to uphold existing Treaty settlement arrangements, existing RMA arrangements and Nga Hapū and Ngāti Porou commitments. This may require amendments to the relevant Treaty settlement or other legislation, or specific provisions in the legislation.

An RPC will appoint a director of their secretariat who will be responsible for providing support and bringing together staff to draft NBE plans.

**Natural and built environment plans**

The NBE Bill will consolidate planning documents into a single NBE plan for each region. The Nelson and Tasman regions will develop a single plan together. NBE plans must further the purpose of the Act and will provide a framework for managing the natural and built environment for each region.

*NBE plan functions and features*

NBE plans will have similar functions to those performed by regional policy statements, and district and regional plans under the current system, in regulating land use and natural resource use in each region through rules and policies. They will:

- give effect to the NPF
- apply environmental limits and targets set in the NPF, and set environmental limits and targets for the region if directed by the NPF
- be consistent with the relevant RSS.

Other aspects of plans include:

- provisions to manage the effects of the use, development, and protection of land and the associated natural and built environment
- rules regarding discharges
- provision for cultural heritage to be identified on a closed register if there is good reason for withholding the precise location

- rules to allocate (via allocation methods) the taking or use of water, the taking or use of heat or energy of water or material surrounding geothermal water, and the capacity of air or water to assimilate a discharge of a contaminant
- rules requiring environmental contributions in relation to activities
- a greater emphasis on monitoring with the aim of providing more informed and responsive planning regulation.

Local authorities must develop a policy relating to Māori participation, in collaboration with iwi authorities and groups that represent hapū. This will reflect priorities of Māori within the region and how the local authority will work with Māori.

*Developing the NBE plan*

The NBE plan development process will assist early collaboration. This includes the ability for parties to register to engage. A new process allows 'enduring submissions' to be lodged before notification of plans and throughout the plan hearings process. This will reduce complexity and repetition for participants.

Statements of community outcomes (SCO) and statements of regional environmental outcomes (SREO) are proposed as voluntary instruments to provide local authorities with a mechanism to directly input local voice into NBE plans. SCOs will be prepared by territorial authorities and will express the views of a district or local communities. SREO will be prepared by regional councils to address any significant resource management issues faced by a region.

Plan evaluation will also occur early in the process, where it is most useful for decision-makers and participants. The process will be more proportionate than equivalent requirements in the RMA ('section 32 reports'). Importantly, an evaluation report will have to be expressed succinctly and plainly; and be prepared and presented in a way that is useful for decision-makers and the public, and will encourage a cost-effective process.

The Ministry for the Environment will have an auditing role, which will involve checking the draft plan for compliance with the NPF and environmental limits and targets. Local authorities will also be able to review and comment on the draft plan before it is notified.

*Independent hearing panels and restrictions on appeals*

An Independent Hearing Panel (IHP) will hear submissions on an NBE plan and make recommendations to the RPC on the proposed plan.

The IHP consists of a chairperson and 3-6 members, and up to 2 additional members from the regional candidate pool that are approved by the responsible Minister and appointed by the Chief Environmental Court Judge. The NBE Bill will specify skills, knowledge, and experience that IHP members must collectively hold. The Chief Environment Court Judge must consult the National Māori Entity regarding the required collective skills, knowledge, and experience for members of IHPs.

There will be a robust IHP process to consider evidence and hear submissions. Where an IHP recommendation is accepted by the RPC, appeals are limited to points of law in the High Court. Where an IHP recommendation is rejected, merit-based appeals can be made to the Environment Court.

*Review of NBE plans and plan changes*

Each RPC will be responsible for reviewing and changing its own NBE plan. The RPC, a local authority or any other party can initiate or request a change to an NBE plan. There are three pathways for undertaking plan changes, which are designed to respond to the scale and nature of the issues being considered.

Most plan changes will use the standard process. For less complex issues (such as local rezoning, local centre planning, amending a heritage schedule, or localised natural resource issues), RPC can use a proportionate process. There will be an ability for limited notification, and independent commissioners are appointed to hear submissions. An urgent process is also available which is more expedient but is subject to specific criteria.

Independent plan changes (requested by any other person) are provided for. Local authorities are responsible for accepting or rejecting an independent plan change request. Requested plan changes must meet the requirements of the region's NBE plan, including being consistent with the RSS.

*Water conservation orders and heritage protection orders*

The NBE Bill also makes provision for water conservation orders and heritage protection orders as mechanisms to protect values associated with water and heritage respectively.

**Consenting**

Councils will continue to be the consent authorities for consents, certificates and registering for permitted activities. The consents and permitting regime will be directed by the planning instruments.

The NBE Bill aims to foster a proportionate process by stipulating that the consent authority is not required to hold a hearing for notified consents, even if an applicant or submitter wish to be heard.

*Activity categories*

NBE plans will categorise activities into four categories: permitted, controlled, discretionary and prohibited. The NBE Bill prescribes the intent of each category to improve consistency in how they are implemented across regions.

The scope of the permitted activity category is broadened to enable NBE plans to permit activities with written approval and certification by a qualified person. This is intended to remove unnecessary consents such as those for activities with localised effects or requiring monitoring.

The controlled category is intended for activities that align with outcomes and have known effects, and there will be a limited discretion to decline.

The discretionary category is the more stringent category where the effects are generally unknown and may not meet outcomes. These consents will require broader assessment and information requirements.

Plans will be required to outline circumstances where certain activities are prohibited and should be declined.

*Notification*

The NPF or NBE plans are intended to specify notification classes for activities that trigger consents. They may identify affected persons for notification of consent applications. This aims to reduce discretion and uncertainty at the consenting level.

In certain circumstances, notification and clear identification of affected persons may not be practical. The NPF or NBE plan may delegate the ability to determine who is notified and identify affected persons to consent authorities. This gives flexibility to respond to local circumstances. The same approach is required for consents that will be amended or reviewed after issuance.

Notification decisions made by consent authorities (if delegated by NBE plans) can be challenged in the Environment Court by way of declaration. (Currently this is via judicial review to the High Court, which can create extra cost and delay.)

The NPF will be able to make rules, categorise activities and specify notification status and identify affected persons as described above.

*Existing uses*

There will be additional flexibility to respond when there are poor environmental outcomes. The NBE Bill empowers NBE plans to make rules that will affect existing rights and land use consents when there is harm to the natural environment or risks associated with natural hazards, climate change or contaminated land. Some of these could be directed by the NPF. Consent authorities will also be able to cancel land use consents through a review process on similar grounds. There will also be broader powers in relation to durations of consent, if directed by an NBE plan or the NPF.

**Designations**

Requiring authority eligibility will now include fire and emergency services, and port operators to designate for land-based activities (outside the coastal marine area).

There will also be an ability for certain providers to apply to the Minister for the Environment to be a requiring authority for ‘public good’ infrastructure.

*Designation and construction implementation plans*

Designations will be available in a ‘two-stage’ process that separates the securing of the spatial footprint through a ‘notice of requirement’ (NOR) for a designation from the environmental management assessment.

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

Construction and Implementation Plans (CIPs) will be the planning mechanism that identifies and authorises the works required to construct the designated infrastructure.

The designation processes will be considered by RPC and will make notification decisions and recommendations to requiring authorities.

**Alternative pathways, including for infrastructure**

There will be three separate alternative pathways for planning and consenting.

Proposals of National Significance and Direct Referral will continue to be provided for. The NBE Bill will allow the fast-track process introduced during the Covid epidemic to continue for consents and designations relating to specified housing and infrastructure projects.

The Minister decides if a project is eligible and must consider whether another pathway is more appropriate.

The pathway is broadly based on the fast-track consenting pathway introduced in the COVID-19 Recovery (Fast-track Consenting) Act 2020.

**Compliance, monitoring, and enforcement**

The compliance, monitoring and enforcement aspects of the future system will be strengthened to drive better compliance and environmental outcomes.

Councils will carry out compliance, monitoring and enforcement and the EPA will retain its RMA enforcement functions. These aspects will be strengthened to drive better compliance and environmental outcomes. Changes include:

- a suite of new civil enforcement tools
- prohibition of insurance to pay for fines
- ability for consent authorities to consider compliance history when processing consent applications
- ability for regulators to apply to have a consent revoked
- ability for regulators to recover the actual and reasonable costs associated with permitted activity monitoring and investigations of non-compliance
- an increase to maximum financial penalties
- a requirement for all councils to have an up-to-date compliance, monitoring, and enforcement strategy.

**Monitoring and system oversight**

Councils will continue to monitor a range of matters, including the state of the environment, the effectiveness of NBE plans, the exercise of resource consents and permitted activities, and the efficiency and effectiveness of NBA processes. The NPF will set out any methods, indicators, or other requirements that apply to monitoring.

RPC will be responsible for producing a regional monitoring and reporting strategy to help coordinate monitoring and reporting across the region. Monitoring information gathered by local authorities will feed into three yearly reports from councils to an RPC to make decisions on any issues, opportunities, or outcomes the NBE plan should address. An RPC will also be required to produce a five yearly assessment of environmental changes and trends within their region. Iwi, hapū and Māori will have the opportunity to work and agree monitoring methods and approaches with councils.

Oversight of the future system will be strengthened and includes a requirement for the government to develop a system monitoring, reporting and evaluation framework, and regular government reporting to Parliament on system performance, including its efficiency and cost effectiveness.

The Parliamentary Commissioner for the Environment has a new role in the NBE Bill to review the government's reporting on system performance and provide a report to Parliament.

Ministerial powers of assistance and intervention will largely be carried over. A new power will enable the responsible Minister to direct RPC and local authorities to take action in certain circumstances.

# Part Two: Background Material and Policy Information

## Published reviews or evaluations

| 2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill? | YES |
|---|---|
| Refer to appendix 1 | |

## Relevant international treaties

| 2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty? | NO |
|---|---|
| | |

## Regulatory impact analysis

| 2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill? | YES |
|---|---|
| Refer to appendix 1 | |

| 2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements? | YES |
|---|---|
| Refer to appendix 1 | |

| 2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements? | YES |
|---|---|
| Refer to appendix 1 | |

## Extent of impact analysis available

| 2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill? | NO |
|---|---|
| | |

| **2.5. For the policy to be given effect by this Bill, is there analysis available on:** | |
|---|---|
| **(a) the size of the potential costs and benefits?** | **YES** |
| **(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?** | **NO** |
| With respect to question (a), refer to *Supplementary Analysis Report: The new resource management system (17 August 2022)*<br><br>The SAR will be available on the Ministry website once the NBE Bill is lodged. | |

| **2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:** | |
|---|---|
| **(a) the level of effective compliance or non-compliance with applicable obligations or standards?** | **YES** |
| **(b) the nature and level of regulator effort put into encouraging or securing compliance?** | **YES** |
| No analysis has been completed on these specific details. | |

# Part Three: Testing of Legislative Content

## Consistency with New Zealand's international obligations

| **3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?** |
|---|
| Refer to appendix 2 |

## Consistency with the government's Treaty of Waitangi obligations

| **3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?** |
|---|
| Refer to appendix 2 |

## Consistency with the New Zealand Bill of Rights Act 1990

| **3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?** | **YES** |
|---|---|
| Advice provided to the Attorney-General by the Ministry of Justice, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights/ | |

## Offences, penalties and court jurisdictions

| **3.4. Does this Bill create, amend, or remove:** | |
|---|---|
| **(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?** | **YES** |
| **(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?** | **YES** |
| Refer to appendix 2 | |

| **3.4.1. Was the Ministry of Justice consulted about these provisions?** | **YES** |
|---|---|
| Refer to appendix 2 | |

## Privacy issues

| 3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information? | YES |
|---|---|
| Refer to appendix 2 | |

| 3.5.1. Was the Privacy Commissioner consulted about these provisions? | YES |
|---|---|
| The Privacy Commissioner had no specific comment. | |

## External consultation

| 3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill? | YES |
|---|---|
| Refer to appendix 2 | |

## Other testing of proposals

| 3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete? | YES |
|---|---|
| There was engagement with the Legislation Design Advisory Committee on specific aspects of the Bill. | |

# Part Four: Significant Legislative Features

## Compulsory acquisition of private property

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|---|---|
| **4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?** | **YES** |
| Refer to appendix 3 | |

## Charges in the nature of a tax

| | |
|---|---|
| **4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?** | **YES** |
| Refer to appendix 3 | |

## Retrospective effect

| | |
|---|---|
| **4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?** | **NO** |
| | |

## Strict liability or reversal of the usual burden of proof for offences

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|---|---|
| **4.4. Does this Bill:** | |
| **(a) create or amend a strict or absolute liability offence?** | **YES** |
| **(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?** | **YES** |
| Refer to appendix 3 | |

## Civil or criminal immunity

| | |
|---|---|
| **4.5. Does this Bill create or amend a civil or criminal immunity for any person?** | **YES** |
| Refer to appendix 3 | |

## Significant decision-making powers

| | |
|---|---|
| **4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?** | **YES** |
| Refer to appendix 3 | |

## Powers to make delegated legislation

| | |
|---|---|
| **4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?** | **YES** |
| Refer to appendix 3 | |

| 4.8. Does this Bill create or amend any other powers to make delegated legislation? | YES |
|---|---|
| Refer to appendix 3 | |

## Any other unusual provisions or features

| 4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment? | NO |
|---|---|
| | |

# Appendix One: Further Information Relating to Part Two

## Question 2.1 - Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?

The following reports are relevant.

*New Directions for Resource Management in New Zealand: Report of the Resource Management Review Panel June 2020*

https://environment.govt.nz/assets/Publications/Files/rm-panel-review-report-web.pdf

*Natural and Built Environments Bill Exposure Draft (19 June 2021)*

*Parliamentary Paper on Exposure Draft of the Natural and Built Environments Bill*

https://environment.govt.nz/publications/natural-and-built-environments-bill-parliamentary-paper-on-the-exposure-draft/

*Summary of Initial Impact Analysis of RM Reform (30 June 2021)*

https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/summary-of-initial-impact-analysis-of-rm-reform/

*Inquiry on the Natural and Built Environments Bill: Parliamentary Paper (Report of the Environment Committee, November 2021)*

https://www.parliament.nz/resource/en-NZ/SCR_116599/0935c4f14c63608e55c528b75167a69daee92254

*Government Response to Report of the Environment Committee on the Inquiry on the Natural and Built Environments Bill: Parliamentary Paper*

https://www.parliament.nz/resource/en-NZ/PAP_119748/89cc271ebe07331c5be669f6396b3ea5d621c8d3

## Question 2.3 - Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?

The following regulatory impact statements were relevant to the preparation of the NBE Bill

*Interim regulatory impact statement: Reforming the resource management system (30 June 2021).* This interim statement related to the exposure draft of the Natural and Built Environment Bill, which was only a partial draft of the Bill for public consultation purposes.

https://environment.govt.nz/what-government-is-doing/cabinet-papers-and-regulatory-impact-statements/interim-regulatory-impact-statement-reforming-the-resource-management-system/

*Supplementary Analysis Report: The new resource management system (17 August 2022)*

This Supplementary Analysis Report has been prepared to act as the RIS for the NBE Bill and the SP Bill. The SAR will be available on the Ministry website once the NBE Bill is lodged.

*Further RIS in relation to other aspects of the NBE Bill*

There will be further RIS prepared in the future in relation to the preparation of the National Policy Framework and other instruments prepared under the legislation.

## Question 2.3.1 - Did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?

1. With respect to the Interim regulatory impact statement: Reforming the resource management system (30 June 2021), the following opinion was provided by Treasury.

*A cross-agency panel chaired by Treasury's Regulatory Impact Analysis Team with members from the Ministry for the Environment, Department of Internal Affairs and Ministry of Business, Innovation and Employment has reviewed the Interim RIS and provided the following statement.*

*The panel considers that the interim RIS partially meets the quality assurance criteria as set out in the Cabinet Office Circular (CO(20) 2) and the broad approach to the interim RIS agreed by Cabinet in December 2020.1*

*Initial "in-principle" policy decisions were taken by Cabinet in December. At that time, Cabinet agreed that an Interim RIS would be provided to the Ministerial Oversight Group. Due to timing constraints, decisions made by the Ministerial Oversight Group to date have been taken without the Interim RIS. The panel has not been able to conduct a comprehensive regulatory quality assessment as the Interim RIS does not cover the full range of decisions.*

*The interim RIS is well written and effectively outlines the complex relationships and dependencies between the proposals and other aspects of the proposed resource management system. However, the panel considers that the case for the preferred options is not convincing. This is because the context in which the Interim RIS has been developed has significantly limited the analysis. This is clearly outlined in the Limitations and Constraints section of the document, and in relation to each assessment.*

*There is a high level of uncertainty in the assessments of the options because key components of the proposed new system have significant interdependencies with other elements of the resource management system for which policy analysis and development has yet to be undertaken. In particular, the estimated costings appear understated, especially in relation to the costs of transitioning existing consents and allocation rights into the new planning system with new outcomes, environmental limits and national and regional priorities.*

*The alternative options assessed in the interim RIS are confined to different variations on the Resource Management Review Panel's recommendations agreed "in principle" by Cabinet in December. If feasible alternatives to the proposals in the exposure draft emerge during the consultation process, we would expect those options to also be assessed in the final RIS (as indicated in the interim RIS).*

*The panel notes that the final RIS should include:*

*• More detailed analysis and evidence of how the proposals will address a number of identified shortcomings in the current system.*

*• More robust costings.*

*• Significant further work on resource allocation and consent rights, and other transition challenges which may be of sufficient scale to be material to the selection of design options.*

*• Further analysis of the significant shift in the cost of the resource system from "users" of the system to the public sector, particularly Local Government, which is yet to be adequately quantified or justified*

2. With respect to the Supplementary Analysis Report: the new resource management system (17 August 2022), a quality assurance panel produced the following assessment and comment which was signed off by Treasury.

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[1] CAB-20-MIN-0522 refers

*A quality assurance panel with members from the Treasury, Ministry for the Environment and Ministry of Business, Innovation and Employment has reviewed the Supplementary Analysis Report (SAR), "The new resource management system" produced by the Ministry for the Environment dated 22 July 2022. The SAR was modified by the Ministry on 20 September 2022 and an Addendum was inserted which provides an update on further policy decisions that have been made since the SAR was finalised. The panel considers that it partially meets the quality assurance criteria.*

*The SAR represents a lot of work on a major and complex reform. It clearly states the problem with the current system and makes the case for change. The SAR outlines the potential for significant benefits from system-wide reform relative to the status quo.*

*The pace at which the proposals have been developed means that much of the detailed policy and implementation decisions are still to be made. This makes it very challenging for the SAR to fully address the range of likely impacts, costs, benefits and risks associated with the chosen reform option, and how it will be implemented. There is a risk that the costs, challenges and any delays to implementation could impact on the realisation of the stated benefits of the reforms. However, the SAR highlights issues which can usefully inform remaining decisions to help manage some of these risks.*

*Targeted consultation has been undertaken, but the full range of proposals has not yet had the benefit of broad public consultation. Proposed future consultation will therefore be important as the costs of changing the country's resource use planning documents and consenting arrangements will be very large – not just in terms of local authority processing costs. Māori, community, business and resource users will all face costs in ensuring their interests are protected and reflected throughout the process.*

*The SAR and Addendum acknowledge that there are significant uncertainties and risks in key areas including: Treaty obligations, Māori participation and representation, changes in resource allocation, sector impact, and system funding requirements. The Addendum indicates the intention to postpone some changes until more extensive consultation has been undertaken with Māori. It will be important to ensure that Māori interests are well integrated with wider system changes that are likely to be occurring in parallel.*

*As much of the detail around how the new system will be operationalised has yet to be developed, there is limited quantitative evidence of the effectiveness of the chosen option. However, further in-depth work is proposed in the SAR and impact analysis will be required to support future regulatory decisions. The panel considers that developing a detailed implementation strategy will be essential for ensuring the effective implementation of the new system. It will also be important to more clearly outline the intentions for post-implementation review.*

## Question 2.3.2 - Aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?

This SAR does not revisit some matters (eg, the purpose of the NBA) that were covered in the *Interim Regulatory Impact Statement: Reforming the resource management system (*interim RIS) which was provided with the NBA exposure draft in June 2021. However, this SAR builds on aspects of the interim RIS focused on national direction setting, regulatory planning and the high-level assessment of the marginal process-related costs and benefits of moving from the status quo[3] to the new RM system.

An undertaking was given in the interim RIS that *"To progress a final RIS, additional analysis will be undertaken on the potential benefits of RM reform to housing supply, affordability and choice, the natural environment, benefits for Māori and the wider benefits of strategic planning."* That additional analysis has been completed, summarised and incorporated in this SAR.

Due to the challenges outlined above, the SAR assessment has remained at a relatively 'high-level' with a focus on the overall RM system and the most significant features (key policy shifts) of the new RM system as determined by Ministers since the release of the exposure draft, which relate to:

- giving effect to the principles of Te Tiriti and Māori participation in the system
- spatial planning - the SPA and RSS
- NBA provisions relating to:
    - national direction – the role of the NPF
    - environmental outcomes, limits and targets
    - integrated management – NBA plans
    - consenting and designations
    - resource allocation
- regional governance
- system revenue and cost recovery
- system oversight.

Due to the complex nature of RM planning and decision-making, and the legislative framework that supports this, the SAR provides a fuller analysis of implementation settings, risks and mitigations than would otherwise be required. The implementation section in this SAR also covers transitional matters from the current to the new RM system, as well as how the new RM system will be monitored against Cabinet's objectives.

A difference from the RMA is that all decision-makers must 'give effect' to Te Tiriti which is different from the obligation to 'have regard to' Te Tiriti obligations. The new RM system remains a devolved system and it is important to acknowledge that in the devolved system there is an inherent level of uncertainty. This is particularly the case for the new RM system as the NBA does not contain all the system details but the NPF and other regional and spatial plans will have this detail as they are developed. In this context, Māori participation will take place within the devolved system, with roles as set out in the SAR for contributing to the development of rules, policies and plans in the system at different levels.

**Out of scope**

This SAR does not cover the CAA, which is being developed on a different timeline to the SPA and NBA. A separate impact analysis will be provided for the CAA when appropriate.

The SAR does not cover finer details of the new RM system beyond matters specifically referenced in the objectives and outcomes for the new RM system agreed by Cabinet/MOG. This recognises that such details will be addressed in future RISs (or equivalent evaluations required by statute) for key elements of the new RM system (eg, the NPF, RSS and NBA Plans).

The SAR is limited to a comparison between the status quo (the counterfactual) and the option already decided by the Government in its response to the recommendations of the independent Review Panel (ie, to replace the RMA with the SPA and NBA).

It has not been possible to complete an assessment of impacts on all sectors and interest groups (ie, a distribution analysis of 'winners' and 'losers'). Much of the detail of the new RM system that will determine such impacts will not be finalised for years after the SPA and NBA pass into law.

Officials have identified, but not evaluated, significant alternative options that have been effectively ruled out of scope by Ministers' decisions about content and timeframes.

# Appendix Two: Further Information Relating to Part Three

## Question 3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The Ministry has consulted with the Ministry for Foreign Affairs and Trade and concludes that the NBE Bill is consistent with New Zealand's international obligations.

1. A number of provisions directly reference international obligations in a general capacity.

Clause 49 of the NBE Bill requires the national planning framework to set targets for each aspect of the natural environment for which limits are required. Clause 50 requires the responsible Minister to set a minimum level target in the national planning framework if satisfied that the associated environmental limit is set at a level that permits unacceptable degrading of the natural environment and – in determining this – the responsible Minister must consider New Zealand's international obligations that relate to the natural environment.

Clause 329 relates to the Minister's call-in powers for matters that are or part of proposals of national significance and requires that the Minister, in deciding whether a matter is a proposal (or part of) a proposal of national significance, to have regard to whether it would assist in fulfilling New Zealand's international obligations in relation to the global environment.

Clause 25 of Schedule 6 allows the National Planning Framework to be amended by Order-in-Council in relation to ensuring compliance with the provisions of any international convention relating to the pollution of the marine environment.

Clause 1 of Schedule 12 allows standards, requirements or recommended practices of international organisations to be incorporated by reference in planning instruments.

2. Other provisions are relevant in New Zealand's consistency with specific international obligations.

**The United Nations Framework Convention on Climate Change (FCCC)**

New Zealand ratified the UNFCCC on 16 September 1993, and it came into force in New Zealand on 1 March 1994.

Among the commitments made by New Zealand in ratifying the FCCC is a commitment to adopt national policies to mitigate climate change through limiting anthropogenic (human-induced) emissions of greenhouse gases and protecting and enhancing our greenhouse gas sinks and reservoirs.

Clause 5 of the NBE Bill requires the National Planning Framework to provide for reduced greenhouse gas emissions and increased removal of greenhouse gases from the atmosphere, as an outcome to assist in achieving the purpose of the legislation.

**The Convention on Biological Diversity (CBD)**

New Zealand ratified the CBD on 29 December 1993, and it came into force in New Zealand on the same day.

Article 6(b) of the CBD requires contracting parties to “Integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into relevant sectoral or cross-sectoral plans, programmes and policies.”

Clause 5 of the NBE Bill requires the National Planning Framework to provide for the protection or, if degraded, the restoration of the ecological integrity, mana and mauri of indigenous biodiversity, as an outcome to assist in achieving the purpose of the legislation. Clause 38 requires the setting of environmental limits in the National Planning Framework relating to indigenous biodiversity. Clause 563 prohibits rules, designations or resource consents from authorising activities in an area of highly vulnerable biodiversity, with limited exceptions.

The above provisions are also expected to be relevant in meeting obligations under the Convention on Wetlands of International Importance (the RAMSAR Convention) which New Zealand signed on 13 August 1976 and which came into force on 13 December 1976.

**United Nations Declaration on the Rights of Indigenous People (UNDRIP)**

In 2010, New Zealand supported the United Nations Declaration on the Rights of Indigenous People (UNDRIP). The UNDRIP is a non-binding, aspirational declaration of the General Assembly of the United Nations. It is a comprehensive international human rights document on the rights of indigenous peoples. It covers a broad range of rights and freedoms, including the right to self-determination, culture and identity, and rights to education, economic development, religious customs, health and language.

Answers to question 3.2 (consistency with the principles of the Treaty of Waitangi) are relevant in demonstrating the way in which the NBE Bill will assist in compliance with UNDRIP.

## Question 3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The report entitled *Supplementary Analysis Report: The new resource management system (7 August 2022)* contains analysis on consistency with Treaty of Waitangi obligations.

The main change aimed to improve consistency is that, under the provisions of both the NBE and SP Bills, decision-makers will now need to “give effect” to the principles of te Tiriti o Waitangi

The legislation also aims to provide Iwi/Māori with increased participation in and influence over decision-making in plans and regional spatial strategies through the ability to appoint representatives to regional planning committees.

The inclusion of a te ao Māori concept in the purpose of the legislation (Te Oranga o te Taiao) is intended, in addition to providing natural environment benefits, to provide better recognition of te ao Māori at the core of the system.

The NBE Bill will also:

- provide for proactive monitoring of Tiriti performance by a national Māori Entity
- enhance the current tools within the RMA (Mana Whakahono ā Rohe, Transfers of Power and Joint Management Agreements), by removing legislative barriers and creating a positive obligation for their use

- provide greater recognition and provision for mātauranga Māori and iwi/Māori outcomes relating to roles as kaitiaki, development aspirations, access to resources and relationships with te Taiao.

## Question 3.4 – Does this Bill create, amend or remove

### (a) offences or penalties (including infringement offences or penalties and civil pecuniary regimes)?

**The following provisions of the NBE Bill create offences:**

Clause 71 of schedule 13 creates offences for: (i) failing, without reasonable cause, to appear in accordance with a summons issued by an Environment Court Judge, and Environment Commissioner, or the Registrar, or fail to produce anything that the summons requires them to produce; (ii) refusing, without reasonable cause, to be sworn or to give evidence at proceedings before the Environment Court; and (iii) refusing, without reasonable cause, to answer a question put by a member of the court during proceedings before the court.

