

NEW ZEALAND MARINE SCIENCES SOCIETY

TE HUNGA MĀTAI MOANA O AOTEAROA



4 February 2023

Submission on the Natural and Built Environment Bill (NBEB) and Spatial Planning Bill (SPB)

We thank the Environment Select Committee for the opportunity to make a submission on the Natural and Built Environment Bill (NBEB) and Spatial Planning Bill (SPB).

About us

This submission is made on behalf of the membership of the New Zealand Marine Sciences Society (NZMSS) - Te Hunga Mātai Moana O Aotearoa. It is made in good faith in my role as President of the NZMSS and in accordance with the Code of Ethics and Rules of the Royal Society of New Zealand.

NZMSS is a professional society affiliated to the Royal Society of New Zealand - Te Apārangi and has approximately 470 members. We are a non-profit organisation that provides access to, and within, the marine science community, and we identify emerging issues through annual conferences, annual reviews, a listserv and a website www.nzmsp.org.nz. NZMSS membership covers all aspects of scientific interest in the marine environment and extends to the uptake of science in marine policy, resource management, the environment and the marine business sector. We speak for members of the society, and we engage with other scientific societies as appropriate.

Introduction

We support the need for reform and consider there is a clear case for change. The New Zealand marine science community is concerned with the level of degradation that has occurred in the marine environment from activities occurring under the Resource Management Act 1991 (RMA).

Our overriding submission is that the Bills need to ensure good outcomes for the natural environment. Ultimately, a thriving natural environment benefits people, given that we depend on it for our wellbeing and for the services it provides, including providing food (e.g., fisheries); supporting nutrient cycling, which mitigates nuisance enrichment effects; regulating carbon sequestration and storage; and preventing or moderating erosion and effects of extreme events, which are becoming more frequent and intense.

We support the intentions of the Natural and Built Environment Bill (NBEB) and the Spatial Planning Bill (SPB); however, we do not support the Bills in their current form. In our view, changes to the Bills are required for them to represent an improvement on the RMA.

The purpose of the NBEB is unclear and risks causing confusion, litigation, and conflict

The purpose clause of the NBEB is vital, as it will directly influence decision-making by Ministers and planning committees. However, its wording is currently unclear, and introduces many conflicting and overlapping concepts. Also, its various components are connected by different conjunctions, making relationships between them overly complex particularly when compared to the RMA (which used the single conjunction “while”). Overall, the wording of the purpose clause may cause confusion, litigation, and conflict.

The NBEB has two purposes, separated by the conjunction “and”. The first, which seeks to enable use and development in a way that protects the environment, falls short on two fronts: the phrase “in a way that” is not sufficiently protective, and it fails to recognise that proactively improving (not just enabling protection of) the environment needs to be a core element of the purpose clause.

We recommend that the hierarchy is altered to reflect an unambiguous first priority of the purpose of the NBEB - upholding the life-supporting capacity of the natural environment and its intrinsic value, with use for various human wellbeing subject to those things. This is consistent with other legislation such as the National Policy Statement – Freshwater Management principal priority of Te Mana o te Wai.

The second purpose, to recognise and uphold te Oranga o te Taiao, sees the introduction of several general concepts without a clear sense of how these relate to concepts in section 3(a), and where primacy is applied.

We would prefer to see a tightly defined purpose statement that is expressed as a hierarchy, conceptually similar to the recommendations made by the Resource Management Review Panel as shown on p.483 of their report *New Directions for Resource Management in New Zealand Report of the Resource Management Review Panel June 2020* (below):

Section 5 Purpose

- (1) The purpose of this Act is to enhance the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao.
- (2) The purpose of this Act is to be achieved by ensuring that:
 - (a) positive outcomes for the environment are identified and promoted;
 - (b) the use, development and protection of natural and built environments is within environmental limits and is sustainable; and
 - (c) the adverse effects of activities on the environment are avoided, remedied or mitigated.
- (3) In this Act **environment** includes–
 - (a) ecosystems and their constituent parts;
 - (b) people and communities; and
 - (c) natural and built environments whether in urban or rural areas.
- (4) In this Act **wellbeing** includes the social, economic, environmental and cultural wellbeing of people and communities and their health and safety.

The approach to outcomes in clause 5 of the NBEB needs amendment

One core part of the purpose of the NBEB is to enable use, development and protection that “promotes outcomes”.

Our first concern is that the list of these outcomes in clause 5 of the NBEB has no internal weighting or hierarchy. Many potentially conflicting outcomes must all be “provided for”, with conflicts to be resolved on a case-by-case basis with a high degree of discretion by decision-makers. This poses a high risk for non-cohesive and ineffective implementation of the NBEB. There is a real risk that this will resurrect a form of “overall broad judgement” that has occurred under the RMA, where long-term imperatives to protect the natural environment can at times be difficult to achieve if they are in conflict with economic opportunities, or existing infrastructure. There needs to be a clearer hierarchy where the ecological integrity and intrinsic value of the natural world receives more weight than other things.

Our second concern is that clause 5(a)(i) classifies the natural environment into air, water, soils, coastal environment, wetlands, estuaries, and lakes and rivers, and their margins; and indigenous biodiversity. This approach poses obstacles for the integrated management of our environment. As a society routinely dealing with issues in the receiving marine environment caused by issues on the land or in freshwater, we are greatly concerned by this approach.

We recommend improved recognition of integrated management, and the need to manage upstream effects to meet the purpose of the NBEB in clause 5.

We note that the recommendations by the Resource Management Review Panel in their report *New Directions for Resource Management in New Zealand Report of the Resource Management Review Panel June 2020* included the following outcome:

"enhancement and restoration of ecosystems to a healthy functioning state" (p.484)

We support this outcome and recommend that clause 5(a)(i) is redeveloped to provide a more holistic description and interpretation of the natural environment that not only encourages but requires integrated management.

Specific comments

In addition, to the comments above:

1. **We recommend** that marine science expertise is provided for in technical reference groups to environmental limit and target setting that have implications for the coastal marine area to ensure that limits and targets accurately reflect and support the values of the CMA as the receiving environment and are measurable and meaningful.
2. Schedule 10 section 1 (1) requires information included in an application for a resource consent to “be proportionate to the scale and significance of the activity” but does not require proportionality to the scale and significance of the effects of the activity.
 - 2 (a) This aspect is only mentioned in section 2(3)(c), which requires the assessment of the activity’s effects to “includes such detail as corresponds

with the scale and significance of the effects that the activity may have on the environment”.

While the combination of sections 1 and 2 consider both, the scale and significance of the activity and its effects, in our view the current structure of these sections inappropriately prioritises the activity, not its effects. Activities considered in operational or economic perspectives as ‘small scale’ or ‘low significance’ can have large environmental effects. This is particularly relevant for the management of cumulative effects, which is one of the three problems with the current resource management system the NBEB aims to address (as described in the NBEB Explanatory note – General policy statement).

We strongly recommend adding a new point to section Schedule 10 section 1 (1): (ba) be proportionate to the scale and significance of the effects of the activity”.

- 3 **We strongly recommend** that recognition is given to the role of coastal vegetation and sediments in carbon capture and storage, which is consistent with the governments direction in the Climate Change Response (Zero Carbon) Amendment Act 2019.

We thank the Select Committee for considering our submission.

We do not wish to be heard in relation to our submission.

Please contact us via the email address provided below for any further information regarding this submission.

A handwritten signature in dark ink, consisting of several overlapping loops and a final flourish, positioned on a light yellow background.

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President – New Zealand Marine Science Society

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