

4 August 2021

New Zealand Parliament  
Molesworth Street  
WELLINGTON 6160.

Dear Sir/Madam

SUBMISSION ON EXPOSURE DRAFT – NATURAL AND BUILT ENVIRONMENTS

*OBJECTIVE NUMBER: A2062985*

Attached is the submission from the Whakatāne District Council on the Exposure Draft of the National and Built Environments Bill.

Yours sincerely,



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General Manager, Development and Environment Services

## *Natural and Built Environments Bill (NBA) Exposure Draft: Submission from Whakatāne District Council*

The Table below provides comment on individual sections of the NBA.

Sections	Feedback
Interpretation	There is currently a mis-match between the National Planning Standards (Standards) work and the Exposure Draft. Twenty of the definitions included in the Standards reference the Resource Management Act (RMA). These will need to be redefined before they can be included in the Interpretations section of the NBA. E.g. 'Raft' is defined in the Standards, but this definition is not carried through to the NBA, yet the NBA definition of <i>structure</i> refers to 'raft'. There needs to be consistency between the NBA, the SPA and CAA definitions.
Section 5: Purpose	Enabling Te Oranga o te Taiao to be upheld is the first purpose of the Act, however it is unclear in the Exposure Draft how this concept will work in practice and whether the provisions of the NBA will be sufficient to ensure that Te Oranga o te Taiao is upheld. A definition of Te Oranga o te Taiao should be included in the Interpretation section.
	The change in purpose will have significant resource implications for local authorities who will need to educate consent applicants about the changes to the consenting framework. Local authorities are not resourced to undertake this additional work.
Section 6: Te Tiriti o Waitangi	The shift from 'take into account' under the RMA to 'give effect to' is significant. More guidance and training will be needed to understand how local government can implement this.
	There are around 39 iwi and 230 hapū within the Bay of Plenty region. There is a real risk that meaningful engagement with all iwi and hapū will be extremely difficult due to the number of iwi/hapū and their lack of resourcing to enable them to actively participate in the level of engagement which is likely to be needed 'to give effect to the Treaty'.
	Significant levels of resourcing for local authorities and all local iwi/hapū will be needed to enable meaningful engagement between the parties.
	The Exposure Draft provides no detail around whether the limits can be prioritised, what happens when there is conflict between the limits or whether development can take place if some but not all limits are achieved (acceptable tradeoffs).
	Because environmental limits will need to be workable at a local level, we suggest ensuring local government input into the process of developing limits takes place. In particular, recognising where there are regional variables due to geography may require a range of environmental limits.
Section 8: Environmental Outcomes	The Environmental Outcomes listed in the Exposure Draft are wide-ranging and include some that are incompatible or, in some cases are mutually exclusive. Not requiring all environmental outcomes to be included in the National Planning Framework implies that those not included are less of a priority.

	<p>Some outcomes can be measured quantitatively while others are qualitative and will be difficult to measure. Most outcomes include a number of elements or a spectrum of outcomes to be achieved (e.g. protect, restore and improve). This makes it more difficult to measure compliance.</p> <p>While we agree with environmental outcomes (f)(g)(h)(i), they are all complex and difficult to measure. Promoting these environmental outcomes could be challenging in regions where there are a number of iwi/hapū, such as the Bay of Plenty where there are around 39 iwi and 230 hapu.</p>
Sections 9-17 National Planning Framework (NPF)	<p>Detail is needed regarding how the NPF will help resolve conflicts between and among environmental outcomes. We suggest the NPF should provide guidance about resolving conflict between limits and outcomes</p> <p>It is unclear what role local government will play in developing the NPF. There needs to be proper engagement with local government on the creation of new national direction and how that aligns with existing direction, given that local government will be required to give effect to national direction.</p> <p>S18 (d) Note comments made in Section 6 around the resourcing needed by both local government and iwi/hapū for effective participation in the processes undertaken in this Act. It is difficult to see how this will happen in the Bay of Plenty given the number of iwi/hapū in the region.</p> <p>The process for developing and amending the NPF needs to be made clear. The resourcing implications of constantly revising/changing NBA Plans would be significant and would have significant resource implications for developers.</p>
Section 18 Implementation principles	<p>Significant local variation exists both within Whakatāne and within the Bay of Plenty Region, in terms of geography, population density, community need and ambitions, and urban versus rural needs. While consistency within regions is desirable on some issues, there is a risk that local needs and outcomes that have previously been consulted on, will be discarded and replaced because the needs of the wider region are different.</p> <p>The legislation does not provide detail around the future functions of district and regional councils. Whatever changes are made, the transition from the status quo to a new legislative framework will be a significant undertaking for local councils, particularly as ‘business as usual’ in some form will overlap with the new framework. As a smaller council (by population), Whakatāne District Council is not as well resourced to manage this transition as some of the larger Councils in our region, particularly while continuing to deliver our current functions and responsibilities. There is a risk that the difference in resourcing between smaller and larger councils in a region could lead to plans that favour the interests of larger councils.</p> <p>Detail is needed around the statutory functions of the different levels of local government under the NBA, particularly for Territorial Authorities which are responsible for managing growth within their territory.</p> <p>(c) Detail is needed around what ‘appropriate public participation in processes undertaken under this Act’ means, particularly for smaller communities. The existing patterns of growth have all been consulted on, and are currently integrated with other local government processes such as the development of Long Term Plans, Infrastructure Strategies etc. Consideration needs to be</p>

