



Planning Bill and Natural Environment Bill:

Advice on matters to refer to advisers

14 April 2026

General matters

From the PCE analysis of the Bills so far, the following matters are identified for referral to the independent legal adviser (Bronwyn Carruthers, KC) who has been contracted to assist the committee with its consideration of the Bills.

Spatial planning.

- Do the provisions for regional spatial plans (RSPs) describe what they must achieve, and their impact or effect, with sufficient clarity for this to be implemented? Is it appropriate for the detail to be determined by national instruments or should some of this be prescribed in the primary legislation?
- Would prescribing more detail about the contents of RSPs in primary legislation increase the likelihood of plans being appealed or the risk of judicial review?
- If the prescribed detail of what an RSP must contain is limited, what effect would this have on the content of such plans? For example, would they be limited to just describing no-go areas for certain activities?

Planning Tribunal. Consistency of Tribunal decisions could drive consistency across procedural decisions of consenting authorities. Is there sufficient scope for this to be achieved by the Tribunal, or are its decisions constrained in the consideration of precedent?

Departmental Report – Part 1

The following matters are identified, based on review of Part 1 of the Departmental Report, for referral to counsel for expert advice.

Spatial planning. The initial spatial plan may be high level and broad in its detail but based on sufficient information for implications of decisions to be understood. There will be a need to update or clarify plans as that information is improved. Does the PB provide adequate means to update this information? Will it be possible to update data (for instance flood maps) without a plan change being required? Alternatively, what mechanism is required (either in the primary legislation or national instruments) to ensure that relevant updates in information/data are incorporated? Is the matter adequately dealt with by the Department's commentary and Schedule 3, cl 48?¹

¹ DR Part 1, page 70-71, rec 54.

Permitted activities. A certificate of compliance may be issued for an activity that may be lawfully carried out without a consent or permit. This could be a permitted activity, or activities that are generally lawful.² How onerous will it be procedurally for consenting authorities to respond to requests if there is greater recourse to permitted activities, or otherwise lawful activities, when combined with a higher effects threshold?

Designations.

- Designations may be identified and recorded in a spatial plan and a land use plan.³ What are the risks to landowners and the local authority of designations being proposed and included in an RSP rather than through the LUP? What is the legal status and effect of future designations, as identified in a RSP, for landowners and local authorities?
- Designations require an assessment of 'strategic need' for a project in the proposed location. This is intended to exclude consideration of alternative routes or sites. However, would the consideration of alternatives remain a relevant consideration for decisions-makers in demonstrating 'strategic need', thereby raising the risk of judicial review?⁴

Consenting integration. The Bills only allow the deferral of an application for additional consents or permits if the approvals sought would be granted under the same Act.⁵ The General Policy Statement makes it clear that the Acts were intended to operate in tandem. Will the decision not to allow cross-deferrals (see the Ministry's reasoning on page 93) promote efficiency and consistency in decision-making, and better outcomes for planning and the environment? What drafting solution could enable all consents and permits relating to an activity or project to be considered together?

Consideration of applications. The department opposes the consideration of other relevant matters when councils are deciding applications under PB clause 139 and NEB clause 156.⁶ Does this explicitly preclude a decision-maker from considering 'relevant considerations' as may be required by public law principles? Or would a decision-maker risk this being consideration of irrelevant considerations for the purposes of judicial review? How will a person making higher order instruments anticipate all relevant matters in advance, and provide for those, in order to exclude consideration of other relevant matters at lower levels?

Number of plans. With reference to the response provided to submissions on PB clause 76 and NEB clause 93 that it is required for there to only be 1 plan per district and region (page 33, rec 17), does the drafting conflict with joint plan preparation? If so, what amendments should be made to reduce any ambiguity in how the relevant provisions are interpreted?

Other matters

Legislative design. The committee would benefit from the advice of the Legislation Design and Advisory Committee (LDAC) on some of the legislative design decisions that have been taken, as set out in the PCE's advice of 27 March.⁷ There are important design issues relevant to these

² PB cl 178 and NEB cl 20, see DR Part 1, page 131, rec 107.

³ DR Part 1, page 12, para 53.

⁴ DR Part 1, page 12, para 52.

⁵ PB cl 116 and NEB cl 137, see DR Part 1, pages 92-93, rec 73.

⁶ DR Part 1, page 103, rec 79.

⁷ PCE Planning Bill and Natural Environment Bill: Legislative design and core components 27 March 2026.

Bills on which LDAC has issued advice that appear not to have been considered. The Committee should have the LDAC's advice prior to considering many of the issues that remain to be addressed in the next departmental reports.

A handwritten signature in black ink, consisting of a long, sweeping horizontal stroke followed by a vertical line that curves slightly to the right at the top.

Rt Hon Simon Upton
Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata