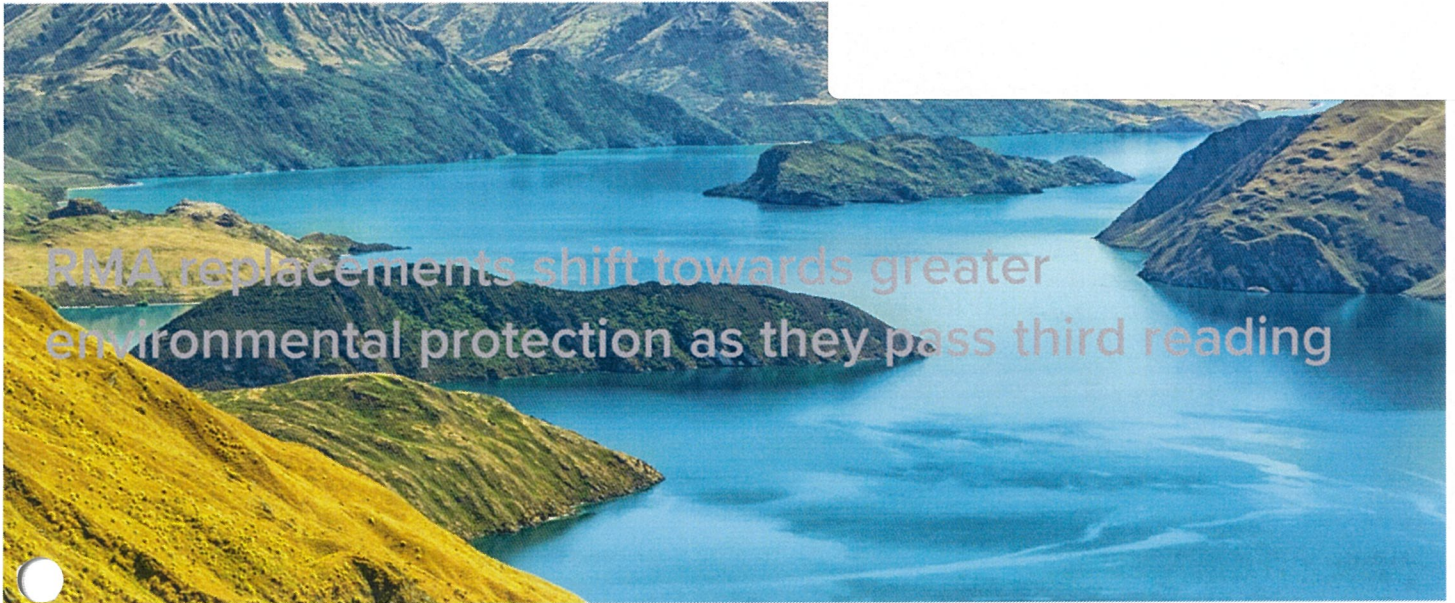


## BELL GULLY

(Garvan, N. & Kete, M., 2023)



17 August 2023

Natasha Garvan and Maringi Kete

Parliament has passed the Natural and Built Environment Bill (NBA) and Spatial Planning Bill (SPA). This means that two of the three legislative elements intended to replace the often-criticised Resource Management Act (RMA), will soon become law.

The bills' initial intent and key concepts were retained as they completed their third reading on 16 August 2023. There have been some significant refinements by the Select Committee aimed at improving clarity and integration since earlier iterations, plus a shift towards greater environmental protection. We consider the bills do not represent a transformative change from the current RMA system.

We expect the process to fully transition to the NBA could take up to ten years. However, the future of the legislation is still uncertain as the Opposition has stated its intention to repeal the legislation before Christmas if elected into Government.<sup>1</sup>

### Key changes

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environment and subject to this, enables the use and development of the environment in a way that promotes the well-being of both present and future generations.

The Government intends the NBA to reflect a move away from an effects-based regime under the RMA, to focusing on positive outcomes. In practice, this should support greater focus on how plans and projects are helping to achieve the twelve outcomes identified in the NBA.

In terms of the incorporation of te Tiriti o Waitangi<sup>3</sup>, all persons exercising powers and performing functions and duties under the NBA must “give effect to” the principles of te Tiriti. The “give effect to” terminology is a more active requirement compared to the previous wording contained in the RMA. The previous wording stated a requirement that the principles needed to be “taken into account”. As confirmed by the Supreme Court, “give effect to” means “implement” and is a strong directive, creating a firm obligation on the part of those subject to it.

## 2. National Planning Framework

A National Planning Framework (NPF) will be created as a single consolidated, comprehensive framework and guidance to those developing Regional Spatial Strategies and NBA plans. The purpose of the NPF is to provide direction on the integrated management of the environment, provide direction on the resolution of conflicts about environmental matters including those between or among system outcomes, and set environmental limits and targets.

The first iteration of the NPF is to enable the development of the first RSS and is required to be based on existing national policy direction under the RMA to the extent that it is compatible with the requirements of the NBA.

The NPF is a positive step forward: one of the issues under the RMA has been the development of national policy in siloes and a failure to reconcile conflicts between competing national priorities and direction.

## 3. Regional Spatial Strategies

Under the SPA every region must have a Regional Spatial Strategy (RSS) to be renewed at least every nine years after it is adopted.

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While long-term spatial planning is welcomed, it needs to be coupled with meaningful implementation plans and agreements if it is to be effective in practice. In addition, it is critical that issues relating to infrastructure funding and financing are resolved – a topic which is not directly tackled by these reforms.