	<p>given into how the proposed changes will affect other local government functions.</p> <p>S18 (d) Note comments made in Section 6 around the resourcing needed by both local government and iwi/hapū for effective participation in the processes undertaken in this Act. Given the place of iwi and hapū in decision making, we support resourcing their involvement in the planning processes, but this resourcing needs to come from central government, not local councils.</p> <p>In the absence of additional resourcing, it will be challenging to promote appropriate mechanisms for effective participation by iwi and hapū given the large number of iwi/hapū in the Bay of Plenty, each of which have their own engagement processes.</p> <p>Unclear how existing district plan review processes are aligned to implementation of NBA. Local government needs direction so that resources are not wasted on activities that will become redundant under the NBA. Need to understand what happens to existing plan making processes and the timelines for transitioning from the status quo to the new framework.</p>
Sections 19-21 Natural and built environment plans	<p>Consistency across regional issues on some matters will be desirable, but there will be plenty of matters where local variation will need to be properly reflected. The ability to provide district overlays that identifies key issues that need specific rules for different locations will be needed.</p> <p>The Exposure Draft does not refer to the proposed Strategic Planning Act, which is likely to require regions to develop a Spatial Plan. The two Acts are closely linked and we believe both pieces of legislation need to clarify how they fit together.</p> <p>We believe that regional Spatial Planning must be undertaken before NBA plans are drafted as the Spatial Plan will provide the strategic direction for development within a region.</p> <p>The draft provides no detail around what opportunities there will be for public input into the plan making and what role each constituent local authority will play in terms of policy making. Detail is needed around what the governance arrangements will look like.</p> <p>Detail is needed around the process to be followed in preparing and adopting the new plans, particularly around the role and rights of the public to contribute or appeal.</p> <p>Need direction regarding how existing consents/designations applications are dealt with in terms of timing and transition to the new system.</p>
Section 22 Content of the Plans	<p>There will be significant resourcing implications for local authorities who will need to make the transition to the new Plans. This is likely to be a greater challenge for smaller councils with less resources. Sufficient time for implementation will be needed to achieve a good outcome.</p> <p>Detail is needed around the consultation requirements for the content of new plans, particularly for sections of existing plans that may be transferred into the new plans.</p> <p>The exposure draft provides no detail around appeal rights or the process for appeal.</p>
Sections 23-25; Schedule 3	<p>Adequate mana whenua representation on the Planning Committees is likely to be very challenging in locations containing a large number of iwi and hapū.</p>

Planning Committees	There are approximately 39 iwi and 230 hapū in the Bay of Plenty region. Detail will be needed around how all iwi/hapū in a region are represented, particularly in situations where there are a large number of iwi/hapū with different ambitions.
	Detail is needed around the process for establishing and resourcing the Planning Committee for each region, and around the roles and functions of the planning committee secretariats.
	Under the proposal around membership, representation on the Planning Committee will not reflect the differences in population across a region. In many regions, it will mean that representation of rural areas or small towns on the Planning Committee will outweigh representation of highly populated urban areas. We are not sure how this will work out in practice. There also needs to be consideration given into how equity in resourcing across councils of different sizes can be ensured.
	Detail will be needed around how constituent local authorities will have input into drafting of NBA plans prior to their referral to an independent hearings panel.
	The drafting of plans will need to have some level of public input if local priorities are to be properly reflected in the plans. Clarity is needed around what role the Planning Committee will play in terms of consulting with the public before developing plans/ prior to the plans being referred to an independent hearings panel.
	Where legal challenges to the NBA plans are brought – are these brought against the Planning Committee or the constituent local authorities? Where does liability for the NBA Plans lie? What liability do the mana whenua representatives have?
	What happens when a constituent local authority wants to challenge a planning committee decision, but is represented on the Planning Committee? Detail is needed around the functions, role and responsibilities of local authorities.