Clause 760(1) creates the offences for contravening, or permitting a contravention, of:

- the relevant provisions of the Act that impose restrictions and duties in relation to land, subdivision, the coastal marine area, the beds of certain rivers and lakes, water, and discharges of contaminants;
- any enforcement order;
- any condition of a resource consent;
- any abatement notice, except for notices relating to unreasonable noise
- a duty to comply with an enforceable undertaking;
- a water shortage direction

Clause 760(2) creates the offence of contravening or permitting a contravention of statutory restrictions in the Act relating to waste in the coastal marine area.

Clause 760(3) creates the offence of discharging a harmful substance or contaminant or water in the coastal marine area from ships or offshore installations.

Clause 760(4) creates offences for contravening or permitting a contravention of:

- a statutory requirement in the Act to provide certain information to an enforcement officer;
- statutory requirements in the Act relating to the protection of sensitive information;
- an excessive noise direction;
- any order, other than an enforcement order, made by the Environment Court

Clause 760(5) creates offences for:

- wilfully obstructing, hindering, resisting or deceiving any person in the execution of any powers conferred under the Act;
- contravening or permitting the contravention of statutory requirements in the Act relating to non-attendance or refusal to co-operate with the Environment Court or any summons or order to give evidence issued or made with respect to provisions in the Act relating to hearings (including the application of provisions relating to Commissions or Inquiry);
- contravening or permitting a contravention of any provision specified in an instrument for the creation of an esplanade strip or in an easement for an esplanade strip;
- entering an esplanade strip which is closed under provisions of the Act.

Clause 701(4) reiterates that failing to comply with an enforcement order is an offence (as described in clause 760.

The NBE Bill also includes provisions:

- allowing for regulations to be made specifying that existing offences specified in the Act may be treated as infringement offences (clauses 775(a) and 857(1)(a));
- specifying infringement offences for the breach of regulations made under the Act (clauses 775(b) and 857(1)(b)).

Most of the offence provisions in the NBE Bill are carried over from the Resource Management Act 1991, but there are new offences relating to the breach of enforcement undertakings and consent conditions.

### (b) The jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)

**The following parts of the NBE Bill relate to the jurisdiction of a court or tribunal:**

Part 4 – Natural and built environment plans

Part 5 – Resource Consenting and proposals of national significance

Part 6 – Water and contaminated land management

Part 7 – Coastal matters

Part 8 – Matters relevant to natural and built environment plans

Part 11 – Compliance and Enforcement

Schedule 13 – Environment Court

## Question 3.4.1 - Was the Ministry of Justice consulted about these provisions?

The Offences and Penalties Team at MOJ were consulted by MfE during the development of the compliance, monitoring and enforcement policies underpinning the legislation.

The main points were:

- There were questions around removal of the jury trial option for NBE Bill offences. The jury trial option comes in through the 2 year sentence trigger. Sentences are being reduced to 18 months in order facilitate the removal of this option. There were questions about the effect this may have on deterrence, but it was accepted that increases in fines and other enforcement tools would counteract this.

- The strict liability offences were discussed, but not in detail as this is an existing feature in the RMA, and an internationally accepted method of dealing with environmental offences.

- There were questions around how the fine maximums have increased substantially, but it was accepted that this is consistent with international precedents, and other domestic regulatory regimes.

## Question 3.5 - Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?

The following provisions in the NBE Bill relate to the collection, storage, access to, correction of, use or disclosure of personal information

**Clause 173** – information for resource consent applications
**Clause 183** – consent authority request for further information
**Clause 184** - Consideration of certain matters required before information requested
**Clause 185** – Responses to requests for further information
**Clause 189** - Excluded time periods relating to provision of further information
**Clause 198** – Purpose of notification is to obtain further information about the application
**Clause 212** – Consent authority must provide an applicant for resource consent with a list of submissions received on the application.
**Clause 223** – consent authority may decline application due to inadequate information
**Clause 230** – information obtained in connection with applications to undertake aquaculture activities must be forwarded to the Chief Executive of the Ministry responsible for aquaculture
**Clause 232** – resource consent may include a condition requiring the holder to supply information
**Clause 293** – applicants for coastal permits for dumping and incineration may be required to provide information
**Clause 294** – applicants for certificates of compliance may be required to provide information
**Clause 299** – applicants for certificates of existing use may be required to provide information
**Clause 309** – Consent authority must give affected applicants the names and contact details of every other affected applicant, and copies of applications
**Clause 339** – Environmental Protection Authority may request information from an applicant
**Clause 341**– local authority must provide information to Environmental Protection Authority when matter called in
**Clause 346** – local authority must provide information to board of inquiry or Environment Court if matter referred
**Clause 380** – applicant for water conservation order may be required to provide information
**Clause 383** – special tribunal may request further information from applicant for a water conservation order
**Clause 385** – Minister must provide information to special tribunal
**Clause 406** – Freshwater farm operator must provide auditor with information
**Clause 411** – making of regulations to provide for the content of a freshwater farm plan including specifying any information that must be included in the plan, and to require auditors, certifiers and farm operators to provide information, and prescribe what information a regional council must keep
**Clause 412** – the purpose of subpart 3 of Part 8 is, in part, that information must be collected on the sale of nitrogenous fertilisers to inform management and planning of freshwater
**Clause 414** – collection and provision of information relating to or arising from the sale and purchase of nitrogenous fertiliser
**Clause 415** – regulations may be made that require persons collect the information relating to or arising from the sale and purchase of nitrogenous fertiliser
**Clause 419** – Regional Council must keep and maintain a publicly available registrar about hazardous activities and industries and contaminated sites
**Clause 449** – Tender for authorisations (relating to occupation of common marine and coastal area) must be accompanied by information
**Clause 478** – Aquaculture zones and quota management system, if an agreement or compensation declaration is registered, the negotiator must make the terms available to any person who applies for consent or authorisation for an activity in the zone.
**Clause 489** - Tender for authorisations (in relation to the removal of natural material, or reclamation and drainage in the coastal marine area) must be accompanied by information
**Clause 508** – A regional planning committee may request further information in relation to a secondary construction and implementation plan
**Clause 509 (4)** – A regional planning committee may request an applicant for a notice of requirement and submitters to provide further information to determine whether a hearing is required.

**Clause 510 (2)** – A person making a submission on a notice of requirement or construction and implementation plan must provide certain information.
**Clause 541 (2)** – A Māori entity that is applying for approval as a heritage protection authority must provide information as required by regulations.
**Clause 541 (3)** – The Minister may make any inquiry into an application under 10.2.2 and request information
**Clause 546 (c)** – A Territorial authority must make notice from heritage protection authority (and information provided with the notice) publicly available.
**Clause 547** – Territorial authority or regional planning committee may request further information from heritage protection authority.
**Clause 731** – Adverse publicity order may require persons to take action to publicise specified information
**Clause 748** – Regulator may request further information in connection with an application for release of financial assurance.
**Clause 760 (4)** – offences relating to failure to provide information, or protection of sensitive information.
**Clause 782** – regulations may be made requiring the provision of information in relation to compliance and monitoring activities.
**Clause 789** – enforcement officer may require information in connection with potential breaches of the law
**Clause 816** – Duties for local authorities to gather information and keep records
**Clause 819 -** Duties for local authorities to keep records relating to iwi and hapu
**Clause 833** – powers for hearing commissioner to require information
**Clause 841** – Powers for Minister for the Environment to require information.
**Clause 842** – Powers for Minister of Conservation to require information
**Clause 848** – Regulations may be made requiring holders of various permits and consents to keep or furnish records and information
**Clause 858** – Regulations may be made about the manner or content of applications, notices or any other documentation or information that may be required under the Act
**Clauses 28 and 33 of Schedule 7** – making publicly available information connected with a notice of designation
**Clause 37 of schedule 7** – Planning committee may request further information in relation to submissions
**Clause 69 of Schedule 7** – Local authority may request information in connection with a request for an independent plan change.
**Clause 88 of Schedule 7** – Powers of local authorities to require information in connection with hearings
**Clause 90 of Schedule 7** – Powers of local authority to make order to protect sensitive information

**Clause 104 of Schedule 7** – Application of Local Government Official Information and Meetings Act 1987
**Clauses 114, 115 and 117 of Schedule 7** – Independent Hearings Panel may request or direct the provision of information.
**Clause 118 of Schedule 7** – Independent Hearings Panel may make orders protecting sensitive information
**Schedule 10** – Information required in applications for resource consent
**Clause 17 of schedule 13** – Environment Court judge may make orders protecting sensitive information
**Clause 59 of schedule 13** – Environment Court may require further information in connection with proceedings
**Clause 89 of schedule 13** – Waiver by Environment Court of requirement to supply information, or direction about the terms on which information must be supplied

The Privacy Commissioner was consulted in relation to these provisions. The Ministry noted that it considered that provisions which relate to principle 11 under the Privacy Act 1993 (limits on disclosure of personal information) are primarily justified on the basis that disclosure is one of the purposes in connection with which the information is being obtained. It also indicated that regulation making powers which that allow for regs to be made requiring disclosure of information were appropriately drafted in that it is the primary provisions that refer to the broad

classes of information, and the regulations focus on the detail. The Privacy Commissioner commented that the Ministry was thinking about these issues appropriately.

## Question 3.6 - Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?

Public and stakeholder engagement from 2019 to 2022 on the policy development of the Natural and Built Environment Bill and the Spatial Planning Bill has included:

a. RM Review Panel consultation in 2019/2020. This included public consultation on the Issues and Options paper, regional hui, and engagement with a number of working groups and advisory groups. The Panel's report, '*New Directions in Resource Management in New Zealand'* was sent by mail to over 2500 key stakeholders including local government elected representatives.
b. A Select Committee Inquiry on an exposure draft of key aspects of the Natural and Built Environment Bill occurred between July – November 2021 with over 3,000 submissions received.
c. Targeted engagement on the key components of the system with iwi/Māori partners, local government and key sector stakeholders from November 2021 to March 2022 tested the remaining policy that had not been in the NBA exposure draft. Submissions received helped influence the remaining policy decisions for the NBE and SP Bills.
d. Strategic engagement occurring on a regular basis over the 2021 and 2022 years with the Local Government Steering Group, and with treaty partners including the Freshwater Iwi Leaders Group/Te Wai Māori Trust and Te Tai Kaha (NZMC, FOMA and NKTMotWM).
e. Engagement with hapū and iwi representatives through regional engagement, key stakeholders (RM Reform Group, NZPI, RMLA, Food and Fibre Forum, ENGO leaders group) and on a technical level through a number of advisory groups.
f. A large and sustained programme of engagement with the PSGEs as treaty settlements are transitioned to the new system.
g. A sustained programme of engagement from May to October 2022 with local government and key sector stakeholder groups to raise awareness and understanding of the new system and encourage meaningful submissions to the select committee.
h. Local government meetings with mayoral forums, planning committees, SIGs and resource management groups, and elected representatives through LGNZ fora.
i. A series of bespoke forums with sector leadership groups, information sessions and workshops from August to October 2022.
j. A series of regional hui in November 2022 with iwi/Māori.
k. A series of one-on-one regional outreach meetings with MfE senior leaders and key stakeholders in the regions.
l. A series of stakeholder events built around speeches delivered by the Minister for the Environment on different aspects of the reform. This also included a presence at key stakeholder conferences such as the LGNZ Conference in July 2022 and the RMLA conference.in September 2022.
m. An information document, *Our Future Resource Management System*, being published and will be sent to a wide-range stakeholders upon introduction of the Bill on 17 October 2022.
n. The Climate Adaptation Act (CAA) is running on a slightly different timetable and is aligned with the National Adaptation Plan (NAP) and other climate work. Parts of the CAA were included in the NAP consultation in April 2022.

# Appendix Three: Further Information Relating to Part Four

## Question 4.1 - Does this Bill contain any provisions that could result in the compulsory acquisition of private property?

Clause 525 Compulsory Acquisition Powers.

A network utility operator that is a requiring authority may apply to the Minister of Lands to have land required for a project or work acquired under the Public Works Act 1991, as if the project or work were a government work within the meaning of that Act.

This power is necessary for network utility operators to acquire land necessary for their functions. Full ownership, rather than partial measures, is required for the functions to be achieved. The application may only proceed if the Minister of Lands agrees. Existing protections and compensation provisions in the Public Works Act 1981 continue to apply. Costs and expenses incurred by the Minister of Lands are recoverable from the network utility operator. Protected Māori Land is excluded from this provision.

## Question 4.2 - Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?

The NBE Bill continues to have provisions similar to the RMA relating to financial contributions. These contributions payable by those undertaking new activities and are intended to assist with the costs of providing infrastructure for developments and providing for the recreational needs of the community. They may also be taken to provide for off-site ‘offset” mitigation, for example where the adverse effects of an activity cannot be avoided or adequately mitigated, a financial contribution could be used to improve the environment elsewhere. Alternative methods of funding such fees for service or general taxation are inappropriate because there is no associated service being provided to the person, and the benefits are local and associated with the area of the new activities.

Councils must specifically use the funds collected for the purposes for which they are intended. Councils must ensure that financial contributions are not imposed on a development for the same purpose as a development contribution.

Clause 156 allows the NPF or a plan to provide that an activity is a permitted activity subject to compliance with conditions or requirements requiring financial contributions to be made by the person undertaking the activity.

Clause 232 allows a resource consent to include a condition requiring an environmental contribution to be made by the consent holder, which can include money, land or a combination of money or land.

Clause 631 provides the Minister for the Environment with the function of considering and investigating the use of economic instruments, including charges and levies.

## Question 4.4 – Does this Bill: (a) create or amend a strict or absolute liability offence?; (b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?

Clauses 762 and 763 carry over equivalent provisions from the RMA, and provide that it is not necessary to prove that the defendant intended to commit the offence in prosecutions for specific environmental offences:

- breaching statutory restrictions on land use
- breaching a subdivision consent condition

- unlawful use or activity in the coastal marine area
- unlawful use of activity in relation to beds of lakes and rivers
- breaching statutory restrictions relating to water
- unlawful discharge of contaminants
- unlawful discharges of contaminants from ships or unlawful installations
- breaching an enforcement order
- breaching a condition of resource consent
- breaching an abatement notice
- breaching an enforcement undertaking
- contravening a water shortage direction
- dumping a ship, aircraft or offshore installation (or any waste from them) in the coastal marine area
- incinerating waste in the coastal marine area
- storing radioactive waste or other radioactive matter or toxic/hazardous waste in the coastal marine area

Defences are available if the defendant proves that the action to which a prosecution relates was necessary to protect life, health or serious damage to property, or if it was due to an event beyond their control.

The imposition of strict liability to environmental offences aligns with the policy reasons identified by the Legislation Design Advisory Committee (see guideline 24.3 LDAC Legislation Guidelines: 2021 edition) in that these are offences:

- which involve the protection of the public from those who voluntarily undertake risk creating activities;
- for which there is a need to provide an incentive for people who undertake those activities to adopt appropriate precautions to prevent breaches; or
- for which the defendant is best placed to establish absence of fault because of matters primarily within their knowledge.

## Question 4.5. Does this Bill create or amend a civil or criminal immunity for any person?

The NBE Bill has the following relevant provisions, in order to protect the relevant participants from interference in carrying out their duties in good faith. Participants are not protected when they act in bad faith.

**Clause 14 of schedule 13** provides that when an alternate Environment Judge acts an and Environment Judge they have the immunities of a District Court Judge under the District Court Judge Act 2016.

**Clause 38 of schedule 13** provides that a Deputy Registrar has all the powers, functions, duties and immunity of the Registrar, subject to the control of the Registrar.

**Clause 42(1) of schedule 13** provides that no action lies against any member of the Environment Court for anything they say, do or omit to say or do while acting in good faith in the performance of their duties.

**Clause 42(2) of schedule 13** provides a that a member of the Environment Court who is a District Court Judge also has the immunities conferred by section 23 of the District Court Act 2016 (the same immunities as a Judge of the High Court).

**Clause 42(3) of schedule 13** provides that no action lies against the Registrar for anything the Registrar says, does, or omits to say or do while acting in good faith under various provisions of the NBE Bill.

**Clause 42(4) of schedule 13** provides that no action lies against a special advisor to the Environment Court for anything they say, do, or omit to say or do while acting in good faith in the performance of their duties.

**Clause 73 of schedule 13** provides that witnesses and counsel appearing before the Environment Court have the same privileges and immunities as they have when they appear in the same capacity in proceedings in the District Court.

**Clause 101 of schedule 7** provides that a member of an Independent Hearing Panel is not liable for anything done, reported, stated, or omitted in the exercise or intended exercise of the powers and performance or intended performance of the duties of an Independent Hearing Panel, unless the panel or person acted in bad faith. It also provides that they may not be compelled to give evidence in court or in any proceedings of a judicial nature in relation to the Panel, unless leave of the court is granting to bring proceedings relating to an allegation of bad faith against the panel or any of its members.

**Clause 92 of Schedule 7** applies section 27 of the Inquiries Act 2013 (other immunities and privileges of participants) to hearing sessions of the Independent Hearing Panel.

**Clause 11 of Schedule 6** provides that a member of a board of inquiry established by the responsible Minister to enquire into and make recommendations on a National Planning Framework Proposal is not liable for anything the member does, or omits to do, in good faith in performing or exercising the functions, duties, and powers of the board.

**Clause 349** provides that members of a board if inquiry (established in relation to a matter lodged with the Environmental Protection Agency) are not liable for anything the member does, or omits to do, in good faith in performing or exercising the functions, duties, and powers of the board.

**Clause 382** provides that a member of a special tribunal (in relation to an application for a water conservation order) is not liable for anything the member does or omits to do in good faith in performing or exercising the functions, duties, and powers of the tribunal

## Question 4.6 - Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?

Part 5 of the NBE Bill contains provisions that provide for decisions by consent authorities on applications for resource consents. These qualify as significant decision-making powers because they determine what activities can and cannot be carried out on land, and can set conditions on these activities where consent is granted. Part 5 contains provisions about notification of affected parties, submissions and hearings, mediation, information and evidence, technical review, matters that the consent authority may have regard to, matters that must be disregarded, alternative dispute resolution, general requirements for conditions that may be included, formal requirements about decisions, time limits for decisions, and notification of decisions. Part 5 also provides for rights of appeal (to the Environment Court in the first instance).

Subpart 2 of Part 8 provides for heritage protection orders to be made by a heritage protection authority (a Minister, local authority, Heritage New Zealand Pouhere Taonga, or any approved Māori entity or body corporate. These orders can apply to a place with special cultural, architectural, historical, scientific, ecological or other interest. They are significant decision-making bodies in the sense that affect what activities may be carried out in relation to the site and many activities will require the consent of the relevant heritage protection authority. Subpart 2 provides rights of appeal to the Environment Court in relation to heritage protection orders.

## Question 4.7 - Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?

Clause 858(1)(k) of the NBE Bill provides for transitional and savings regulations that are in addition to or which substitute for, the transitional and savings provisions set out in the Bill.

This power is needed given the scale of reform and the need to adapt to situations as they arise.

The power is strictly limited to transitional and savings provisions, and is subject to a sunset provision.

## Question 4.8 - Does this Bill create or amend any other powers to make delegated legislation?

The NBE Bill contains the following relevant provisions.

**Clause 2** provides for regulations to be made commencing provisions of the Act

**Clause 34** provides for the National Planning Framework to be made by regulations.

**Clause 393** provides for a water conservation order for any water body to be made by Order in Council.

**Clause 395** provides for the revocation or amendment of a water conservation order by Order in Council.

**Clause 401** provides for the operation of subpart 2 of Part 6 (dealing with Freshwater farm plans) to apply to a region, district or part of New Zealand on and from the date specified by Order in Council.

**Clause 411** provides for regulations to be made relating to freshwater farm plans; specifically: (i) prescribing crops for the purpose of the definition of "arable land use", (ii) prescribing agricultural land uses for the purpose of the definition of "farm"; (iii) prescribing the area of land in relation to agricultural land use; (iv) providing for the content of a freshwater farm plan; (v) providing for the form and manner in which a freshwater farm plan must be certified; (vi) prescribing the circumstances in which a certified freshwater farm plan must be amended and recertified; (vii) prescribing timeframes, frequency, manner of completion, period for final reports, matters to be taken into account and fees payable in relation to audits of farms for compliance with certified freshwater farm plans; (viii) prescribing criteria for the appoint of auditors or certifiers and their continuation in these roles; (ix) requiring auditors, certifiers and farm operators to supply prescribed information to regional councils; (x) prescribing information that a regional council must keep in relation to farms in its jurisdiction; (xi) prescribing infringement offences for the contravention of, or non-compliance with provisions or regulations; and (xii) providing for other matters that are contemplated by, or necessary for giving full effect to Part 6 or its administration.

**Clause 415** provides for regulations to be made to: (i) require persons of a specified class to collect information relating to or arising from the sale and purchase of nitrogenous fertiliser; (ii) prescribe how the information is to be collected; (iii) require the persons to provide the information to the EPA, a regional council, a specified person or class of persons or a specified agency; (iv) specify how, and the frequency at which, the information must be provided; (v) allow the personal information of a purchaser to be collected only if their purchase exceeds a specified volume of nitrogenous fertiliser.

**Clause 438** provides for an Order in Council to be made directing a regional council not to proceed with a proposed allocation of authorisations for space in a common marine and coastal area or to give effect to matters specified in the Order in Council.

**Clause 483(1)** provides for the making of an Order in Council to direct that a consent authority must not, unless the applicant holds an authorisation that authorises the action concerned, grant a coastal permit for a specified part of the marine and coastal area that would, if granted, authorise the permit holder to undertake any activity in connection with coastal tendering.

**Clause 567** allows the Minister of Conservation to declare an area to be critical habitat

**Clause 672** provides for regulations to be made to provide for: (i) the process by which nominations to the membership of the National Māori Authority must be made; (ii) the process for determining any dispute that arises in the course of the nomination process; and (iii) providing for anything incidental to those matters or necessary for carrying out, or giving full effect to, the requirements for establishing the National Māori Entity

**Clause 775** provides for regulations to be made to: (i) specify the offences in the Act that are infringement offences: (ii) specifying infringement fees for infringement offences against the Act;

**Clause 782** provides for regulations to be made: (i) prescribing the manner or content of applications, notices or any other documentation of information required under Part 11 (compliance and enforcement); (ii) prescribing (for the purposes of monitoring by local authorities) indicators, matters by reference to which monitoring must be carried out, standards/methods/requirements applying to the monitoring; (iii) requiring local authorities to provide information they have gathered to the Minister and prescribing the content of the information to be provided and the manner in which, and time limits by which, it must be provided; and (iv) providing for any other matters necessary or desirable for the efficient operation of part 11

**Clause 827** provides for regulations to be made relating to the use of market-based allocation method under the national planning framework or plan, and the collection and spending of money for their use

**Clause 848** provides for regulations to be made: (i) prescribing the methods or making an application or requirement for a designation, the persons to be served, the times of service, and the form of application and notice required; (ii) prescribing the fees payable or the methods for calculating fees and recovering costs in respect of consent applications, tenders, operations or other matters under the Act; (iii) prescribing, for the purpose of the Registrar deciding whether to waive, reduce or postpone the payment of a fee, the criteria that the Registrar must apply to assess a person's ability to pay a fee and identify proceedings that concern matters of public interest; (iv) prescribing the amount, methods for calculating the amount, and circumstances and manner in which holders of resource consents are liable to pay for the occupation of the coastal marine area, the occupation of the bed of any river or lake that is the land of the Crown, the extraction of sand, shingle, shell and other natural materials and the use of geothermal energy; (v) providing for discounts on administrative charges

**Clause 849** provides for regulations to be made providing for any project or work to be a network utility operation.

**Clause 850** provides for regulations to be made: (i) prescribing requirements that apply to the use of models; and (ii) authorising Ministers to specify requirements that local authorities must meet when reporting on the costs of functions under the Natural and Built Environment Act and the Spatial Planning Act.

**Clause 851** allows for regulations to be made amending plans in relation to aquaculture activities in the coastal marine area and to establish a process for the allocation of specified aquaculture related authorisations.

**Clause 854** provides for emergency response regulations to be made for the purpose of responding to a natural disaster and recovery efforts.

**Clause 855** provides for regulations to be made for the purpose of specifying administrative charges that a local authority is required to fix.

**Clause 856** provides for regulations to be made for the purpose of the alternative consenting pathway for specified infrastructure and housing that: (i) impose requirements in relation to an application (ii) require the EPA to invite comment on an application for a resource consent or notice of requirement: (iii) specify person or organisations from whom that comment must be invited (iv) provide for the establishment and operation of the expert consenting panel; (v) enable limited suspension of the processing of an application by the panel in specified circumstances or if specified criteria apply; and (vi) provide for procedural and administrative matters.

**Clause 857** provides for regulations to be made for the purpose of: (i) specifying the offences in the Act that are infringement offences; (ii) specifying infringement offences for the breach of regulations; (iii) prescribing infringement fees.

**Clause 858** provides for regulations to be made for the purposes of: (i) the form or content of applications, notices, or any other documentation or information as may be required under the

Act; (ii) the manner in which applications are to be processed; (iii) templates for reports required to be prepared under the Act; (iv) the practice and procedure of the court and form of proceedings; (v) procedural steps when the court or a board of inquiry determine and affected application; (vi) prescribing criteria for the exercise of powers; (vii) prescribing threshold amounts and matters to which an authority in required to have regard in determining whether exceptional circumstances exist; (viii) prescribing exemptions; (ix) providing transitional and savings provisions; (x) providing for any other matters necessary for facilitating or ensuring an orderly transition from the RMA; (xi) providing for any other such matters as are contemplated by, or necessary for giving full effect to the Act and its due administration.
**Clause 5 in schedule 2** provides for regulations to be made providing for a process for giving effect to Mana Whakahono ā Rohu and joint management agreements
**Clause 6 in Schedule 2** provides for regulations to be made to modify regional planning committee processes
**Clause 25 in Schedule 6** provides for the National Planning Framework to be amended by Order in Council
**Clause 26 in Schedule 6** allows for regulations to be made providing for anything the Act says may or must be provided for by regulations, and providing for anything incidental that is necessary for carrying out, or giving full effect to, the Act.
**Clause 140 in Schedule 7** allows for regulations to be made: (i) prescribing methods to assist in developing a process for making plans; (ii) prescribing the form and manner of assessment methods and evaluation reports; (iii) prescribing the form of reports required; (iv) prescribing the form for notifying plans and any information required for that process; (v) providing for anything incidental that is necessary for carrying out, or giving full effect to, the Act.
**Clause 141 in Schedule 7** provides for regulations to be made prescribing methods to assist in developing a process for making plan, the form in which evaluation reports must be prepared and published, and the methodology to be used in preparing the assessments required for the purpose of evaluation reports.
**Clause 41 in Schedule 8** provides for regulations to be made: (i) relating to statutory deadlines about the composition of planning committees; (ii) prescribing the processes the Local Government Commission must follow in making determinations on a composition arrangement; (iii) prescribing procedures and processes to be followed by planning committees in performing or exercising their functions, duties, or powers under the Natural and Built Environment Act or the Spatial Planning Act; (iv) prescribing information relating to outcomes monitoring and other information that must be included in any statement of intent by a planning committee; (v) prescribing information that must be included in any annual report by a planning committee; (vi)prescribing processes that the regional planning committees must follow for engaging with iwi authorities, groups that represent hapū, and Māori groups with interests in the region on the funding provided for Māori participation; (vii) prescribing how the consent engagement costs payable by consent applicants or holders, either for a locality or nationally, are to be determined; (viii) prescribing requirements for the process by which local authorities develop local authority participation policies.

**Clause 8 of Schedule 10** provides for regulations to be made prescribing the form and content of, and the procedure for, assessments of environmental effects.

**Clause 4 of Schedule 11** provides for an Order in Council to be made approving the form of an instrument for the purpose of recording the rights and interests attaching to an esplanade strip.

**Clause 7 of Schedule 11** provides for an Order in Council to be made approving the form of an easement to create an access strip for the purpose of recording the rights and interests attaching to an esplanade strip.

The reason for the regulation making powers provided in the NBE Bill general relates to the need to provide for matters of detail for which it is not appropriate to utilise Parliamentary time, and the need for flexibility in how the Act is applied and matters that may need to be frequently changed. There is also a regulation making power (clause 15.20A) providing for emergency response regulations to be made for the purpose of responding to a natural disaster and recovery efforts.