#### 4. NBA Combined Plans

Every region must have a Natural and Built Environment Plan (NBA Plan) instead of separate regional and district plans. This means there will be 15 plans for the whole of Aotearoa New Zealand, rather than the 100 plus regional policy statements and regional and district plans we currently have. This change should assist in making the system more navigable and reducing costs and complexities.

The NBA Plan will give effect to the National Planning Framework (NPF), provide for the needs of the communities of the region and be consistent with the regional spatial strategy. Hearings on submissions on NBA plans are to be held by Independent Hearing Panels, with final decisions made by Regional Planning Committees (RPCs) as outlined below.

#### 5. Regional Planning Committees

A RPC is to have at least six members, but no maximum and be supported by a secretariat. The RPC members will be appointed by local authorities, Māori appointing bodies, and a representative appointed by the Minister responsible for the SPA (for RSSs). Iwi authorities and groups that represent hapū in a region must set up an iwi and hapū committee to be the sole iwi and hapū committee for the region for the purpose of agreeing on the composition arrangement for the region with local authorities and determining the Māori appointing body or bodies. Once established, local authorities and the iwi and hapū committee must agree on the composition arrangement for the RPC.

Under the NBA, if the RPC accepts the Independent Hearings Panel's (IHP) recommendations, appeals can be made to the High Court on a question of law only. Alternatively, if the RPC rejects the IHP's recommendations and makes an alternative decision, appeals may be made to the Environment Court in respect of the differences between the alternative decision and the IHP recommendation. Appeals can also be made to the Environment Court where the RPC accepts the IHP's recommendations are beyond the scope of submissions.

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functions and duties in giving to the principles of te Tiriti o Waitangi.

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As was made clear in an urgent hearing in the Waitangi Tribunal, there is a strong view that the Government should be engaging with iwi and hapū directly in regards to the performance of the Crown and other entities in giving effect to the principles of Te Tiriti, rather than engaging with a national entity<sup>4</sup>.

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There is a risk that the Government does not meaningfully engage and partner with iwi and hapū and instead defers to the National Māori Entity for feedback and input.

## 7. Fast-track consenting pathway for eligible infrastructure and specified housing

The NBA includes a fast-track consenting model similar to that set out in the COVID-19 Recovery Act. A form of fast-track referral that does not require notification (except for submissions from relevant persons or groups), nor hearings to be held. Fast-track was originally a temporary response measure. Therefore, it represents a significant change in the process for the consenting of eligible activities. These activities include telecommunications, renewal of consents for renewable energy generation, wind or solar energy generation, housing developments that meet certain thresholds, and a range of infrastructure projects and government assets excluding activities in a customary marine title area or protected customary rights area unless agreed by the relevant group.

There is a two-year lapse date, which means the process is only applicable to projects that are “construction ready”.

## 8. Freshwater allocation

A notable shift has occurred in regard to the way freshwater allocation is approached under the NBA Bill. The first-in first-served approach developed by the courts and adopted by councils is being replaced by criteria yet to be determined, based on the resource allocation principles of environmental sustainability, efficiency, and equity. These principles apply only to the development of directions in the NPF or rules relating to allocation methods for certain resources or use of the market-based allocation method.

A Freshwater Working Group (the Working Group) must be established to make

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- ↔ NBA plans must then include rules that require one or more allocation methods to be used for taking, diverting and using freshwater, the capacity of freshwater to assimilate a discharge of nitrogen, and a resource specified in the NPF as a resource for which an allocation method must be used.

Ultimately, the allocation of freshwater will need to be consistent with the principles of Te Mana o Te Wai as set out in the National Policy Statement for Freshwater Management which will be rolled over into the first NPF. In accordance with Te Mana o Te Wai, the health and wellbeing of water bodies will be the first priority, followed by the use of water for human health needs.

## Next steps

Many existing RMA processes and instruments will continue to have effect until replacements are developed.

In relation to the Climate Change Adaptation Bill, the third element of the RMA reforms, the Climate Change Minister James Shaw has called for a select committee inquiry into community-led retreat and adaptation funding, a process which will conclude in the next parliamentary term. Details on submission closing dates [will be made available on the Parliament website](#) in due course.

If you have any questions about the matters raised in this article, please get in touch with the contacts listed or your usual [Bell Gully adviser](#).

<sup>[1]</sup> (1 August 2023) 769 NZPD (Natural and Built Environment Bill – In Committee, Hon Scott Simpson).

<sup>[2]</sup> The concept of te Oranga o te Taiao was developed specifically to be a shared environmental ethic for everybody in Aotearoa New Zealand. The NBA defines Te Oranga o te Taiao to mean the: health of the natural environment; the relationship between the health of the natural environment and its capacity to sustain life; the relationship between the health of the natural environment and the health and well-being of people and communities; the interconnectedness of all parts of the environment; and the relationship between iwi and hapū and te Taiao that is based on whakapapa.

<sup>[3]</sup> The term “te Tiriti o Waitangi” is defined in the definitions section of the NBA, and it is defined to mean “the Treaty as defined in section 2 of the Treaty of Waitangi Act 1975” which refers to both versions of the Treaty.

<sup>[4]</sup> *The Interim Report on Māori Appointments to Regional Planning Committees*, Wai 2358, Waitangi Tribunal Report 2022.

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