

15 March 2023

Environment Select Committee Chairperson

VIA EMAIL [environment@parliament.govt.nz](mailto:environment@parliament.govt.nz)

### **SUBMISSION ON THE NATURAL AND BUILT ENVIRONMENT BILL AND THE SPATIAL PLANNING BILL**

1. We appreciate the opportunity to make a submission on these two Bills. We are also grateful for the extra extended deadline to make this submission during a time when councils are coming to grips with their work programmes and priorities not only after the 2022 local body elections, but now also in the aftermath of Cyclone Gabrielle's disruption.
2. While we are supportive of the objective of the resource management system reforms, we are not yet convinced that the system has indeed been simplified and will be more efficient and less costly. The NBE Bill is over 800 clauses long and details numerous processes and requirements – many of them entirely new.
3. Our submission generally aligns with those made by Local Government New Zealand, Taituara and Te Uru Kahika. Instead of repeating much of what is covered in those thorough submissions from the local government sector groups, we have chosen to focus on several key issues for regional councils and particularly the Hawke's Bay Regional Council (HBRC).
4. Key issues covered in this submission are:
  - a) strength of voice for the environment
  - b) commensurate accountabilities on those entities in the new system having decision-making roles and responsibilities
  - c) now post-Gabrielle more than ever, Hawke's Bay needs bespoke governance arrangements – not one-size-fits-all design heavily prescribed in legislation with little flexibility and limits on innovation.
  - d) upholding of existing Treaty settlement arrangements as described in the Hawke's Bay Regional Planning Committee Act 2015 ('HBRPC Act')
  - e) upholding of existing Treaty settlement arrangements for Te Komiti Muriwai o Te Whanga and Te Muriwai o Te Whanga Plan as described in the Ahuriri Hapū Claims Settlement Act 2021
  - f) role for water conservation orders in a system that already features national direction for freshwater management, partnering with tāngata whenua and input from local communities
  - g) transitional arrangements and timeframes establish foundations for successful new system in a way that maintains local community momentum and focus on addressing their key environmental challenges (e.g. freshwater management, climate action and halting biodiversity decline).

#### **Key institutional arrangements**

5. Ensuring local demographic input requires accountability, governance and legitimacy to be addressed in the reform and plan-making processes. The current provisions in the Bills (particularly around the Regional Planning Committees) are inadequate in this respect. The accountability and governance issues raised with the Bills' RPC model need reconfiguration. Far too many of the processes around formation and functioning of RPCs are very cumbersome and

resource intensive. As Te Uru Kahika's submission summarises very well<sup>1</sup>, the Bills as proposed effectively fragment the 'golden thread' of accountability under existing Local Government Act (LGA) arrangements, with a weakly accountable committee and non-accountable hearing panel in the middle of pivotal planning processes for the futures of local communities. Where the proposals leave councils is in a difficult position of implementing policy that it is created with no electoral accountability. Councils are no longer a 'plan-maker' but a relegated to role of a 'plan-taker' in the new arrangements of the RPCs and independent hearings panel being the entities with direct influence on plan content.

6. Te Uru Kahika's submission says<sup>2</sup> that the regional sector is concerned about the move away from the approach to resource hierarchy established by the National Policy Statement for Freshwater 2020, and a loss of catchment focus and loss of the planning hierarchy. Te Uru Kahika's submission emphasises the importance of ecological integrity and the focus on, and voice for, the environment. We strongly agree with Te Uru Kahika's submission in that regard.
7. Given that the Bills propose membership of the new RPCs to have at least one member appointed from each local authority in the region, we record those local authorities in the Hawke's Bay region. There are seven in total (being HBRC, Central Hawke's Bay District Council, Hastings District Council, Napier City Council, Wairoa District Council, Rangitikei District Council and Taupo District Council – the latter two councils have parts of their districts within the Hawke's Bay Region as well as parts in one or more other regions).
8. Based on the NBE Bill's proposed membership model, the minimum total number of members would be nine (one each from the six territorial authorities, one from HBRC and two tāngata whenua appointees). A tenth member for the Crown would join for the Regional Spatial Strategy purposes. We acknowledge that the NBE Bill does enable greater numbers than the specified minimums.
9. We do not support only one local authority voice (i.e. the regional council member) for natural environments in that proposed model. It risks marginalising the importance of ecological systems (i.e. marine, aquatic, terrestrial and air) which we all heavily rely upon to enjoy our everyday lives, conduct business and even do recreational activities. Currently through the Hawke's Bay Regional Planning Committee, those voices are very strong and prominent. We note that the NBE Bill proposes to retain a split of regional councils' responsibilities (in Clause 643-644) from those of territorial authorities (in clause 645-646).
10. By Central Government's own actions over recent years, the importance of natural systems and environmental limits is also very apparent in freshwater reforms and the catalogue of other national policy statements and national environmental standards. These have made enhancement of the environment and climate adaptation a priority. The NBE Bill's proposed model of governance over RSS and NBEA Plan preparation reduces the importance of the environment to being no greater than that of any other matter. This is compounded by the NBE Bill's omission of any prioritisation the 'outcomes' listed in section 5.
11. The proposed RPC membership model of only one member from a regional council is totally unsatisfactory.

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<sup>1</sup> At paragraphs 1-11 and Figures 2 to 4.

<sup>2</sup> At paragraph 33.

### **The Hawke’s Bay Regional Planning Committee (‘the Committee’)**

12. According to records held in Te Kahui Mangai<sup>3</sup> hosted by Te Puni Kokiri, there are 23 iwi authorities for RMA purposes in the Hawke’s Bay region. There are over 100 hapū/marae. Of that, nine large tāngata whenua groups of Hawke’s Bay<sup>4</sup> benefit from Treaty settlement redress in the form of the Committee. The Committee was established under specific stand-alone legislation, namely the Hawke’s Bay Regional Planning Committee Act 2015 (HBRPC Act). The Committee has been operating since April 2011 (for the first four years as an interim committee under the LGA prior to the HBRPC Act coming into effect). Legislation was required to ensure that the Committee could not be discharged except by unanimous written agreement of the Appointers and to confirm its role and procedures. Accordingly, the legislation was enacted and came into force on 15 August 2015.
13. The Committee is a joint committee of the Hawke’s Bay Regional Council deemed to be appointed under Clause 30(1)(b) of Schedule 7 of the LGA.
14. The purpose of the HBRPC Act is to improve tāngata whenua involvement in the development and review of documents prepared in accordance with the RMA for the Hawke’s Bay Region. We note that one of the reform objectives is giving *“greater effect to the principles of Te Tiriti o Waitangi and provide greater recognition of te ao Māori, including mātauranga Māori.”* We support that objective, yet are conscious that Māori membership of the RPC model proposed in the Bills is merely only one method for delivering on that objective of the reforms.
15. The Hawke’s Bay Regional Planning Committee’s purpose is to oversee the development and review of regional policy statements and regional plans [under the RMA]. Repeal of the RMA will have profound implications for the Committee’s roles and responsibilities.
16. The HBRPC Act has resulted in fundamental and positive changes to the way in which HBRC operates and works with tāngata whenua. Those relationships are continually being worked on to develop new effective ways of working together for better environmental outcomes. That said, HBRC continues to work on those relationships across the region and in many ways – not only through business of the Committee and its members.
17. Currently, we cannot see how the Committee would continue to exist and operate if proposals in the NBE Bill are confirmed for a new regional planning committee in each region to oversee development and changes to single plans under the Natural and Built Environment Act. Nor could the Committee in its current model simply be ‘elevated’ into the RPC model as proposed in the Bills. One clear difference is that currently HBRC can appoint ten members to the Committee. The RPC model proposed in the NBE Bill would significantly reduce that to a minimum of only one member.
18. One possible scenario is that the Committee operates as a subcommittee of the new regional planning committee proposed in the NBE Bill.<sup>5</sup> Nonetheless, for the reasons thoroughly covered

<sup>3</sup> [www.tkm.govt.nz](http://www.tkm.govt.nz)

<sup>4</sup> Nine Treaty settlement entities as listed in the HBRPC Act are: Maungaharuru-Tangitu Trust, Ngati Pahauwera Development Trust, Tu Hoe Te Uru Taumatua, Ngati Tuwharetoa Hapu Forum Trust, Mana Ahuriri [Trust], Te Kopere o te iwi o Hineuru Trust, Heretaunga Tamatea Settlement Trust, Te Tira Whakaemi o Te Wairoa and Ngati Ruapani ki Waikaremoana.

<sup>5</sup> The HBRPC Act has established the Committee to operate as a joint committee of the HBRC, so a sub-committee arrangement is not entirely new.

in the sector submissions, we do not support the Bill's model for a RPC, the secretariat, plus associated functions and funding arrangements.

19. **We submit that it is crucial that the shape of future resource management legislation must not compromise or weaken the HBRPC Act's purpose without very sound reasons and prior genuine consultation with the Regional Council and all relevant tāngata whenua groups.**
20. We note that Clause 1 of the NBE Bill Schedule 2 says:
 

*"The purpose of this schedule is to ensure that the integrity, intent and effect of Treaty settlements... made under the [RMA] are upheld in relation to this Act."*

And Clause 4(1) of NBE Bill Schedule 2 says:

*"The Crown must uphold the integrity, intent and effect of Treaty settlements...."*
21. Clause 4(2) then goes on to state:
 

