



Briefing for Incoming Minister for the Environment,  
***Hon Penny Simmonds*** and  
Minister for Resource Management Reform,  
***Hon Chris Bishop***



# ONE

## Retain the positive elements of the NBEA and SPA

The Government has clearly signalled its intent to repeal the Natural and Built Environment Act (NBEA) and Spatial Planning Act (SPA) before Christmas and continue with environmental management under the Resource Management Act (RMA). Beyond that, the pathway for RM reform is less clear. We would welcome the opportunity to discuss 'what's next' with you, as you embark on your reform agenda.

EDS has significant expertise in RM reform. Between 2017 – 2020, we undertook a multi-year research project on reform of the RMA. It identified many problems that needed to be fixed, and offered alternative pathways that could be pursued. The published outputs from that work were required to be considered by the independent Randerson Panel. EDS also examined the Natural and Built Environment and Spatial Planning Bills in detail and produced an extensive submission on them, identifying positive aspects as well as things that required change. We have continued to examine the pros and cons of the new laws and would welcome an opportunity to discuss how future RM reform might progress in a positive direction.

There is broad consensus that the RMA is fundamentally broken. While the NBEA and SPA are not perfect, many aspects are expected to achieve the outcomes that we understand the Government wants:

- 000 Fewer and clearer plans to simplify the planning system
- 000 Faster plan-making processes
- 000 Fewer consents
- 000 A focus on outcomes, including for housing and infrastructure
- 000 More certainty for developers through use of environmental limits
- 000 Greater strategic planning for infrastructure and urban growth
- 000 Fast track process for renewables and infrastructure



We encourage you to identify and retain positive aspects of the NBEA and SPA. Those laws have been subject to extensive consultation and professional input (not least the contribution of the Randerson Panel), which provide an evidenced-based foundation for further policy development. They can be 'panel-beated' to address the Government's concerns around things like Māori concepts and engagement models, centralised decision-making and regional planning committees.

### **The Spatial Planning Act**

The SPA is demonstrably not broken or in need of repeal. The Act sets up a formal spatial planning process at a regional level to align strategic land use decisions with the funding and planning of development. It is critical to housing provision and addressing the infrastructure deficit.

The SPA provides more certainty about what should (and should not) go where, reducing red tape and the re-litigation of fundamental questions at multiple stages of the planning process. Repeal of this Act should be complemented by changes to the RMA that allows regional policy statements (or some other mechanism) to provide a similar spatial planning function.

Adopting an entirely different approach, based on enjoyment of property rights, is not a good idea and is unlikely to endure across different governments, therefore creating more long-term uncertainty for developers. Respecting private property rights, while one important element of environmental law, is not itself an effective guarantor of the public interest in a healthy environment. Going down this route would make New Zealand an outlier internationally.

A split-law approach (separate acts for environment and development/planning) has also been mooted by the Government as a possible way forward for RM reform. Integrated management of land and other resources is critical to effective outcomes for both development and protection of the environment. While a single environmental law is our preferred approach, next year we will be examining international jurisdictions that have separate environment and development laws. We would be happy to discuss our findings with you.

***We encourage you to identify and adopt the many positive aspects of the NBEA and SPA as a basis for change, rather than starting from scratch.***

## TWO

### Direct new projects of regional and national significance away from areas with high environmental value

We understand that early in its term the Government plans to introduce 'fast track' consenting legislation, possibly in combination with setting up a National Infrastructure Agency. The NBEA contains fast track provisions already, which are an improvement on the 'shovel ready' provisions of the Covid Recovery legislation. We encourage you to look closely at those provisions as the basis for any new fast track legislation.

Key to enabling regional and national projects of significance is constraints mapping, which identifies areas where development has an easier consenting pathway. Under this scenario, development is directed into places with low environmental value, reducing conflict, delay and expense. We are highly supportive of this approach, which would provide greater certainty for all parties.

The SPA sought to achieve this and could be amended to serve the Government's policy objectives.



*Constraints mapping is urgently required for developer certainty and environmental protection.*

Constraints mapping is particularly important for protecting areas of high biodiversity. Nature is a critical defence against increasing climate change impacts and we must take every measure to protect it.

"A rich biodiversity and resilient ecosystems have the potential to shield us from the worst consequences of climate change. They absorb some greenhouse gases and act as a buffer against extreme weather events and other climate impacts, protecting houses, crops, water supplies and vital infrastructure. Conversely, the continuing loss of biodiversity and degradation of ecosystems will weaken their ability to provide benefits and protection to the extent that we risk reaching points of irreversible change. Human activities are undeniably driving these losses. **We are approaching environmental tipping points in many areas, beyond which large and often irreversible changes will be unavoidable.**" Our Atmosphere and Climate Report 2023

***We urge you to ensure that fast-track legislation does not come at the cost of environmental values.***



## THREE

### Continue with implementation and development of national direction

Several policy instruments that are in various stages of development or implementation under the RMA should continue, irrespective of what happens to the NBEA and SPA.

#### ***National Policy Statement for Freshwater Management 2020 (NPSFM)***

The NPSFM had its genesis under the previous National government. Its central concept of Te Mana o te Wai is now being implemented via bespoke freshwater plans. Councils are well advanced in that process, with some having already notified their plans. We are concerned that “rebalancing” of the Te Mana o te Wai hierarchy is being contemplated. Recent reporting on freshwater quality shows continuing decline across several attributes. Freshwater plans, which prioritise the health and well-being of freshwater above other uses in accordance with Te Mana o te Wai, have the potential to turn that around. We strongly oppose any weakening of the NPSFM.

#### ***National Policy Statement for Indigenous Biodiversity 2023 (NPSIB)***

The NPSIB has been promulgated after a long process of engagement and compromise that started under the previous National government. Key to its implementation is identification of significant natural areas (SNAs). Aotearoa New Zealand is a global biodiversity hotspot with some 4,000 endemic species threatened or at risk of extinction. Much of this biodiversity is found on private land. The NPSIB is critical to ensuring that landowners appropriately manage effects on this flora and fauna. We strongly oppose changes to the NPSIB that would stop implementation of SNA protections. Instead, support for landowners could be forthcoming to assist in implementation.

#### ***National Policy Statement for Renewable Electricity Generation 2011 (NPS REG)***

We support the Government’s intentions to update the NPS REG. We recognise that renewables are a key part of our transition to Net Zero 2050 and they need a supportive consenting pathway. While it is appropriate that the updated NPS REG is enabling of new generation, it needs to safeguard areas with high environmental values. This could be achieved by constraints mapping as previously described, and by ensuring that the new instrument does not allow for trade-offs between renewables and areas of high value e.g., SNAs.

#### ***National Policy Statement on Natural Hazard Decision-making (NPS NHD)***

Development of a NPS NHD is a positive step forward and this work should continue. There is an urgent need to stop building in high natural hazard risk areas, which only serves to exacerbate risk and future cost. Councils need clear and direct national support to achieve this outcome, which a strong NPS NHD has the potential to do.

#### ***New Zealand Coastal Policy Statement 2010 (NZCPS)***

The NZCPS is a longstanding part of the national policy landscape. Its ‘avoid policies’ have successfully enabled appropriate development in the coastal environment (e.g., the Waipipi Windfarm on the South Taranaki Coast), while stopping activity that is not. We strongly support its ongoing implementation and oppose any dilution of its protective policies.

#### ***New policy on offshore wind***

We are also supportive of broader policy development designed to facilitate the deployment of offshore wind. Offshore wind has the potential, if done well, to have a lower environmental impact than onshore renewables. Separate permitting systems are required (as with Crown owned minerals) to assess commercial feasibility and environmental impacts, and the interaction between those frameworks will be important. Environmental considerations need to inform initial commercial feasibility decisions, even if detailed assessments of effects are only scrutinised under subsequent environmental permitting processes.

The process of collating all national policy into a single, integrated piece of national direction (currently framed as a National Planning Framework under the NBEA) should continue irrespective of what happens to the NBEA itself. The ad hoc, reactive way in which multiple pieces of national direction have been created over the years has led to a system that is increasingly uncertain, conflict ridden, difficult to implement for local authorities and hard to navigate for the public.

***We urge you to leave the NPSFW, NPSIB and NZCPS alone, and to continue development of other important pieces of national direction. Work should continue turning all these into a more cohesive package of national direction.***

## FOUR

### Establish a biodiversity incentives scheme

The Ministry has recently consulted on a biodiversity credit scheme to facilitate the flow of economic resources to landowners undertaking conservation activities. Some form of biodiversity incentive package is well overdue in this country and a mechanism that enables this financing at scale has enormous potential. It could, if designed well, turn the tide on biodiversity loss. It would also complement implementation of the NPSIB and reward landowners for their hard work regenerating and protecting indigenous biodiversity.

***We encourage you to support development of a biodiversity incentives scheme which would reward landowners for the biodiversity good they provide.***

## FIVE

### Continue development of a Climate Adaptation Act

The costs of adapting to climate change are escalating. Yet, the current system lacks the tools needed to effectively deal with the evolving situation, particularly when it comes to managed relocation. The Select Committee Inquiry into Climate Adaptation is necessary to track a way forward and we ask that you to let that process continue.

EDS is currently in the final stages of a major project involving several business partners looking at what a new Climate Adaptation Act could look like. We would welcome the opportunity to discuss our findings with you.

***We recommend that you continue the current work programme on a new Climate Adaptation Act.***

## SIX

### Institutional Reform

Alongside legislative RM reform, institutional reform will be necessary. Implementation failings can undermine or even defeat the positive intent of legislative change. Implementation challenges under the RMA have arisen partly from failings of institutional design, whether that be funding constraints, inappropriate siting of functions, excessive politicisation, inefficiencies, or a lack of meaningful checks and balances.

EDS is currently undertaking a policy project looking at the future of local government and of the Environmental Protection Authority from an environmental perspective, which will also touch on the broader institutional arrangements that need to be changed. We will be publishing our findings in 2024 and would welcome the opportunity to discuss them with you. Indications so far are that the role of the EPA should be strengthened to improve environmental outcomes, increase efficiency, and ensure proper oversight of councils where nationally important outcomes are at stake. Local government itself also requires a degree of structural reform. The Environment Court is also vital and should be strengthened rather than eroded.

***We recommend that any RM legislative reform programme be accompanied by a parallel process to reform our core environmental institutions, including local government and the EPA.***

We look forward to working with you during the coming term of government.

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