



Environment Committee
Parliament Buildings
Private Bag 18041
Wellington 6160

14 April 2023

Dear Eugenie and committee members

Thank you for asking me to provide independent advice on the departmental reports for the Spatial Planning Bill and the Natural and Built Environment Bill.

This advice covers the departmental reports I have received originally – the report for the Spatial Planning Bill and tranches 1 and 2 for the Natural and Built Environment Bill. Today I received copies of NBE tranches 3A, 3B and 4. I will provide advice on those as soon as I can.

Looking through the lens of protecting and improving the natural environment, I have identified in a tabular form (attached) changes that I think the committee should support and areas where further improvement is still necessary. It is ordered in the same order as presented in each tranche of the department reports. I have used colour coding to summarise my advice.

Significant risk Significant improvement needed	Caution risky Improvement needed	Neutral (important point)	Good for the environment Support	Great for the environment Strongly support
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Overall, the changes recommended by MfE in the departmental report are improvements for the environment over the original draft bills. The areas that still need improvement, sometimes a lot of improvement, mostly involve matters that MfE has simply not addressed (as opposed to proposed changes that would be bad for the environment).

My key observations are:

- Consideration of the environment in the Spatial Planning provisions is stronger. However, the proposal to promulgate the first spatial plans prior to articulation of limits and targets remains a serious flaw.
- Requirements for detail across a region could still risks trade offs in the spatial plans that put the environment at risk.
- Narrowing the NBE purpose clause is promising, subject to the actual drafting.
- Leaving a list of non-prioritised system outcomes in the Bill will invite significant legal uncertainty and seriously risk the natural environment being compromised. If the Committee considers that non-environmental outcomes need a home, the Spatial Planning Bill is the place for them and they should be promoted subject to the purpose and outcomes of the NBE Bill.
- Recommended changes to environmental limits and targets are a mixed bag.
 - The improvements proposed are welcomed and should help stop further deterioration in environmental quality and provide for some improvement (but this is not guaranteed).

- Exemptions to limits, places of national importance and significant biodiversity remain too broad and will undermine those environmental protections.
- Not setting limits and targets in the first NPF will lock in preferences for use and development over the primary environmental protection measures. This is a serious flaw. No NBE plan (or spatial plan) should be promulgated without limits and targets being set.
- There appears to be a gap that would not allow protection of places that are of *regional* importance but not considered of *national* importance. Any such gap should be fixed.
- The provisions (and proposed improvements) on compliance and enforcement are good and should be strongly supported.
- Proposed changes to duties and restrictions (clauses 13-30) are generally good, but could benefit from tweaks.
- The provisions (and proposed improvements) on water conservation orders are good and should be supported.
- Making system review by the PCE mandatory is unnecessary and risks the ability of the PCE to perform its wider statutory duties.

The Committee should be clear that my comments are a response to the issues as they have been raised by officials and are provided on the basis that the bill as presented to the Committee is the only way in which environmental protections can be framed. This is, of course, *not* the case but my role here is not to relitigate some of the more fundamental issues at stake.

I would be happy to provide further detail and discuss with the Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Simon Upton', written in a cursive style.

Rt Hon Simon Upton

Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata