



PCE Note to Members of Parliament: Planning Bill and Natural Environment Bill

21 July 2026

During the last Parliament's encounter with resource management law reform, I made a submission to the Select Committee. I also provided advice to the Committee at its request. On this occasion, when the Committee once again sought my assistance, I decided not to submit on the basis that it is better to be either a submitter or an advisor, but not both. As a result, I have – together with a team led by my General Counsel, Rebecca Thornley – carefully followed the submissions made to the Committee and the advice tendered in departmental reports. I in turn offered the Committee my own advice on both what they had heard from submitters and the Ministry. That advice and report is now available to all Members on my website.¹

As a result of confining my role to being that of an advisor, I have not thus far spelt out at length my view of the draft legislation before the House. I am now taking the opportunity to do so. I am mindful of the fact that Parliament requires me, under section 16 of the Environment Act, to maintain a watching brief over the effectiveness of the agencies and processes that make up New Zealand's 'environmental management system'. That role is spelt out in very neutral language, but there is a normative rider: I am to do so "with a view to maintaining and enhancing the quality of the environment".² It also enjoins me to investigate the effectiveness of environmental planning and environmental management carried out by public authorities.³

It would be hard to identify legislation that is closer to the core of my statutory mandate. In providing the House with my assessment of the two Bills that have emerged from the Environment Select Committee, I cannot avoid the question of whether these Bills will indeed 'maintain and improve the quality of the environment'. That is a difficult question to answer. In the first place, environmental outcomes depend on much more than Acts of Parliament. But, accepting that legislation does play a very important role, these Bills are about much more than the environment. Their principal thrust is to enable development and resource use. That is described as being "within environmental limits" but, for reasons that I shall elaborate upon shortly, it is almost impossible to say whether the provisions designed to impose those limits will be effective.

Basis for reform

Before I explain why, it is worth recalling that a wide cross-section of New Zealanders have convinced themselves that "the Resource Management Act (RMA) is broken". We have heard this from Ministers, business leaders and environmental groups. I have always been sceptical of these claims. They have been advanced – often on the basis of anecdote – to promote completely different narratives. The RMA has certainly had its problems. But much has also been achieved. At the time the RMA was passed into law, there was an open rubbish dump in the middle of my home town, Ngāruawāhia, sandwiched between State Highway 1 and the main trunk railway line. Fires smouldered here and there, there were birds and rodents in abundance and a noxious smell that spread to close-by housing. It looked and felt like something closer to the third world than the New Zealand of our imaginations.

1 <https://pce.parliament.nz/publications/pce-advice-to-the-environment-select-committee-on-the-planning-and-natural-environment-bills>

2 Environment Act 1986, s 16(1)(a).

3 As above, s 16(1)(b).

That's all gone – and the RMA played its part in that.

That said, there is no question that the experience of the RMA for many businesses and citizens has been one of slow, litigious and costly processes. For many, the clear focus on environmental effects led to an excessively risk-averse approach on the part of regulators. A common criticism from across the board (chorded again by interests with completely opposing motivations) was a “lack of national direction”. That was certainly true for the first half of the Act's life. And when it started to arrive, it was piecemeal and flawed. In many cases, central government lacked the information to provide sensible direction. The quality of our environmental information is so uneven that Ministers who tried to issue anything likely to have any impact took significant risks.

I have advised the House on a number of regulatory forays based on debatable models or data.⁴ When it comes to national policy statements on freshwater management, we have been through four editions, and no one is happy. The reason, I suspect, has less to do with the words in an Act of Parliament than it has to do with New Zealanders saying they want a clean environment but not wanting to face the trade-offs that trying to get there will require. I have particular sympathy for regional councils which have, in my view, been asked to implement and take the flak for policies designed in Wellington – without resourcing and often with inadequate supporting information.

None of this is designed to detract from the need for change. But they show how difficult it is to answer the question of whether these Bills stand a better chance of “maintaining and improving the quality of the environment”. That ultimately may have less to do with legal drafting and more to do with shared – or not so shared – values, and the quality of the tools and institutions we give ourselves. That said, legislation plays a powerful role in shaping the incentives that drive businesses, households and regulators. It needs to be carefully scrutinised. My assessment is given in that spirit.

Positive elements of the proposed reform

Let me start with what I think is unquestionably positive about the Bills.⁵

- More permitted uses should make it easier to build and maintain the essentials of modern life, infrastructure and housing. The changes should in turn make it easier to electrify and decarbonise the economy.
- More consistent zoning and fewer plans across the country will make it easier for developers and builders to navigate the web of different rules when operating across local authority boundaries. Regulations that avoid the frictions of urban living will be more streamlined and easier to implement and enforce.
- Standardised rules and methodologies should reduce costs and improve consistency of outcomes. New Zealand is a small country with scarce skills. We need to stop wheel reinvention and reduce costs, which add nothing environmentally.
- Mandatory national policy direction and national instruments will guide implementation of the resource management system.
- Spatial plans constructed by all local authorities in a region will support better roll-out of infrastructure and enable a proactive approach to providing for a future in which climate change will pose significant risks to communities.
- There will be a greater diversity in the range of compliance and enforcement tools available to regulators.
- The creation of a Planning Tribunal should make it easier to resolve smaller disputes. Joint planning

4 PCE, 2018. Overseer and regulatory oversight: Models, uncertainty and cleaning up our waterways. <https://pce.parliament.nz/publications/overseer-and-regulatory-oversight-models-uncertainty-and-cleaning-up-our-waterways>; PCE, 2024. A review of freshwater models used to support the regulation and management of water in New Zealand. <https://pce.parliament.nz/publications/a-review-of-freshwater-models-used-to-support-the-regulation-and-management-of-water>; PCE, 2025. Reviewing the use of the LUC system in a regulatory context. <https://pce.parliament.nz/publications/reviewing-the-use-of-the-luc-system-in-a-regulatory-context>

5 This Note provides comment on the version of the Planning Bill and Natural Environment Bill as reported by the Environment Select Committee on 20 July 2026.

processes will facilitate local authority collaboration and regulatory plan making will be streamlined with clear timeframes.

- There is formal recognition of the role of adaptive management in primary legislation, providing a recognised framework for dealing with uncertainty.
- Levies may be charged for the use of resources to raise revenue for the specific purpose of environmental management (and improvement).
- Temporary and future provisions in plans can be switched off and on without further plan changes.

While not a part of the Bills themselves, they have been accompanied by a welcome, long-overdue recognition by the Government of the need to improve the quality of environmental data and access to it.

Consequences of this legislation that we can predict with some certainty

The Bills represent a wholesale rejection of localism. Those who have called for more **national direction** have been heard in spades: there will be a consolidated source of national policy direction under each Act. These will somehow have to remain consistent and complementary over time. Almost everything undertaken at regional and local levels of government will be scripted by central government. The much-cited ‘funnel’ means that the legislation imposes a hierarchy that will prevent matters settled at higher levels being re-opened at lower levels. It is important to understand that there is no roll-back in regulation here. Rather, there is a very significant taking back of regulatory power by central government. For some, national consistency in local regulation will be a plus. But it requires a faith in the ability of governments to regulate from the centre that some would regard as heroic.

The advantages of the drive for **standardisation** include more certainty about the regulations resource users will face and the way they will be implemented. It should also mean making better use of scarce technical skills both in developing regulations and in monitoring their outcomes. The disadvantages include a likelihood that local concerns may be disregarded. The Bills make it more difficult for councils to make rules that address local concerns by letting the government decide where councils can and cannot depart from the national templates. Regulations can be standardised and homogenised; communities and ecosystems cannot. Places are different and people often live in one place rather than another for precisely that reason.

There will inevitably be friction between nationally imposed rules and locally lived experience. This is likely to mean that **place-based conflicts** will more frequently become national issues. We have already seen that with housing intensification in Auckland. The space for public participation in rulemaking will shrink to the extent that nationally determined standards are imposed and the scope for national micromanagement of local issues enlarged.

Matters that communities have long considered contribute to the ‘feel’ or ‘liveability’ of a place, but which have depended in part on the regulation of private property will no longer be a matter councils can control. The protection of local landscapes, amenity, the contribution of private trees and green space, and basically anything regarded as ‘aesthetic’ or providing ‘character’ will no longer be a matter councils can concern themselves with. This is a major change. A requirement to provide for ‘amenity’ made its first appearance in the statute book in 1926.⁶ Exactly a century later, it is being removed.

Environmental protection and ministerial discretion

Given that the two Bills replace New Zealand’s primary environmental protection statute, it is fair to ask what we can say with any certainty about the likely environmental outcomes that the replacement legislation offers. The answer is: very little. That is because the legislation gives no particular priority to environmental outcomes. It is here that the contrast with the RMA is most striking. The RMA was an

⁶ Town-planning Act 1926, s 3(1).

explicitly environmental statute. It spelt out a high-level guiding purpose in section 5, and sections 6 and 7 required particular matters to be provided for.

The two current Bills, by contrast, have descriptive purpose clauses that are designed to provide no guidance to decision-making and do not specify the overall policy objective of the Acts. The appendix to this note expands on the role of purpose clauses and provides detail on the evolution of this debate since the enactment of the RMA.

Each Bill has instead a list of unprioritised goals that persons exercising powers under the Acts are only required to seek to achieve.⁷ The goals are the fundamental elements of the proposed law and are intended to guide the entire planning and natural environment systems. But the Bills leave it up to the Minister to ‘particularise’ the goals and to determine how conflicts between them will be managed. In resolving conflicts, the Minister may prioritise one goal at the expense of another. While there are matters the Minister must consider in seeking to resolve conflicts between goals *within* each of the Acts, even these do not apply to resolving conflicts and applying priority between the goals of the two Acts.⁸ Arguably, it is between the goals of the two Acts that the most environmentally significant conflicts will arise. Rather than address this matter, the Select Committee has encouraged the House “to continue discussing this matter ... and consider whether further changes are needed.”⁹ This is disappointing and is evidence, if it were needed, that the Bills are not yet ready to be enacted.

Where the RMA constrained the scope for regulation to managing the environmental effects of activities, the Bills give complete discretion to Ministers to strike whatever environmental or developmental balance they prefer. In short, Parliament can have no certainty about the outcomes that are to be achieved by these Bills.¹⁰

Depending on the degree to which the Minister is concerned about the environment, the outcome of national policy direction and other national instruments could be quite protective of the environment, or it could allow the quality of the environment to be steadily degraded. In its advice to the Select Committee, the Ministry for the Environment confirmed that the protectiveness of the framework depends on what national instruments say and could be either more, or less, protective than the RMA.¹¹ That uncertainty flows through to the likely effectiveness or otherwise of environmental limits, which have been characterised as the lynchpin of the Natural Environment Bill (NEB). Furthermore, the NEB as introduced has been amended so that the Minister no longer has an obligation to consider how national policy direction enables development within environmental limits when resolving conflicts between the goals.

Whereas in 1991 the House was able to agree on a guiding purpose, in 2026 what the Bills are supposed to achieve is being left to the Executive to determine. Whether that will be protective of the environment is simply unknowable. In fairness, it can be argued that the front end of the RMA didn’t deliver for the environment notwithstanding all those words in Part 2. The environmental outcome we can expect from these Bills will depend entirely on the calls the Minister makes. It is an unenviable task to be undertaken with little statutory guidance.

The breadth of ministerial discretion is sweeping. The Minister can:

- define the goals (‘particularise’), direct how they are to be achieved, and specify how directives must or may be implemented¹²
- direct the outcomes key instruments must achieve or provide for (national policy direction, national standards, regional spatial plans, natural environment plans, land use plans)¹³

7 Noting that subsequent clauses then restrict the ability for those persons exercising powers or performing functions, to have direct reference to the goals.

8 Planning Bill cl 58(3), Natural Environment Bill cl 85(3).

9 Planning Bill 2025 (235-1) and Natural Environment Bill 2025 (234-1) (select committee report), at 46.

10 While any significance that might be attached to the order in which the goals appear is explicitly excluded, I find it remarkable that the very first goal of the Natural Environment Bill is “to enable the use and development of natural resources” with a specific example added for good effect “the production of food and fibre, including aquaculture”. The omission of other resource using industries, such as tourism or mining, is hard to explain.

11 Ministry for the Environment, Departmental Report – Report 3, p.389.

12 Natural Environment Bill, cls 71(1)(a) and 72(2)(a)(ii).

13 As above, cl 72(2)(b).

- decide how the conflicts within and across the goals of the Acts are to be resolved¹⁴
- direct the approach to effects management to be specified in both national policy direction and national standards¹⁵
- specify that compliance with directives are the only ways in which a goal may be achieved and restrict how a key instrument achieves a goal¹⁶
- develop national standards that identify those activities that can breach environmental limits and control how councils are able to respond to the impacts of breaching a limit¹⁷
- develop national standards that determine the processes and methodologies that must be followed by regional councils when setting ecosystem health limits¹⁸

In short, everything is tradable. Like the RMA, these Bills rely on secondary legislation for their ‘bite’. Wide regulation-making powers are in themselves not a problem. The matters that need to be dealt with are far too voluminous to be set out in primary legislation. But it is for Parliament to decide *how much* discretion should be given to Ministers, what criteria must be applied when exercising discretion, and to define the over-arching purpose that should guide them and everyone else exercising powers under the legislation.

With broad and unchecked ministerial discretion, there is a greater risk that direction will flip-flop as political tides ebb and flow. The repeated revisions to the National Policy Statement on Freshwater Management with each subsequent government is a salutary example. Yet these Bills provide even less direction and constraint on making secondary legislation than the RMA. They are unlikely to deliver the certainty and stability that their authors are hoping for.

Also concerning is the effect widespread ministerial discretions could have on lobbying incentives. To put it bluntly, the more discretion that is accorded to ministers, the greater the likelihood that they will be the target of special-interest lobbying. I have been particularly concerned in recent times by provisions, such as section 10A of the Fast-track Approvals Act, allowing government policy statements on the regional or national benefits of certain projects to be prepared. Or section 360I of the RMA, which allows the government to modify or remove provisions in regulatory plans. As currently drafted, the Bills provide the Minister with almost unlimited discretion to fine tune the regulatory framework in a way that will inevitably incentivise vested interests to seek regulatory accommodations.

To be clear: the Minister needs to be able to propose regulations – planning cannot be provided for in primary legislation. It is too place-based and detailed. But the scope for regulation should be much more clearly prescribed by Parliament itself.

The enjoyment of property rights

One of the aims of the proposed reforms is a renewed emphasis on the enjoyment of property rights. I am a property owner, and I have a natural sympathy for those who insist that owning property places a limit on what governments should be able to interfere with. We have all heard tales of regulatory excess when it comes to what people can and cannot do with their properties. Māori are no stranger to this argument and have been frequently opposed to regulatory impositions on the land that remains in their possession.

These Bills take particular aim at rules relating to ‘specified topics’. Those topics include:

- historic heritage sites and structures
- sites of significance to Māori
- outstanding natural landscapes and features

¹⁴ As above, cl 71(1)(b).

¹⁵ As above, cls 72(3) and 77(1).

¹⁶ As above, cl 72(4).

¹⁷ As above, cl 79.

¹⁸ As above, cls 58 and 58A.

- areas of high natural character in coastal, lake, river and wetland settings
- terrestrial indigenous biodiversity.

Members will have a range of views about where property rights start and stop. I find it easy to understand why landowners would bristle when faced with regulations that tell them to protect physical structures for the enjoyment of the community at private expense. On the other hand, for reasons deeply intertwined with the history of colonisation and dispossession of land, I find it very hard to understand how anyone could claim to be compensated for rules designed to protect sites of significance to the original occupants of Aotearoa.

Of all the specified topics, biodiversity is potentially the most problematic. The Natural Environment Bill erects a goal of “no net loss of biodiversity.” I have set out my views on that goal in advice to the Select Committee.¹⁹ In short, there is no guarantee that the goal professed in the Natural Environment Bill of “no net loss” – however that is defined – is achievable or even coherent. The Bills as originally drafted meant that any rules in a proposed plan to protect terrestrial indigenous biodiversity may engage regulatory relief. Despite the changes at Select Committee, that core principle remains unchanged.

There can be no doubt that the bundle of property rights created from the earliest days of colonisation included the right to destroy biodiversity. It was regarded as an essential step in the creation of an agricultural economy. Taxpayers subsidised the activity as late as the late 1980s. By then, we had learnt a great deal about the cost of indiscriminate clearing and the protection of what was left became something all governments took an interest in. My own view is that the fragile state of much of our biodiversity suggests that before we destroy any more, we need to:

- take stock and ascertain the significance of what remains; and
- understand the consequences that removal of any of it would have beyond the boundaries of the property on which it is located.

We are not currently in a position to answer either of those questions. The Bill effectively reasserts a right to destroy biodiversity which, if curtailed, must now be compensated for by ratepayers. To ensure that money spent by councils goes towards protecting the most important biodiversity remaining on private land, some of the Government’s planned increase in spending on environmental information will urgently need to be spent on improving biodiversity information. In the meantime, whilst this information is being gathered, clear national direction will be needed to prevent the clearance of important indigenous vegetation.

The fact remains that local authorities with small rating bases, but significant biodiversity at risk, will be unable to afford to protect it all. Government funding to support biodiversity protection will be needed in order for some councils to meet any sensible biodiversity limits.

The ‘specified topics’ do not exhaust the areas in which property rights may be impinged upon. While the purpose of the Planning Bill references the ‘enjoyment of land’, the reality is that property rights remain significantly constrained. Notwithstanding the reversal of the presumption in section 11 of the RMA whereby, under the Planning Bill, subdivision is now permitted unless otherwise restricted by a rule or national standard, property owners will continue to find their ‘enjoyment’ limited and in some cases even further constrained. For example:

- The designations provisions in Schedule 5 provide enhanced powers for infrastructure providers to impinge on private property rights. For example, the ability for a designating authority to achieve an indicative location of a future designation through a regional spatial plan will inevitably have a blighting effect on affected properties.²⁰ Because such a notation on the plan is not a formal designation, affected landowners will have no recourse to remedies such as those provided by clause 53 of Schedule 5. Those protections are triggered only once a formal designation application is made, which could be years or even decades in the future.

19 PCE Advice: Biodiversity challenges. After the changes proposed in Departmental Report 3 updated PCE advice on these points was provided in the PCE Independent Adviser’s Report: Planning Bill and Natural Environment Bill. <https://pce.parliament.nz/publications/pce-advice-to-the-environment-select-committee-on-the-planning-and-natural-environment-bills>

20 Planning Bill, sch 5, cl 33.

- By allowing plan changes through the consent granting process, a consent applicant can undertake a plan change, but those who would have had standing to submit if it had been an actual plan change no longer have standing to participate unless the adverse effects threshold for notification is met.²¹

More generally, the overall picture of the regulatory impact of the new planning system on the enjoyment of land cannot be ascertained from the text of the Bill. Volumes of national instruments (policy direction and standards) will be necessary to implement the system, including the particularisation of the goals set out in clause 11. It is these that will determine, for the time being, whatever enjoyment of property rights there may be.

I would offer one further observation: one person's 'enjoyment' can be another person's loss of enjoyment. In most of urban New Zealand, we do not start with a blank sheet of paper. The restrictions imposed by zoning long ago have become internalised in property values. People have paid for dwellings in places with particular densities and particular characteristics and services (or their absence). Liberalising those restrictions may deliver greater 'enjoyment' for some while imposing a loss of enjoyment on others.

Trust, confidence and certainty of the system

The Bills require councils to appoint independent hearing panels for regional and local plans, but no such arms' length requirement extends to the preparation of national instruments. This is at odds with the power that will be exercised through these instruments. They will direct the system far more than the primary legislation does. If there is to be trust and confidence in the process for preparing national instruments, and certainty that they can be relied on as a stable base for the planning system, the Bills should include a mechanism where the process for new or significant amendments to national instruments is not led by the Minister.

I have endorsed the suggestion of submitters calling for mandatory technical advisory groups, a Board of Inquiry or some other independent assessment, for the purpose of hearing submissions and making recommendations on proposed national policy direction. Should the Minister decide to depart from those recommendations, they should, in the interests of transparency and accountability be required to formally set out the reasons for so doing.

This approach would have implications for the length of time required for the transition. I acknowledge the desire for a swift and timely transition to the new system, but spending a little more time at the outset will be well spent if the outcome means greater system stability. Requiring an independent body to hear submissions on national policy direction need not lead to endless delay. The fast-track approvals framework has shown that appropriate statutory timeframes can be imposed for consultation processes, assuring system efficiency while delivering robust outcomes.

The procedural safeguard I and many submitters have proposed was not adopted by the Select Committee. I consider that to be unwise. An orderly, well-conducted independent assessment would be of material assistance to any Minister wishing to assure people that national policy direction has been carefully considered. Process is as important as substance in the search for stability in the planning system.

²¹ Planning Bill, cl 144(2)(b).

The sequence of implementation

The sequence in which new planning documents are put to bed requires further attention. Reducing the number of planning documents in each region to just three – a regional spatial plan (RSP), a natural environment plan (NEP), and land use plans (LUP) is a huge step forward in terms of simplification and one of the reform’s most promising aspects. However, as currently conceived, the Bills require the completion of RSPs **before** the NEP. This doesn’t make sense. It suggests that decisions about the placement of key infrastructure corridors and the direction of urban expansion can be made without understanding the environmental constraints that exist.

The Select Committee was assured that RSPs would be rapidly revised to take into account NEPs and any limits or other constraints they contained. That seems a cumbersome way forward. Any sensible approach to spatial planning needs to be informed by information about the characteristics of the physical environment and any constraints that attach to the land. I have come to the view that RSPs and NEPs should be developed in parallel, to guarantee that a common data foundation exists and that one plan informs the other. LUPs are clearly secondary and subordinate in the scheme of planning documents. But RSPs and NEPs are of equal importance. Had the Government chosen to propose a single Act rather than two, the artificiality of these parallel arrangements could have been dispensed with. I have more to say on that below.

What changes to local government might mean for the Bills

The House needs to be aware of what the proposed changes to the structure of local government could mean for the management of the physical environment. The two Bills assign critical functions to regional councils, but local government reforms are designed to abolish them. Unitary councils seem to be the preferred outcome for these reforms and if they were to follow existing regional council boundaries, this reform would be able to be implemented. If, however, critical functions that need to be undertaken at the level of catchments – such as managing water, soil erosion and natural hazards – are fragmented, the risks to environmental management could be serious.

The recent reform of the so-called ‘three waters’ started with a proposal for four large entities and finished with 42. There are currently 17 regional or unitary councils (including the Chathams). That is plenty. Ending up with 25 or 30 unitary councils to appease parochial interests would be disastrous for environmental management. Should that prospect eventuate, we would need to go back to the catchment commissions of the post-Second World War era. Current local government reforms have been explained as being about abolishing regional councils, but to be coherent, they need to be understood as territorial authority amalgamation within coherent catchment boundaries, following a careful assessment of the functions that need to be discharged.