*"The Crown must, unless otherwise agreed with **the relevant party**,— (a) discuss with **each relevant party**, for the purpose of agreeing, how the integrity, intent, and effect of the Treaty settlement, the NHNP Act, or the other arrangement will be upheld in relation to this Act: ..."* (emphasis added)
22. What is missing is clear direction that the Crown must also engage with relevant councils in how those existing arrangements will be upheld and not solely the "relevant parties" being Post Settlement Governance Entities. Particularly in terms of the HBRPC Act, HBRC is clearly an equally relevant party. When exercising powers to make regulations under the NBE Bill, we submit that the Minister must be required to involve the Hawke's Bay Regional Council in the preparation of those regulations.
23. **We submit that the Bills need to specify that the Crown will engage with HBRC before the legislation is passed (or at very least prior to secondary legislation coming into effect confirming any institutional arrangements for the governance and plan preparation for management of natural resources similar to those functions in section 30 of the RMA).**
24. **We submit that the new resource management system's legislation must enable bespoke governance arrangements for resource management in the Hawke's Bay region that:**
  1. **At least upholds intent of the HBRPC Act and purpose of the Hawke's Bay Regional Planning Committee**
  2. **At least upholds intent of the Treaty settlement legislation forming Te Komiti Muriwai o Te Whanga and Te Muriwai o Te Whanga Plan as described in the Ahuriri Hapū Claims Settlement Act 2021**
  3. **Maintains a strong voice for natural systems and the environment**
  4. **Features strong connection to communities with commensurate accountabilities for decisions to be made**
  5. **Is cost-effective**
  6. **Is agile and not bedevilled by highly prescriptive legislation for establishing new complex governance arrangements, the appointment of members and the associated funding and secretariat arrangements.**

### **Relevance of water conservation orders in new system**

25. The NBE Bill makes provision for water conservation orders (WCOs) as a mechanism to protect values associated with fresh water bodies. We accept that there are a number of WCOs already in place under the RMA and earlier legislation. But we do not accept that the NBE Bill should retain virtually the same processes as the RMA for new WCOs. Policy settings and frameworks for the management of New Zealand's freshwater resources have been radically overhauled with several iterations of the National Policy Statement for Freshwater Management (NPS-FM) during the 2011-2022 period. We expect much of that direction in the NPS-FM to be carried over into the new National Planning Framework.
26. The NPS-FM directs that councils identify outstanding waterbodies and protects their significant values. HBRC has invested significant resources over a number of years to do just that, but it has required pioneering research and developing methodologies where none currently exist. Meanwhile, we have had to respond to a poorly crafted application for the Ngaruroro River and part of the Clive River that would have had profound impacts on our communities. That application (which was filed by a consortium of primarily national lobby groups) prompted large protests from local community interests. Several years later and probably after many millions of dollars spent by all participants, today, the Environment Court's interim 2022 findings remain the subject of High Court appeal proceedings. Many of the issues traversed in submissions and hearings on that WCO application are very similar to those that have been the subject of a very extensive collaborative community engagement process and proposed freshwater plan change process under the RMA. Modern regional planning documents have to identify freshwater limits and targets and outline actions (including regulatory actions) to be taken to uphold Te Mana o Te Wai.
27. In short, **we do not support the Bill's proposal that there remains a process and place for new water conservation orders.** Nonetheless, transitional arrangements can be made in the legislation to 'ring-fence' those WCOs already in place.

### **Transitional arrangements, timeframes and impacts on existing priority work programmes**

28. Many of the concerns we have with the proposals could be mitigated by the sequencing and transitioning of both current RMA plans and the reforms overall. As Te Uru Kahika's submission<sup>6</sup> emphasises, the transition should also be used to allow other reforms that also have significant implications for local government decision making, functions and accountability to "catch up" and be aligned. These reforms include, for example the Three Waters Reform and the Future for Local Government Review.
29. As we see it, local government remains in the engine room of implementing the NBE Bill and SP Bill. It is clumsy for much of the key institutional architecture (i.e. council configuration and responsibilities) to be under review at a time when substantial resource management reforms are expected to be implemented in a large part by those very same councils. Those reviews and reforms are an unhelpful distraction from Hawke's Bay communities tackling some of the greatest environmental challenges of our generation. For us, those challenges and new many ones have ballooned in the aftermath of Cyclone Gabrielle.

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<sup>6</sup> At paragraph 73.

30. We consider it is crucial that the value of current work on spatial strategies (or equivalent) and RMA plans is not lost and that councils do not lose momentum on this work. Prior to Cyclone Gabrielle, HBRC had a very ambitious programme of work known as the 'Kotahi Plan.' The Kotahi Plan is a combined regional plan, regional coastal plan and a regional policy statement all in one. Central to the Kotahi Plan is work to implement the National Policy Statement for Freshwater Management 2020 (NPS-FM 2020) and the other national direction. Because of its freshwater planning content, the Kotahi Plan programme was aiming for proposed plan public notification by 31 December 2024. The Kotahi Plan programme is now on hold as we contemplate HBRC's role and responsibilities for our region's post-cyclone recovery. We anticipate special emergency recovery legislation to be passed to enable a swift recovery effort and 'building back better.' But that emergency legislation will not last forever. In years to come, we fully expect we will transition back into operating under the new resource management system's legislation.
31. Our submission is made on the basis that the new legislation will one day apply in the Hawke's Bay region – but its application is likely to be deferred for the short term while we operate under special Cyclone recovery legislation (like what was in place in Canterbury and Kaikoura for those earthquake recovery efforts).

Thank you for the opportunity to make this written submission and also for granting us an extension that has enabled us to provide a more considered response to just a few of the very complex features of the Bills.

We do wish to be heard in support of our submission. If possible, a timeslot adjacent to presentations being made by our PSGE partners would be preferable.

Ngā mihi nui,



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**Chair**

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