



The Planning Bill and Natural Environment Bill

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“... the cumulative effect of 2 or more such effects
create effects that are greater than less than minor”
(Natural Environment Bill, cl 15(1)(b))



Context

- We have the highest proportion of threatened or at-risk indigenous species in the world (over 4,000).
- More than half of our rare ecosystems are at risk of collapse.
- Ninety percent of wetlands have been lost since pre-human settlement.
- Forty six percent of groundwater monitoring sites failed to meet drinking water standards for *E.coli* at least once between 2019 and 2024.
- Between 2016 and 2020, 55 percent suffered from moderate or severe organic pollution.

What's different?

- It's not completely revolutionary, but quite a bit... today I'll look at six key things.
- Split legislation
- A narrower scope
- Different purposes and principles
- Environmental limits
- Regulatory relief
- Standing

We now have two statutes. How does that work?

- Planning Bill/land use plans = RMA district council functions/district plans (roughly)
- Natural Environment Bill/natural environment plans = RMA regional council functions/regional plans (roughly)
- These, alongside spatial plans, are stitched together into combined regional plans
- There's some overlap still (eg natural hazards are dealt with in both)
- But some functions have been clarified (eg biodiversity is only considered under the Natural Environment Bill)
- Controls on land use can be imposed under *both* Bills for different reasons.

We now have two statutes. How does that work?

- Where do the Bills interact procedurally?
- National direction – “to help resolve conflicts between the goals” of the Bills
- Spatial plans - to “enable integration at the strategic level of decision making” across the Bills
- Horizontal influence between natural environment plans and land use plans is weak. A lot will depend on how councils work to harmonise their ‘chapters’.
- Consenting – the statutes essentially become separate boxes?
- Mechanically there’s a huge amount of cross-referencing.

Scope

- The scope of effects able to be considered has been narrowed under the Planning Bill.
- It now excludes things like the internal and external layout of buildings; trade competition; retail distribution effects; the viability of a project; visual amenity; the socio-economic status of residents; private views; landscapes other than outstanding ones, heritage other than significant historical heritage, and natural character around water bodies except if it's 'high' natural character.
- Some are sensible, but there are concerns....

Scope

- Landscape and visual amenity – it's not just about the colour of someone's door
- Retail distribution effects – cities are communities, not just markets
- Views from public places?
- What does 'well-functioning' rural and urban spaces include (compact urban form)?
- Building orientation and design – is there not some public interest?
- Greenhouse gas emission reduction? Missing in action.

From purpose and principles to goals

- Sustainable management is dead. Long-live what exactly?
- The Bills' purposes are inert.
- We now have a shopping list of goals.
- They're mainly relevant to national direction.
- We're then in the 'funnel'.

From purpose and principles to goals

- The Planning Bill has 9 goals
- Stopping land use unreasonably affecting others
- Enabling growth
- Well-functioning urban and rural areas
- Competitive land markets
- Infrastructure planning
- Public access to water bodies
- Protecting areas of high natural character in water bodies from inappropriate development
- Outstanding natural features and landscapes
- Significant historic heritage
- Natural hazards
- Provide for Māori interests

From purpose and principles to goals

- The Natural Environment Bill has 6 goals
- enable the use and development of natural resources within environmental limits
- safeguard the life-supporting capacity of air, water, soil, and ecosystems
- protect human health from harm caused by the discharge of contaminants
- achieve no net loss in indigenous biodiversity
- manage the effects of natural hazards
- provide for Māori interests

From purpose and principles to goals

- It's not clear how the goals of the Bills are to be resolved.
- Even the NEB has internal conflicts.
- There's heavy reliance on national direction and spatial plans, and there's no hierarchy of goals.
- The NEB even allows national direction to decide the act under which specific effects are managed!
- The 'sealed box' of the Planning Act may also reduce the potential for synergistic benefits of land use planning (eg green space, nature based infrastructure).
- An effects management hierarchy that's not a hierarchy? National direction has the ability to determine the order in which effects are avoided, minimised, remedied, offset or compensated.

From purpose and principles to goals

- Decision makers must “seek to achieve” the goals, which is quite different from the RMA’s “recognise and provide for” that applies to nationally important environmental protections.
- A get out of jail free card – the ability to elevate some goals over others, or even add new ones?

Will environmental limits save the day?

