

3 February 2023



Submission on Natural and Built Environments and Spatial Planning Bills

To the Environment Select Committee

Submitter: Whakatāne District Council
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1 Introduction

The Whakatāne District Council (Council) has actively engaged with the resource management reform process, providing input to submissions by Local Government New Zealand and Taituarā – Local Government Professionals Aotearoa, and the Bay of Plenty Regional Council regional submission. We generally support these submissions.

Our submission identifies some specific matters of particular interest and concern to the Whakatāne District Council.

We do not seek to make an oral submission.

2 Background

The Whakatāne district has an area of 4449 square kilometres. The population was 38,300 as of June 2022. The District has experienced relatively high levels of population growth over the last few years (7% increase since 2018).

Nearly half of our community identify as Māori, who have a very strong local presence and identity. There are seven iwi, 80 hapū and 69 Marae in the district.

3 Submission

3.1 Loss of Local Voice

Councils biggest concern is the significant reduction in the role of local voice.

The move towards regional scale planning under both Bills is intended to reduce the number of local government resource management plans, and to simplify and standardise processes. Regionalised planning could include councils and communities having less input into and involvement in the new system.

The planning framework will play a fundamental role in the new system. However, plans will be developed by Regional Planning Committees (RPC), not councils. Councils and therefore communities will have only a limited role in preparing plans. This has the potential to weaken the community voice and reduce influence over critical decision-making about their unique place, with responsibility shifted almost exclusively to the RPCs.

Reducing local voice potentially undermines local government's critical placemaking role and may not recognise that communities best understand their unique and diverse natural and built environments.

Existing urban form and patterns of development are a reflection of many years of local influence and decision-making, and it is important to recognise the significance of those decisions and why they were made. Hence, the development of Statements of Community Outcome (SCO) is an important part of reflecting that local voice in any regional planning process.

There is currently a lack of clear guidance on how SCO should be prepared and structured to provide a RPC a coherent and regionally consistent (as far as possible) story.

Decision Sought

- ***Adopt the proposals from the LGNZ to enhance local voice and ensure RPCs will align and integrate with councils' current statutory roles, functions and accountabilities.***

3.2 Funding

Another significant concern is funding.

Councils feel that the resourcing pressure from the reform has been under-estimated by government. We already struggle to resource these activities under the current system. There is a risk that productivity in the sector will decrease through the transition, increasing public criticisms for creating complexity, costs, delays and uncertainty; and discouraging investment and innovation, the opposite of what the reform is intending to achieve.

The legislation requires councils to fund the processes that develop NBE plans and Regional Spatial Strategies (RSS). The current provisions have little clarity about councils' relationship with the secretariat and its influence over RPC budgets and resourcing.

We are concerned about equitable funding for the development and implementation of RSS and NBE, recognising the size of the Whakatāne District with large tracts of indigenous vegetation (as an example), but with a small pool of ratepayers and lower than average household incomes.

Despite the regionalisation of planning removing councils' plan-making responsibilities, Councils will still need to maintain local policy capability and capacity throughout the transition phase and be able to contribute to RSS and NBE development, implementation and review. This is in addition to maintaining local consenting and compliance, monitoring and enforcement capability and capacity.

The Council supports the increased involvement of iwi and hapū in the new system. However, we are also concerned that local government and iwi/hapū will have to fund this strengthened role. Even with current roles, iwi and hapū are significantly constrained in contributing in the way they would like to. Central Government must act in good faith and in a consistent manner as a good Treaty partner and resource iwi to participate in the new system. This will lead to much greater optimal outcomes from the new planning regime.

We value our relationships with iwi/hapū and whānau and wish to see them succeed as a result of this legislative change. A new approach toward funding for iwi/hapū to build capability and capacity for iwi/hapū is required to ensure this success.

Central government must contribute if it is to achieve the outcomes it seeks, including the intention to reduce the need for consenting while ensuring environmental safeguards are still in place. This is a major shift in focus, with significant risks if sufficient funding is not provided in the RSS and NBE plan development process.

Decision Sought

- ***Adopt LGNZ proposals for transformational funding and resourcing to ensure local government and our iwi/hapu partners have sufficient capacity and capability to implement the new system and give effect to its aspirations.***

3.3 Giving Effect to Principles of Te Tiriti O Waitangi

The change in language from “take into account” in the RMA to “give effect to” is intended to increase the weight to be given to the principles of Te Tiriti. This is supported. This is recognised as a significant policy shift in practice for RSS and NBE plans.

Decision Sought

- ***This change is supported. However, it would be desirable for there to be guidance at an appropriate level, to clarify the significance of the policy shift and practice.***

3.4 Managing Environmental Effects

The NBE Bill sets out a new effects management framework for managing environmental effects.

The terms *avoid, minimise, remedy, offset, and redress* are central to the framework and used in a manner particular to the legislation and should be defined.

The effects management framework of *avoid, minimise, remedy, offset, redress* follows a deliberate priority order. However, this order is not consistently applied within the Bill. Some clauses revert to the current RMA wording and order of ‘*avoid, remedy, mitigate*’. For example, Section 228 (3) refers to “...*avoiding, remedying, or mitigating the effects...*”).

It is unclear what “remedy” will mean in practice in the effects management framework. To ‘remedy’ something is usually to rectify an ill that has already taken place. This is not relevant to an application for consent for a new activity. It might be relevant to a consent renewal where more stringent conditions apply, or to enforcement action.

The new effects management framework requires greater consistency, certainty and precision if it is to be effectively and efficiently implemented.

Decision Sought

- ***Define the terms ‘avoid, minimise, remedy, offset and redress’ in Clause 7 Interpretation.***
- ***Apply the effects management framework consistently across the new legislation.***
- ***Reconsider and confirm the purpose of ‘remediation’ in the effects management framework.***

3.5 Te Oranga o te Taiao

The Bill introduces the concept of upholding Te Oranga o te Taiao. The Council seeks to ensure the interpretation and practical application of this concept is well defined to avoid unnecessary confusion and/or litigation. With the Three Waters Reform introducing the concept of Te Mana o te Wai, we ask for clarity in how the two concepts integrate into the new legislation to create a better outcome than current provisions provide for.

Decision Sought

- ***Ensure the interpretation and application of Te Oranga o te Taiao is well defined.***
- ***Ensure the concepts of Te Oranga o Te Taiao and Te Mana o Te Wai integrate well into the legislation.***

3.6 Developing Regional Spatial Strategies

Each RPC will develop and approve the RSS. The RPC will have significant flexibility to design its own engagement approach with the community and key sector groups.

It is notable that comparison between the RMA system and the future system in the System Overview Report does not refer to the Future Development Strategy (FDS) required under the NPS UD. An FDS achieves similar spatial planning outcomes to those of an RSS, albeit that some FDS are at 'subregional' rather than regional scale.

Many communities have already invested significant time and resources in spatial planning, which are now embedded into plans under the RMA and LGA that integrate land use, infrastructure and funding policy and implementation, and often in developing urban form on the ground.

To optimise the return on this community investment and to save time and cost, existing adopted spatial plans and their underpinning analysis and community engagement should be required to be taken into account in first generation RSS, given this is what will likely happen in practice through the SCO.

Consideration could also be given to the option of early establishment of RPCs tasked with consolidating existing regional/subregional spatial plans as a "Transitional RSS" to speed up overall implementation of the reform. This could include a formal gap analysis taking into account the NPF that would inform the new RSS.

Decision Sought

- ***Recognise FDS and other spatial planning instruments as part of the current RMA system, and as a significant input to a first generation RSS.***
- ***Establish RPCs and consolidate existing regional/subregional spatial plans as transitional RSS to speed up overall implementation of the reform.***

3.7 Central Government Membership on RPCs

The NBE Bill specifies system outcomes that decision makers will be required to provide for natural and built environments (National Planning Framework-NPF). These foundational policies will need to be interpreted and applied at local level, with any conflicts reconciled.

NPF implementation will be a key role for RPCs, in preparing the RSS assisted by central government appointed members.

Central government needs to clarify how they intend to deliver on strategic outcomes sought through RSSs. Central government should be involved in decision-making on RSSs and also commit to the delivery of strategic outcomes, including beyond current limited funding timeframes for transition.

The optional nature of central government appointed membership of the RPC does not reflect the importance of the role. The role will not only be transitional, but ongoing through future RSS implementations plans, monitoring, reviews and changes.

Decision Sought

- ***Make central government membership of the RPC mandatory and enduring for the development, adoption, implementation, monitoring, reviews and changes of RSS.***
- ***Ensure that all central government membership appointees have appropriate capacity, capacity, continuity and authority to support RPC decision making.***

3.8 RSS Implementation Plans and Implementation Agreements

To drive and enable change across the system, the SPA requires that an RSS be accompanied by an implementation plan.

The implementation plan concept is strongly supported as it recognises there are a range of delivery partners – central government, local government, iwi, Māori or the private sector – all of which are relied on for assured delivery. Current spatial plans are significantly weakened by the lack of reliability and commitment to key actions, particularly for core infrastructure delivery.

An implementation agreement between organisations who have a role in the delivery or regulation of a priority action in a RSS will not be enforceable.

This is perhaps understandable in the context of actions that may require decisions under current related statutory processes, including funding decisions. However, RSS Implementation Agreements should be recognised and given significant priority and weight in decisions made under these related statutory processes.

There is also a risk that some agreements may be entered for expediency with limited actual commitment, affecting the reliability and integrity of the RSS Implementation Plan.

Decision Sought

- ***Consider changes to related legislation and decision frameworks to ensure that particular regard is given to RSS Implementation Agreements under the SPA.***
- ***Include an additional requirement that an RSS implementation Agreement must identify the risk (event, consequences and probability) of an agreement not being followed as a result of parties not providing sufficient commitment or changing their decisions after the fact. While circumstances may mean that previous commitments need to legitimately change, this should be by way of exception and possible wider agreement.***

3.9 Developing the NBE Plan

NBE plan development can only follow the development and adoption of an RSS. NBE plan development is expected to take 2 years.

The expected 2 year timeframe is unrealistic given the significant change in focus, intention that front loaded policy will reduce implementation burden, the scale and complexity of issues, and the breadth and depth of expected engagement.

RPCs should have discretion to determine when to commence preparation of the NBE. There may not be the need to await adoption of an RSS before commencing some aspects of NBE Plan development.

Decision Sought

- ***Provide RPCs discretion to determine when to commence preparation of all or part of the NBE Plan, having regard to progress on RSS development and adoption.***

4 Concluding Remarks

We generally support the issues raised by the Local Government sector in their respective submissions, and in particular those submission from Local Government New Zealand (LGNZ) and Taituara (Local Government Professionals Aotearoa).

We reserve our judgment on whether the proposed legislative framework will deliver the environmental outcomes and protection sought. However, we appreciate the intention to streamline the resource management framework.

We believe a realistic and ongoing funding regime from Central Government is absolutely critical to ensure a sound partnership between local government and iwi/hapū is successful to deliver on the outcomes and protections being sought.

Yours faithfully

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a stylized, somewhat abstract representation of the name.

Victor Luca
MAYOR
For the Whakatāne District Council

A handwritten signature in blue ink, featuring a prominent, stylized initial 'S' followed by a cursive script that appears to read 'Stephanie O'Sullivan'.

Stephanie O'Sullivan
CHIEF EXECUTIVE