Preliminary questions: Planning and Natural Environment Bills

18 December 2025

To Environment Committee members,

The purpose of this note is to provide you with a list of key issues, and associated questions, that may be useful to your thinking as you begin to read and analyse the Bills. It is not comprehensive, given the size and complexity of a resource management system, but it highlights a selection of what I see as being key issues committee members might like to turn their minds to. I have not offered a view, or position, on the matters set out. Rather, the issues are drafted for members to draw their own conclusions about how well, or otherwise, they are addressed by the Bills.

It is obvious from my initial review of the Bills that the speed of the policy process, and short drafting time, has left elements of them in need of far more detailed work. MfE officials will likely be tasked with providing you with an initial briefing. If this is to be useful, I recommend that the Committee requests that any such briefing outlines any parts of the Bills where the drafting has been identified as deficient is likely to be addressed in the departmental report.

System questions

The Bills give rise to consideration of broader issues regarding how they interact with other parts of New Zealand's constitutional and legal architecture. Some key high-level questions include the following:

- How are Te Tiriti and Treaty settlements reflected in the Bills, and do they fulfil the Crown's obligations to Māori, iwi, and hapu? The Committee may want to appoint a specialist advisor to support its consideration of these issues since I do not possess specialist expertise in this area.
- Local government plays a critical role in the existing resource management system – it is envisioned that it will play a significant, but different, role in the new system. Yet its future is in flux with work going on in parallel to the resource management reform on the future of local government. The Committee may want to ask for specific briefings about that work and how it interacts with the Bills.

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- The Fast-track Approvals Act 2024 provides an alternative mechanism for resource management decisions under the RMA. How does - or should - the Fast-track Approvals Act interact with the proposed system?
- Do the goals, and how they are particularised by the key instruments, adequately protect the interests of future generations?

Greater emphasis on top-down direction and decision-making

One of the policy intentions behind the Bills is to constrain, more tightly than is the case in the RMA, the discretion available to decision makers at both the plan making and consenting levels. The proposed system seeks to achieve this by providing greater emphasis on legislated goals and new or revised directive 'national instruments', including standards, from which lower order documents and decisions are given restricted scope to deviate.

The potential advantage of this approach is the greater certainty for 'users' about whether, or not, they will be able to undertake an activity, and under what conditions. It should also bring about greater consistency between regions. On the other hand, it could limit the flexibility to respond to regional and local issues and reduce the role of decision makers at a local level, leading to a reduction in awareness of the scale or importance of regional and local resource management issues. This tension will exist in any legislation of this type. The question is: how it will play out in practice given the framing of these Bills?

Enhanced top-down direction could also, perversely, lead to more flux and complexity depending on the degree and frequency with which plans and activities need to change every time the higher-level instruments are modified – which could happen multiple times as governments change. It is not clear what will happen to activities that have been permitted subject to certain standards when those standards are subsequently changed by central government.

For instance, if all activities, existing and new, are required to adhere to the changed standards, existing resource users may have to change how they undertake their activities. If the changed standards only apply to activities commenced *after* national instruments are changed, compliance monitoring and enforcement will become more complex. The same activities could be subject to different standards depending on when they commenced.

Key questions include:

- Will the emphasis on top-down direction leave sufficient scope for "bottom-up" or community-led approaches to managing environmental pressures?
- After the initial promulgation of national instruments, how will subsequent changes to them apply to activities that started before the standards were changed? How will compliance monitoring and enforcement work if different standards apply to the same activities depending on when they started?

Environmental limits

The Bills introduce an environmental limits regime to protect 'human health' and 'ecological health'. Central government is to be responsible for setting the 'human health' limits and these are to apply nationally. Primary responsibility for setting 'ecological health' limits will rest with local government, although there is provision for the Minister to set national bottom lines for ecological health. Councils will be able to take a less demanding approach to those national bottom lines provided they provide a justification report.

Environmental limits are expected to protect the natural environment but where these limits will be set, and how they will be implemented and enforced, has been left to Ministers to develop after enactment through national instruments.

Key questions include:

- Is the environment sufficiently protected by the Bills given that:
    - 'Best endeavours' to ensure the use of natural resources occurs within environmental limits is the threshold to guide development of national direction and standards.
    - Protection of the environment is just one goal to be balanced or weighed against other system goals (e.g. enable use and development) and councils can dial back the limits if they can issue a justification report.
    - Procedural principles include taking all practicable steps to act in an enabling manner.
- Is it appropriate for ministers to have discretion over the activities to be exempt from complying with limits? Is it clear what those activities will be or what the process for granting those exemptions includes?
- Are there provisions in the legislation sufficient to ensure that ecological limits have appropriate levels of protection or ambition for improvement, and do not just bed in, or worsen, existing pollution and stresses from human activity?
- If environmental limits are breached (or at risk of being breached), are there adequate mechanisms to curtail or stop existing activities in a timely manner? In circumstances where environmental limits are already exceeded at the commencement of the new system, how will this 'overallocation' be clawed back?
- Is there an over reliance on offsetting and compensation in the new system? How will effects that may result in irreversible harm in one location be considered against a positive effect somewhere else? How is the loss of an ecosystem or species at a local or catchment scale balanced or weighed against what might be a positive 'overall' outcome for the environment?