- There's a dedicated framework for limits in Part 2 of the Natural Environment Bill. A lot of it looks good on the surface.
- The 'purpose' of limits is to safeguard life-supporting capacity.
- Limits *must* be set for air, soil, water and indigenous biodiversity.
- National standards must enable resource use only *within* limits. Spatial plans must be consistent with environmental limits and map out the 'spatial implications' of limits.
- Natural environment plans must ensure limits are complied with.
- Regional councils must avoid breaching a limit, and if a breach is likely then it has to take some kind of action, such as preparing an action plan, changing its regulatory plan or reviewing consent conditions.
- Private plan changes can be rejected on the grounds they would be inconsistent with limits.
- Consents cannot be granted if it would breach a limit.
- And councils must report on any breaches of limits.

BUT

Will environmental limits save the day?

- A distinction is being made between limits for human health and limits for ecosystem health. We likely won't have national bottom lines for the environment. It's up to the regions...
- Councils are directed to consider environmental protections alongside “the needs or aspirations of communities for the economy”. Is that really a limit?
- Councils can breach a national limit if they can justify it.
- Limits for indigenous biodiversity don't explicitly have to protect threatened species.
- The regulatory toolkit is pretty constrained when it comes to defending limits.
- Infrastructure with public benefits can breach limits.

Will environmental limits save the day?

- What if a limit is already infringed, or is about to be infringed?
- A cap on resource use is a first preference.
- But if that's not feasible.....
- Time for an action plan.
- Action plans are specifically not allowed to include regulatory controls on how land is used unless 'non-regulatory measures' are insufficient.
- Timeframes for achieving change (getting back above limits) are a bit woolly and have to be 'achievable'.

Regulatory relief is anything but a relief

- There's a framework where councils will have to compensate landowners where certain kinds of rules significantly impact their land.
- There are two quite distinct bits to this.
- 1. Specified rules (specific overlays like SNAs, ONFLs, SASMs)
- 2. Every other kind of provision in a plan

Regulatory relief – specified rules

- Under the Planning Bill, specified rules are district council rules that protect ONFLs; areas of high natural character around water bodies; significant historic heritage; and sites of significance to Māori.
- Under the NEB, they are regional council rules that protect SNAs, terrestrial indigenous biodiversity, and sites of significance to Māori.
- Note: ALL indigenous biodiversity protections on private land are specified rules, not just SNAs.

Regulatory relief – specified rules

- Is there a ‘significant impact’ on ‘reasonable use’?
- What’s a significant impact?
- “National regulations and instruments” get to say what this means.
- What’s a reasonable use?
- Does this have retrospective effect on RMA rules? Yes!

Regulatory relief – specified rules

- What kind of relief needs to be provided? There are four criteria.
 - Does it restrict “development potential”?
 - Does it impose obligations on a landowner (for example, restoring an environment)?
 - Does it create costs or constraints on reasonable use or enjoyment?
 - Does it affect land value?
- Relief frameworks can provide for different *kinds* of relief. But let’s be realistic...

Regulatory relief – specified rules

- What's the upshot?
- A massive chilling effect on councils.
- Huge amounts of litigation and churn.
- Unfairness for councils – having to pay for national direction they're required to implement, even with rates caps!

Regulatory relief – all other provisions

- Allows the Environment Court to order relief wherever a provision “severely impairs” the “reasonable use” of the land and “places an unfair and unreasonable burden”.
- A severe impact is a higher threshold than the “significant impact” one applying to SNAs etc (for specified rules), but much lower than the RMA’s ‘incapable of reasonable use’ test.
- We will see a lot more challenges to legitimate council regulations....

Standing up for the environment - consenting

- Under the Planning Bill, public notification of consents has to occur where the effects on built environment are more than minor.
- Under the NEB, public notification will be allowed only where proposals generate “significant” adverse effects on natural resources or people.
- Even where there *are* significant effects, submitters will have to reside in the relevant region to be eligible to submit.

Standing up for the environment - planning

- Submissions and appeals on the merits of plans are very limited – they're allowed only where a plan departs from standardised provisions (eg standard zoning rules) in national direction.
- Where a plan's just a bunch of standardised national rules, appeals are only allowed on points of law.
- Submissions can be made only by residents, otherwise you have to show you have an interest greater than the general public.

Conclusion

- There's a lot more to unpack.
- Some things are sensible, but others are alarming.
- They can, and must be, fixed.
- Otherwise we'll have "effects creating effects that are greater than less than minor." Or to put it more plainly, we'll stuff up the environment on which our economy depends.