

Submission to Environment Committee

Natural and Built Environment Bill

5 February 2023



1. Timaru District Council thanks the Environment Committee for the opportunity to submit on the Natural and Built Environment Bill.
2. This submission is made by the Timaru District Council, 2 King George Place, Timaru. The submission has been endorsed unanimously by the Council.
3. The contact person for the submission contact is Hamish Barrell (District Planning Manager), via hamish.barrell@timdc.govt.nz.
4. Timaru District Council wishes to speak to its submission.

Introduction

5. There is a broad professional consensus that the Resource Management Act 1991 (RMA) is complex due to changing circumstances and the complexity of amendments made over time.
6. Timaru District Council (TDC) recognises the need for reform to the RMA, however there are several aspects of the proposed Bill that we believe require review and amendment and/or clarification.
7. TDC supports submissions made by the Local Government New Zealand (LGNZ), the Canterbury Mayoral Forum, and Taituarā.
8. Resource Management rules in the Timaru District are currently outlined in the District Plan, regulating what can be developed or built within zones. The District Plan determines resource management issues, objectives, policies, methods and rules for the District over the next 10 years. The plan links directly to the development and improvement of the District for the wellbeing of its residents.
9. Timaru District is made up of diverse pockets of environmental, urban, rural and productive land that reflects the diversity of its people.
10. This Bill, and the Spatial Planning Bill, seek to balance the need for growth with the development of regions, and the responsibility to ensure the environment is improved and restored for future generations.
11. The NBE seeks to provide each region with a Regional Planning Committee (RPC) who will consider plans using the two parts of the NBE, and shifts focus away from

managing adverse effects towards promoting positive outcomes. The RPC must be appointed for each region as a statutory body (Clause 100).

12. The NBE provides that the RPC will decide the size of the committee. The RPC will need to consider the size of the committee and make sure that its size reflects one that is able to make effective decisions and efficiently function.
13. While the RPC considers plans, local authorities will still monitor and enforce duties as set out in Part 2, (Clause 643) with an extension of the enforcement functions proposed.

Tensions between NBE's purposes, system outcomes and decision-making principles

14. The two purposes of the NBE are set out in Clause 3:
 - 1) to enable the use, development and protection on the environment, and;
 - 2) recognise and uphold te Oranga o te Taiao.
15. TDC raises questions around the juxtaposed positions of the two parts of the purpose of the NBE (clause 3).¹ The parts have potentially competing interests; one to enable use, development, and protection of the environment and the second to uphold and recognise te Oranga o te Taiao.
16. In addition, the system outcomes prescribed in Clause 5 of the NBE could have unintended or even cross-purpose outcomes. For instance, such as need to protect the coastal environment (Clause 5(a)(i)(B)) and that public have access to coastal areas (Clause 5(h)). These sub-clauses primarily focus on urban living (where most rate payers interact with the RMA). The focus on good urban outcomes has to include developing urban areas that attract and retain people, enable the creation of jobs and promote the wellbeing of the community.
17. We believe it is difficult to envisage how this clash will be successfully navigated in practice. TDC is concerned with a lack of clear direction of how these purposes should be interpreted and applied, and seek that the Bill is amended to provide this.
18. It is critical that this guidance is robust, clear and available so that the legislation can be efficiently applied. Court processes will clearly be necessary in some circumstances, but should be minimised to prevent the costly mistakes and delays of the past, and avoid repeating the failures of the RMA.
19. Consistent with other parties' submissions, TDC is concerned at the need for clear definitions of terms used in the NBE. While a number of terms are defined under Clause 7, it is critical that these are robustly defined to prevent the ongoing and expensive litigations that have plagued the RMA.

¹Comments reflective of the Canterbury Mayoral Forum Submission on Natural and Built Environmental Bill.

Canterbury is a complex, diverse region – will the Regional Planning Committee be sufficient to work effectively and represent the region?

20. The Regional Planning Committee (RPC) for the Canterbury region will potentially be the largest in New Zealand by area, and the most geographically and economically diverse.
21. Further, the Bill allows for each local authority to have a representative on the RPC. We deem that it is highly likely that every local authority will want a seat at the decision-making table to ensure that their perspective is factored into the final outcome. In Canterbury's case, there are 10 local authorities. When combined with iwi representation requirements, there may be more than 20 members of the Committee. We view this membership as likely to be too large and unwieldy to work effectively.
22. As a result of these, TDC considers that a future Canterbury RPC is probably unlikely to adequately represent the interests of local communities particularly well. This view is reinforced by unclear references in the Bill to its composition being derived upon the 'desirability of applying some weighting' to population (Schedule 8, Part 1, Clause 3 (2) (d)).
23. The needs of rural areas such as the Timaru District are not likely to be effectively met if the RPC's membership or voting is weighted according to population. In other words, what is considered beneficial for larger population bases will be more likely to be approved or prioritised, at the potential detriment of other areas of the region.
24. To be clear, we do not oppose the concept of regional plans entirely. We believe that regional plans (and regional spatial strategies) may work for some regions more effectively than others. Similarly, they will not be suitable for the circumstances of some regions. Their creation should not be at the detriment of local decision making. The key litmus test should be whether the efficiency gains can be created without the loss of meaningful local decision making in planning.
25. Whilst TDC acknowledges that membership or voting based on population is normal, this is another reason why the Timaru District is unlikely to be well served by these reforms. TDC advocates for regions to be given the opportunity to form sub-regional RPCs to ensure that sub-regional priorities are given effect to.
26. The legislation's preference for environmental outcomes over urban outcomes is reflected by the System Outcomes, which heavily reference environmental values but say nothing about good urban design. Urban living (which is where most ratepayers interact with the planning system) is confusingly tied in clause C, and rural living, both concepts 'sandwiched' between other outcomes (a) through to (i).
27. The decision-making principles focus solely on the Minister and RPC mandatorily considering aspects on the environmental factors within a short time frame will be detrimental for the planning of wellbeing of residents. TDC advocates strongly for the role of local government to enhance the well-being of its residents.

28. The concept of a Statement of Community Involvement, and what influence it may or may not carry, has not been tested. Because Statements of Community Involvement are likely to differ between different parts of Canterbury, the legislation should provide a mechanism for these to be standardised.

Loss of local government viability

29. Local government is currently facing major changes through the resource management reforms, 3 Waters reforms and Future for Local Government reforms. TDC holds concerns about the speed of which these suite of reforms interact with each other and will create major changes for the role of local government. It is prudent that careful, considered, cross referenced considerations be given to the speed of the introductions of these reforms.
30. In our view, the cumulative effect of the government's reforms (including Three Waters) makes it likely that some territorial authorities will become financially unviable. The provision of water services and planning services constitutes a considerable proportion of the funding streams of smaller territorial authorities; their purpose and justification for their existence will be significantly undermined, and we believe it is likely that they will be forced to amalgamate with other territorial authorities and lose true local government representation. The reforms do not create amalgamations, but their effects likely will.
31. We note that the reforms could likely create a negative wellbeing effect to TDC officers who are working currently to capacity. As found in other areas of local government and other industries across New Zealand, there is currently difficulty in sourcing specialist staff. TDC has an indelible duty of care to ensure staff are not 'burnt out' or affected by stress due to high work-loads.
32. As mentioned earlier, Sub-clause C of System Outcomes (section 5) is also unusual in seeking to provide an equivalent outcome for both rural and urban populations, whereas the focus is presumably on urban areas where most of the population resides. The arrangements are likely to result in an over-emphasis on environmental outcomes thereby stymieing urban and rural development. This combined with uncertainty over how giving effect to the principles of the Treaty of Waitangi are supposed to be applied in any given context and a general lack of clarity on priorities across the system sets the system up to fail. Subsequent national direction may address this. However, being unclear as to which outcomes carry priority sets the system up to unrealistic expectations from the onset which will likely derail the laudable intentions expressed by the Minister.
33. TDC supports frameworks that enable local authorities to share resources to become more efficient but allow decision making to remain at the local level.

Loss of local control in planning decisions within their jurisdictions

34. District Plans set by TDC reflect local knowledge and local understanding of the natural and built environment. This includes where there are potential risks to the environment through degradation and disaster.
35. Under legislation, TDC must give effect to the Regional Spatial Strategies (RSS) through the Long-Term Plan. TDC has concerns that this provision could effectively amount to an undemocratic blank cheque, whereby the District is issued with commitments (financial and otherwise) without them having had adequate input from the local communities affected by them. We seek clarification on this point, and further information about the protections that will be provided to local authorities to prevent or mitigate such issues.
36. TDC affirms the role of local government as a major actor in the creation of vibrant local communities and in the managing the local environment. With creation of an RPC that may not physically sit within the TDC region, we raise our concern that the decision-making process is too far removed from the communities that will experience the result of their decision-making.
37. Further, we note that the RPCs are, in their proposed form, not directly democratically accountable. Elections are a valuable tool which allows residents of a district to endorse or amend directions and plans. The RPC does not have this direct representational accountability within its framework.
38. Timaru District has had the foresight to invest in its own future through its bespoke District Plan review process. The ongoing review will update the plan to meet the current needs of our district, meet legislative requirements, and address some of the current difficulties with the RMA.
39. The District Plan will need to be in effect for at least 10 years to effectively realise its benefits. Therefore, if the Bill proceeds, TDC requests to be placed in tranche 3. TDC does not support the Canterbury region being a trial region.

Cost and complexity

40. The cost of implementation of the new Acts (assuming that they pass the House) places a disproportionate financial burden on local authorities, who are already facing uncertainty through Central Government reforms. First tranche regions involved in the trials will be provided funding, but this has not been confirmed for the second or third tranches. As stated, the Canterbury region is complex and diverse and not providing funding for further tranches further financially burdens this region. We recommend that funding be provided on a 'needs basis' to support all regions to implement RPCs, regardless of their tranche.
41. The RPC is not the only committee required to be created under the reforms. Clause 32 (NBE) and 42 (SPB) provides that the RPC should establish subcommittees, cross regional committees and a Fresh Water subcommittee, which will further add costs and complexity.

42. TDC requests more information about the potential funding requirements for these subcommittees, including funding directly from central government for any major subcommittees.
43. The Bill allows for the consenting of the plans to be undertaken by Council. TDC questions the complexity of this tiered approach and whether it will result in a system than is more cost-effective and easier to navigate than the current arrangements.

Additional comments

44. Although not explored deeply in the original Randerson Report, the split between the Spatial Planning Bill and Natural and Built Environment Act is artificial and flawed. It would be preferable if urban housing (town planning) and environmental aspects were kept separate, as is the international benchmark in almost every other country. The intention to address everything in an integrated way while again commendable and well intentioned will in TDC's view set the reform up for the same sorts of eventual problems experienced by the RMA.
45. Another option would be to bring in the new consenting and compliance and enforcement provisions proposed under the NBE as TDC has a general level of comfort with these, but consider holding off while the NBE purpose and principles, regional spatial strategies and plan making provisions are re-worked to better address sustainable urban form and local decision making processes.
46. TDC requests the Bill includes increased support and funding for iwi and hapū to support participation in the process from implementation of the RPCs through to ongoing development and capacity for representation to achieve the outcomes of the reforms.
47. TDC supports the Amendments requested in the Canterbury Mayoral Forum submission, appendix 1.
48. TDC encourages the government to ensure that these resource management reforms receive cross-party support.

Summary of recommendations

49. Provide regions with the ability to create sub-regional RPCs.
50. Provide guidance on how the competing purposes and system outcomes should be interpreted and applied.
51. Provide clear definitions of terms.
52. Adequately fund and resource all tranches.
53. Clarify funding arrangements for sub-committees.

54. Provide a mechanism for the standardisation of Statement of Community Involvement.
55. That the government consider the content and timing of this reform within the broader context of other reforms to the local government sector, with a specific focus on ensuring that the sector has the capability to absorb all of the reforms without meaningful disruption to business as usual activities and levels of service.

Conclusion

56. Thank you again for the opportunity to submit on this Bill.
57. Please do not hesitate to contact Hamish Barrell via hamish.barrell@timdc.govt.nz with any questions you may have.

Ngā mihi

A handwritten signature in blue ink, appearing to read 'Nigel Bowen', followed by a small dot.

Nigel Bowen

Timaru District Mayor