Regulatory relief regime

As part of the resource management system reform's focus on the greater enjoyment of private property rights, the Bills introduce a regulatory relief mechanism whereby property owners can be compensated if plan rules would unduly inhibit a landowner's ability to use the land as they wish to. The Bills limit the application of regulatory relief to constraints on land use dealing with: sites of significance to Māori; heritage protections; landscape values; natural character, and

terrestrial indigenous biodiversity (specified topics). Regulatory relief would not be available for constraints imposed to manage natural hazards.

National instruments may address the specified topics and set rules or requirements for them. Where local authorities want to include additional protections or restrictions for the use of land in plans, beyond what has been mandated by national instruments, regulatory relief might apply. This would incur additional costs for councils (and by extension local communities). These costs might be through direct payments to landowners who are constrained or through reduced revenue (for example if landowners are 'compensated' through rates relief).

How the regulatory relief regime operates will be particularly significant when it comes to indigenous biodiversity on private land.

Key questions include:

- Is the list of values to which regulatory relief could apply appropriate? (See the definitions of 'specified topics' in the two Bills that define for what regulatory relief can be sought.)
- Does the introduction of a regulatory relief regime effectively create a right to destroy biodiversity on private land? If biodiversity is destroyed on private land, who is responsible for restoring and paying for - biodiversity elsewhere to meet the legislative goal of "no net loss"?
- Would the regulatory relief regime discourage councils from implementing overlays or restrictions to avoid having to pay compensation? This is particularly relevant in the context of proposed rate caps. In respect of which environmental resources might this be most problematic?

Critical implementation issues

The Government intends the new system to be implemented swiftly and then adjusted as components are further developed. This raises questions about whether critical components of the system will be sufficiently developed when the system becomes operational, and if not, how easily the system can respond or be adjusted as those components are finalised or fine-tuned?

The new system will require significantly more resources, at least from central government, for it to function properly. In particular, the setting and monitoring of environmental limits will require considerably more information. In a system that seeks to enable more activities to be undertaken without regulatory scrutiny prior to commencement (e.g. through a raised threshold for effects and more use of permitted activities) significantly more effort and resource will need to go into assembling the information needed to support the standards that attach to permitted activities and then to monitor compliance with them.

Spatial planning is to be a key component of the system, guiding where development can occur and under what terms and conditions. Getting that right will require good environmental information about what is and isn't appropriate in specific locations. Given how context specific the natural environment is, most of that information will need to be collected regionally and locally. The development of environmental limits will take time (and resources) to be done well.

Key questions include:

- What investments in environmental information are planned? Will these investments be made by central government and will they be on a scale and within a timeframe that can meaningfully feed into the transition to a new system? Specific investments are needed to:
    - enable high quality spatial planning;
    - define the 'biodiversity' baseline needed to assess whether the goal of "no net loss of indigenous biodiversity" can be met;
    - enable the setting of environmental limits; and
    - determine appropriate standards to accompany permitted uses.
- How is compliance monitoring and environmental monitoring to be funded? Does the legislation include adequate mechanisms to charge users? Does it include charges for activities that are automatically permitted to fund compliance monitoring?

How do the reforms apply in the rural context?

Much of the rationale for the reform has been driven by removing unnecessary impediments to development in urban areas. As a result, far greater thought appears to have been put into designing how the Bills would work in the urban context. It isn't immediately obvious how some of the provisions included in the legislation would work in the rural context. This is an area that could benefit from specific examination by the Committee.

The challenges faced in rural areas are distinct from those faced in urban areas. Often, in rural areas, environmental problems aren't generated by a minority of property owners who aren't obeying the rules. Instead, the problems in a given catchment are the result of the cumulative effects of land use decisions by the majority of the property owners in that catchment.

Key questions include:

- How will spatial planning apply in a rural context? Will there be one "rural" zone or many? How will rural zones interface with urban zones? Will there be buffer zones to prevent reverse sensitivity issues?
- How will permitted uses and permitted baselines interact with environmental bottom lines in rural areas?
- How are cumulative impacts considered and managed in the new system, including to ensure environmental limits are met?
- Does the legislative framework allow local communities to work together through entities like catchment groups to create a plan that is tailored to the key issues facing their catchment? If so, what governance is required to ensure sufficient local buy-in for such a plan? How will free-riders be dealt with? How will such groups be able to fund themselves?

The role of public participation

The new system proposes to focus public participation on the development of national instruments and the development of the combined regional plan (made up of the spatial plan, district land-use plans and a regional environment plan). Where councils use the nationally standardised zones and overlays, the public will not be able submit on the detail of any rules that apply to those zones. This is a significant shift from the existing RMA approach. People have got used to being able to 'have a say' about things that they feel affect them or shape their neighbourhoods, cities, districts and regions even if they are not directly affected.

Public participation on consents and permits in the new system appears mostly limited to those directly affected, presumably, in most cases, immediate neighbours. Appeal rights may also be very limited.

A key question is:

- Are there sufficient opportunities, and representation, for people to shape the communities in which they live?

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