Implications for fast-track approvals

The original policy rationale for the Fast-track Approvals Act 2024 (and hence its title) was to speed up the approvals process for projects that met the statutory test. This reform presented an opportunity to incorporate lessons learned from the fast-track regime. In particular, how consenting processes could be effectively streamlined and the value of spatial planning. Assuming that the improvements from the fast-track framework have been incorporated into the Bills, it leaves little justification for the ongoing existence of a fast-track regime.

The remaining argument for the Act’s necessity appears to be that it continues to offer a ‘one-stop shop’ for approvals. However, amendments are recommended for the NEB to address the most commonly sought package of approvals, with the inclusion of a bespoke alternative process for Wildlife Act approvals that are associated with a natural resource permit. This is designed to increase the speed and efficiency of handling applications for NEB activities that have Wildlife Act impacts.²²

It seems that the rationale for the Fast-track Approvals Act is greatly diminished, and its ongoing existence on the statute books should be reconsidered.

22 MfE Department Report – Report 4, p.24.

Some final thoughts

For the second time in three years the House is being asked to pass dual Bills to replace the RMA. It is a process that, over the life of two governments, has consumed over seven years of officials' time and countless hours of commentary and critique from industry, local government, NGOs and professional communities that span law, planning and infrastructure.

The protracted nature of the process reflects the extraordinary complexity of what this legislation tries to facilitate and the inherently conflicting interests it cuts across. That is the nature of the beast – it goes to the heart of property rights in a democratic society that values both freedom of activity and a well-managed environment. Whether the legislation endures or invites a radical revisiting in the short term will depend on whether it correctly interprets the RMA's many critics – agreed in their condemnation but completely disparate in their preferred solutions.

There is some irony to be had re-reading the advice of the Expert Advisory Group. Here is what they had to say:

“We take a number of lessons from this history. We need a disciplined focus on a system design that achieves simplification rather than further complexity. We need to ensure the solutions we develop are within our collective capacity to implement well. And we need to build a system that can achieve broad and enduring consensus across society, so as to put an end to the “flip-flopping” of RMA reform that has meant long-identified solutions to issues have not been implemented.”²³

I do not think that the Bills before the House come close to providing the basis for a ‘broad and enduring consensus across society’. For that reason, I consider that the Bills would benefit from more consideration.

Again, we have been here before. In 1990, Sir Geoffrey Palmer ran out of time to finish his flagship reform before the approaching General Election. In a simpler, bi-partisan world, it was agreed that the Bills should be carried over to the next Parliament. The then Opposition reserved to itself the right to review the Bill, but agreed that so much effort had been expended that the legislation should be enacted in some form. When, following review, it came to its third reading in 1991, there was no division on the Bill. Parliament unanimously signed off. It was by no means a perfect creation. But that consensus may have been one of the reasons it lasted 35 years.²⁴ Members need to consider whether they have material that will be sufficiently long-lived. It really matters because everyone's lives, properties and businesses are at stake.

If Parliament were to allow more time by referring the Bills back to the Select Committee, I would nominate the following three matters for further consideration:

1. In my view, neither the previous government nor the current one has made a convincing case for two statutes. While one Bill would be simpler, two statutes could conceivably be made to work. But as currently drafted, these Bills simply add complexity and, potentially, confusion. If there is a shared goal of maintaining and improving the quality of the environment while streamlining procedures and enabling much more agile development, the House should take the time to get these Bills in better shape. Drafting Bills that genuinely work in tandem and in an integrated way would take time. I note that the Select Committee's specialist legal adviser, Bronwyn Carruthers KC, recommended that the purpose statement of each Bill should be explicit as to its relationship with the Bill's framework and its counterpart Bill.²⁵ I have suggested in my report to the Committee one way in which this might be achieved.²⁶

23 Blueprint for resource management reform – *A better planning and resource management system 2025* at [20].

24 Even then, it underwent 29 amending Bills and grew from 382 pages (22 July 1991) to 1,004 pages (as of 19 May 2026). The text has also been altered by at least another 145 statutes since 1991. While some amendment is inevitable, the world doesn't stand still.

25 Bronwyn Carruthers KC, 5 June 2026 at [7].

26 PCE Independent Adviser's Report: Planning Bill and Natural Environment Bill, 26 May 2026 at [18].

2. A clearer purpose or objectives for the proposed legislation would provide the basis for critical trade-offs up front. This would set up the legislation to provide a more robust framework for environmental limits, with the minimum standard of environmental protection set out. A failure to do so will signal that whereas in 1991 we could agree that certain environmental matters needed to be addressed, we are now unable to agree on anything that can be placed in primary legislation. I note that further time would enable the Government's first draft of its proposed national policy direction to be scrutinised before the legislation is settled. Innumerable questions from Select Committee members have been met with the response from officials that the answer will lie in secondary legislation. Looking at that draft could conceivably help MPs to reach a consensus on the primary legislation.
3. There should be a careful and comprehensive review of the extent to which matters have been left to ministerial discretion, both as to environmental impact and process. In particular, consideration should be given to the use of an independent body for the development of at least the first iteration of national direction and for any future comprehensive reviews. The Minister should be required to explain any deviations from the recommendations made by the independent body. The Bills should also be more prescriptive about the criteria the Minister must consider when making decisions and limit the extent to which the Minister can intervene in delegated processes and decisions.

Finally, I would like to acknowledge the work of the Select Committee. Its members included a former regional council chair, former regional and city councillors and a resource management law expert. Together with the life experiences of its other members, it would have been hard to put together a better cross section of MPs to examine this legislation. But the complexity and scale of these Bills is daunting and the timeframes under which the Committee has worked have been punishing. These have also been of real consequence for Parliamentary Counsel. If further amendments surface in the Committee of the Whole House, it will not be a reflection on the law drafters.

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Te Kaitiaki Taiao a Te Whare Pāremata

Appendix

Do purpose clauses any longer serve a purpose?

The evolution of purpose clauses between the Resource Management Act 1991 and the two Bills before the House in 2026 provides a fascinating insight into changing views about the value of purposes clauses and the unravelling of any consensus there may have been about the need for environmental protection.

Part 2 of the RMA has remained largely unchanged since its enactment. It is worth re-reading sections 5, 6 and 7:

5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:
- (f) the protection of historic heritage from inappropriate subdivision, use, and development:
- (g) the protection of protected customary rights:
- (h) the management of significant risks from natural hazards.

7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

- (a) kaitiakitanga:
- (aa) the ethic of stewardship:
- (b) the efficient use and development of natural and physical resources:
 - (ba) the efficiency of the end use of energy:
- (c) the maintenance and enhancement of amenity values:
- (d) intrinsic values of ecosystems:
- (e) *[Repealed]*
- (f) maintenance and enhancement of the quality of the environment:
- (g) any finite characteristics of natural and physical resources:
- (h) the protection of the habitat of trout and salmon:
- (i) the effects of climate change:
- (j) the benefits to be derived from the use and development of renewable energy.

What is immediately striking is the clearly environmental focus of the provisions. Very little was said about economic development, not because it was unimportant but because this was a statute designed to deal with the *consequences* of resource use, not its encouragement. The statute was very much a creature of its time. In the wake of a neo-liberal economic revolution, it wasn't believed to be the role of the state to go around legislating and regulating for economic growth. Economic activity and resource use were a matter for the market. Regulating the environmental *consequences* of that activity was the appropriate role of the state.

Obviously, environmental regulation isn't required in the abstract and section 5(2) justified the regulatory regime in terms of *enabling* people and communities to provide for their social, economic and cultural wellbeing. But the Act made no claims that Parliament could legislate for economic development any more than it could legislate for harmony and happiness. It was asserting the need for regulation because there are real consequences (or externalities) from economic activities that cross the boundaries of adjoining neighbours and can damage common pool resources like air and water.

Tort law can, in principle, handle many cross-border frictions, although the transaction costs can be high and market power can make access to conflict resolution very costly. Similarly, the allocation of property rights to common pool resources or the creation of tradeable permits in rights to pollute can address more complex environmental pressures. The nitrogen trading scheme at Lake Taupō is an example. The problem with mechanisms such as these is that they require huge amounts of information that can be expensive and the initial allocation of rights can be controversial.

For better or for worse, New Zealand has largely relied on the regulation of environmental effects, and the RMA was a very clear assertion of that. The purpose was, necessarily, broadly stated but its environmental thrust was unmistakable. And when it came to providing further guidance on where those exercising powers under the Act should focus (in clauses 6 and 7), the list of topics was again heavily directed to the public environmental space. Economic activity is mentioned, but in relation to the *efficiency* of resource use or the inappropriate nature of subdivision.

Economic historians are best placed to speculate on why market liberalisation resulted in the rather striking separation of economic and environmental management tools. And volumes could be written about the unintended carry-over of much regulatory wiring from the prior world of town and country

planning. But a provincial economy undergoing a major correction following the removal of agricultural subsidies and a population that barely grew during the 1990s meant that environmental pressure was subdued and regulatory activity modest. As growth and population returned in the early years of the twenty-first century, the need for regulation – and reaction to its costs – regained public attention which, unsurprisingly, led people to question whether the purpose of the RMA was compatible with growth and development.

The report of the review panel, led by Hon Tony Randerson KC in 2020, provides a useful summary of the protracted debate about the utility of the Act's purpose clause over the preceding 20 years. Notable was the proposal of the 2012 Principles Technical Advisory Group to include development objectives in sections 6 and 7.²⁷ The diagnosis seemed to be that development needed a statutory mandate to be considered. Randerson's review went some distance towards adopting that reasoning, but the ensuing replacement legislation still made use and development of the environment *subject* to protecting the health of the environment.²⁸ However, it gave use and development new profile through the enactment of *outcomes* on whose realisation the achievement of the Act's purpose depended. These included, in subsections 6(9) and (10):²⁹

6 System outcomes

(1) The purpose of providing system outcomes in subsections (2) to (13) is to establish what must be achieved at the national and regional levels to ensure that the purpose of the Act is achieved.

...

(9) There are well-functioning urban and rural areas that are responsive to the diverse and changing needs of people and their communities in a way that promotes—

- (a) the use and development of land for a variety of activities, including for housing, business use, and primary production; and
- (b) development capacity, in relation to housing and business land, being available well ahead of expected demand; and
- (c) adaptable and resilient urban forms that provide access for people and their communities to and between social, economic, recreational, and cultural opportunities.

(10) Infrastructure is provided in a timely and ongoing manner to promote the well-being of both present and future generations.

...

And in section 7, providing for outcomes, many of the seeds of the current Bills before the House were sown. In short, the wheel had turned from legislating not just for the side-effects of activities but trying to secure particular outcomes from those activities.

The work of the Expert Advisory Group on whose advice the current Bills are based went further than its predecessor and decided to jettison the idea of a purpose clause that was anything more than descriptive – in the case of the NEB, establishing “a framework for the use, protection and enhancement of the natural environment.” It noted that, “we do not think conflicts between environmental protection and development can be adequately resolved through a simple statement of purpose”.³⁰ That of course had never been the purpose of the RMA's purpose clause. But protracted political – and legal – debates about the tension between the economy and the environment put the purely environmental purpose of the RMA in everyone's sights. It became a convenient excuse for all manner of costly regulatory failures.

27 See the report of the Principles Technical Advisory Group, 2012, p.52–54.

28 Natural and Built Environment Act 2023, s 3(2).

29 As above, s 6.

30 Blueprint for resource management reform – *A better planning and resource management system 2025* at [61].

The upshot is that the House is being offered purpose clauses that serve no purpose beyond blandly describing the fact that Parliament has decided to legislate for a framework.³¹ It is interesting to test the clause against the guidelines of the Legislation Design and Advisory Committee. The Committee proposes that “the objective of a bill is its backbone” and that “achieving the policy objective should drive the design of the legislation and all the detailed decisions made when drafting.”

My observation is that the proposed purpose clauses provide no backbone at all. The backbone is left to Ministers to develop by way of regulation. In place of the 2023 Act’s outcomes, we have goals. But even these provide no backbone, since they can be re-arranged like a Rubik’s cube in almost unlimited permutations. While it is true that most of the goals in the Natural Environment Bill relate to the environment, the very first of them is directed to *enabling the use and development of natural resources* and the words ‘within environmental limits’ have been removed. The duty to achieve any of them is no more onerous than ‘seeking to achieve them’ – which is reasonable given that neither legislators nor governments can achieve outcomes in respect of which so many factors are beyond their control.

Ministers might seek to particularise and reconcile the various goals in a way that is protective of the environment – or they might not. The framing of the Bills is an implicit admission that there is no longer a finite, objective list of environmental externalities and challenges that must be addressed. The RMA managed to achieve a consensus on what the substance of those matters encompassed. It wasn’t perfect and could easily have been amended. Instead, we have moved from protecting the environment to trying to legislate for environmental and developmental outcomes that are inherently conflictual. It is that which has seen the purpose clauses shrivel to the point that they do little or no service.

The absence of a substantive purpose, and the delegation of the definition and achievement of the listed goals to the Minister, is an eloquent admission that whatever consensus was forged 35 years ago in enacting Part 2 of the RMA, has long since dissolved. Far from an enduring consensus, we face an era in which government intervention in both the economy and the environment is the new normal and likely to be subject to frequent shifts as regulations are amended to meet the political demands of the moment. It is likely to be a turbulent future – with the environment itself intervening to force the hand of governments. There seems for the moment to be no enduring consensus in sight.

31 The attempt to remove any substantive content from these purposes clauses is, of course, still subject to s 10(1) of the Legislation Act 2019, which provides that the meaning of legislation must be ascertained from its text, in light of its purpose, and its context. Ultimately, it will be for the courts to determine how the purpose provisions of these Acts will assist in their interpretation.