

## POSITION PIECE: REGIONAL REGULATORY PLANNING UNDER THE PLANNING ACT AND NATURAL ENVIRONMENT ACT

**Date:** 27 August

**Contact:** Al Cross  
Director, Resource Management Reform  
Al.Cross@teurukahika.govt.nz

Te Uru Kahika represents the sixteen regional councils and unitary authorities comprising Aotearoa New Zealand's regional sector. The name Te Uru Kahika reflects the work and vision of the regional sector: *thriving environments and thriving communities*.

Collectively, the sixteen regional authorities have wide-ranging statutory responsibilities for resource management. We are responsible for integrated management of land, air and water resources, supporting biodiversity and biosecurity, providing for regional transport services, and building more resilient communities in the face of climate change and natural hazards.

To fulfil these responsibilities, regional authorities engage extensively with mana whenua, central government, and local communities, and we prioritise maintaining strong, on-going relationships.

Te Uru Kahika welcomes the opportunity to support the Government's goal of building a more efficient, outcomes-focused resource management system. We are committed to working constructively with central government to deliver a system that is faster to implement, more cost-effective to operate, and better at enabling economic growth within environmental limits.

**This Position Piece provides our view on aspects of regional planning under the Natural Environment Act and the Planning Act.**

We focus on the pertinent Recommendations 21,22 and 26 (and links to the national instruments in Recommendation 11) made in the Cabinet Paper [Replacing the Resource Management Act 1991 – Approach to development of new legislation](#). Our positions are consistent with Cabinet recommendations.

In providing our opinion through this position piece and the companion piece on regional spatial planning, we view the planning system as a triangle of interaction – with spatial planning sitting atop natural environment and district plans, which are themselves connected and not separate. How this hierarchy is intended to operate requires close attention in the drafting of the two new Acts.

We look forward to further discussions with Central Government on this important topic.



## OUR RECOMMENDATIONS

### 1. Provide clear and consistent responsibilities for domains within the two Acts

Alongside the management of natural resources (air, land, water, ecosystems, and coasts), regional and unitary councils have responsibilities to avoid or mitigate natural hazards; to manage activities in the coastal marine area; and to manage the beds of lakes and rivers. In these roles, regional councils actively seek to inform the location of activities and conflicts with environmental conditions.

*Implementation options:*

- The Planning Act and Natural Environment Act must clearly and consistently assign responsibilities for domains and, if appropriate, roles within a domain.
- Enabling regional councils to lead the Spatial Planning process if that is the preference of councils within regions, while recognising the unique arrangements of unitary authorities.
- In addition to responsibilities under the NEA, explicitly assign regional authority responsibilities under the Planning Act in natural hazards, riverbed, and coastal management.

### 2. Require that regional spatial plans resolve or avoid major conflicts between development and environment

Activities that align with regional spatial plans should have a more streamlined approval pathway under a natural environment plan.

Development is often proposed in areas subject to natural hazards (particularly flooding) and increasingly so as our understanding of natural hazard risk continually improves, and at the same time new land development options are locating in more constrained environments. Considering environmental limits, constraints, natural hazards, and resource availability within the regional spatial plans will minimise the potential for future development to encounter significant challenges during consenting.

The more environmental opportunities and constraints that are factored into the spatial planning process, the greater the likelihood of natural environment plan consenting frameworks being more enabling for activities that are consistent with the spatial plan.

The planning system will need to recognise that spatial planning will not be able to address all conflicts and opportunities between activities or land uses to the granular level required for decision making. In all likelihood, many development activities will need authorisation under both Acts.



It will be faster and more cost-effective to line up the dual authorising processes as much as possible. Where potential conflict is identified during drafting of Natural Environment Plans and District Plans for matters that interface between these documents, then resolving these to support the future authorisation processes needs to be factored in.

Regional and unitary councils have the context in which competing values and land uses are tempered through a range of approaches, including spatial planning. Regional and unitary councils can bring to a spatial planning process an understanding of local ecosystems, resource availability, pressures, and mana whenua and community aspirations.

Regional spatial plans will mature with each iteration, and it is recognised that not all conflicts or environmental conditions will likely be addressed in the first iteration. However, it is important that the new Acts reflect the potential of a mature system even if timeframes mean the potential cannot all be achieved in the first round of regional spatial plans and natural environment plans.

*Implementation options:*

- Explicitly assign responsibilities under the Planning Act to regional authorities to identify environmental constraints (natural environment) including the implications of national environmental limits. Certainty, and efficient and timely processes will result if the spatial planning process can foreshadow environmental and natural hazard risk and signal a clearer planning and approval pathway for some infrastructure and development.
- Require the resolution of competing national policy direction initially through the preparation of regional spatial plans, and at more granular level through Natural Environment and District Plans, ideally supported by a clear prioritisation framework. This relates to national policy direction under both the Planning Act and the Natural Environment Act.
- Alongside infrastructure, land use zones and natural hazard mapping, the Planning Act should require spatial information on the location of at least the following in the regional spatial plan:
  - Drinking water source protection areas
  - Biodiversity corridors/threatened species habitat
  - Highly productive soils
  - Airsheds
  - Riverbed extent
  - Sites of significance to mana whenua
  - Outstanding natural features and landscapes
  - Sensitive coastal zones, estuaries, and marine areas (customary marine title areas)
  - Emergency Management Priority Routes
  - Contaminated land.



### **3. Set expectations for how to address environmental effects of activities that are anticipated in a regional spatial plan.**

The new resource management framework provides a timely opportunity to reframe how effects are managed, moving from a consent-by-consent negotiation toward a context-driven system that reflects spatial factors and community expectations. The current consenting approach places significant discretion in the hands of decision-makers without providing applicants or communities with a clear sense of what outcomes to expect. Regional spatial plans can and should play a central role in this reframing, recognising that this role will mature with time and iterations of the spatial plans. We recognise that this will need to work hand-in-hand with other initiatives such as reducing/removing overlap with other legislation or regulations, clearer national direction, and more standardisation.

*Implementation options:*

- The Planning Act could enable the regional spatial plan to direct how the notification and authorisation processes under Natural Environment Plans should occur. Where an activity is not anticipated, the regulatory test should not be whether it can simply “mitigate” effects, but whether it can operate in a way that is functionally and environmentally consistent with the regional spatial plan.
- The Natural Environment Act should contain an expectation that the notification and authorisation process for activities anticipated in the regional spatial plan will be streamlined, recognising that the *general* trajectory for local and regional development has already been subjected to a public process in forming the regional spatial plan. A natural environment plan should manage environmental benefits and adverse effects, not relitigate location.

### **4. Ensure there are pathways that recognise local environmental goals alongside national policy direction**

Environmental issues are best addressed locally alongside community and mana whenua. Local communities hold very strong views about the desired state of our air, land, water, and coasts which are not always consistent with the activities they choose to pursue. Regional authorities have learnt through discussions with communities and mana whenua the importance of landing a suite of ‘environmental outcomes or goals’. These are expressed in regulatory documents but also through strategies and local agreements. These goals are:

- Usually qualitative
- Described using language that reflects local values
- Set at a scale that makes sense locally
- Codified through a discussion on the viability of environmental outcomes in the face of economic, cultural, and social aspirations.





We note the EAG recommendation that national goals have precedence. It is very unlikely that all environmental concerns will be addressed in national goals, to do so would make national processes unwieldy and prevent the local nuancing that is often required, for example, at catchment scale. We also note that if local outcomes are not explicit, consent processes could become more complex.

There is also a strong role for environmental outcomes to drive investment in environmental protection and enhancement by councils, government, communities, catchment groups, and the philanthropic sector. Outcomes are achieved using collective efforts of many agencies, not just councils. Environmental outcomes could guide actions in freshwater farm plans and biodiversity offset requirements both of which will be most effective if they can respond to local priorities.

*Implementation options:*

- The Natural Environment Act should show a clear role for local environmental goals informed by discussion with communities and tāngata whenua.
- National policy direction under the Natural Environment Act should set national environmental goals and clearly state how much discretion there is for local influence including any spatial aspects. Do all national goals need to apply in every place?
- A statement of local environmental goals / outcomes could be compulsory under the Natural Environment Act. These will complement and could be required to be consistent with any national goals and outcomes. These can then be used to justify and prioritise regulatory responses.

## **5. Recognise that not every environmental issue or concern needs a regulatory response.**

Not all environmental issues need a regulatory response or at least do not need the regulatory rigour of an environmental limit, place-based tools, or other rules. Sometimes the most effective outcomes are achieved through market mechanisms, infrastructure investment, or on-the-ground action. The system should make space for practical, non-regulatory solutions where they add more value. Councils would then be enabled to focus regulatory effort on high-risk issues, improving compliance and public trust. Examples include public access to rivers, protection of pristine sites with very little land development in their catchment, or provision of fish passage through existing structures.

Environmental goals/outcomes set nationally or locally give a yardstick against which the environmental risk of an activity can be assessed and lead to regulatory effort that is proportional to risk. They allow councils and others to prioritise effort and clearly identify and justify where regulation is going to be used. The scale of responses within regulatory plans must be at a scale and timeframe that makes sense to the local community and proportional to the risk to the agreed environmental goals/outcomes.



*Implementation options:*

- Require natural environment planning processes to clearly identify and justify where regulation is going to be used and how these can be complemented (or replaced) by other tools.
- Require regulatory approaches to focus on higher-risk activities, degraded environments, and those activities that lend themselves to allocation or other approaches anticipated in the Natural Environment Act. The system should prioritise clarity and up-front permissions for low-risk activities.
- Encourage regional authorities to consider other avenues than regulatory approaches, perhaps formalised through their Long-Term Plans or documents under the Local Government Act or other legislation.

## **6. Provide clarity on the process and content for Natural Environment Plans**

Natural Environment Plan requirements, content and considerations should be set out clearly and concisely in the Natural Environment Act. We caution against too much prescription of process; our experience with overly prescriptive process is that it prevents us tailoring a response to the scale of an issue and limits agility to respond to emerging issues.

*Implementation options:*

A Natural Environment Plan must:

- Give effect to all national policy direction and take into account national standards.
- Reflect outcomes set out in Treaty Settlement legislation.
- Reflect Iwi Management Plans.
- Involve mana whenua and communities in its preparation.
- Allow for liaison with agencies responsible for health-based environmental limits such as Taumata Arowai and potentially the EPA.
- Take into account (the activities set out in) a regional spatial plan.
- Consider strategies prepared by councils and partnering organisations, or by community.

A Natural Environment Plan should contain:

- Environmental goals/outcomes that reflect local community and mana whenua values
- Environmental limits, placed-based tools, and the process for operationalising and monitoring national and local goals and outcomes.
- Rules to manage activities where these are not addressed in national standards.
- Any allocation, offset, or levies approaches set out in secondary regulation under the NEA.
- Link to investment in, and infrastructure for, environmental improvements – included in non-regulatory actions.



## 7. Enable agile and proportional consenting processes

Regional authorities support the Government's intent to reduce the consenting burden on resource users and councils and consider there are additional options alongside National Environmental Standards that can reduce the load. It is also important to focus on the timeliness and efficiency of consents and making it very easy for applicants to understand and meet their regulatory obligations.

We recommend consenting processes are included within the work on digital transformation for RM reform, consent information can be linked into and receive data from other platforms such as natural hazards. There is definitely scope to make more use of a digitally enabled regulatory framework where consent applicants can simply enter what they want to do, on their phone or device, and receive instant guidance on rules and regulations, prohibitions or alternatives. Councils are ready to implement smart user-friendly systems and improve environmental performance through better data. This work links to wider work on data platform integration and access across other programmes such as climate change resilience.

The use of digital tools could reduce the volume of full consents by replacing them with rapid, transparent digital permissions for low risk, expected activities (similar to the current deemed permitted activities). While mostly an implementation issue, there is merit in foreshadowing this approach in the primary legislation. Ultimately, a system like this reduces the burden on users, improves compliance, and makes the role of consent authorities more strategic—focusing effort where it adds the most value.

Permitted activities are not the answer in all situations and need careful consideration. The concept of not requiring consent when the activity is within limits appears attractive. However, consenting processes may still be required to manage external effects on neighbours, cumulative effects or if a future allocation regime is applied. As an example, a groundwater take needs to be assessed for its effect on neighbouring wells (a technical assessment), and the abstraction may need to be consented to ensure it can be incorporated into a future water quantity allocation regime where efficiency and other tests may be important.

### *Implementation options:*

- The NEA must recognise that some low-risk activities will still need consent, for example, if they are to later become part of a future allocation regime or require an evaluative analysis.
- Central government should work with local government to invest in fast, digital systems for the quick provision of information to prospective applicants, and approving permits and consents across the PA and NEA. Quick and meaningful wins will be important.



## **8. Enable agile, proportionate processes for developing and changing Natural Environment Plans.**

We believe a major obstacle to efficient resource management is the time taken to develop and finalise plans under the RMA, particularly the revisiting and challenging of decisions through court processes. Councils need flexible tools to respond quickly to new science, unanticipated consequences and new activities or risks or new opportunities. The regional spatial plan will play a part in directing appropriate activities and, over time, should be able to address some of the conflicts currently slowing down the preparation of natural resource plans.

Regional authorities previously endorsed the proposal under the NBEA to provide for different plan change processes with proportionality of process related to the scale of change. The existing ability to make minor plan changes to correct errors should also be retained and strengthened.

Under the RMA, processes for changing national direction are faster than council's processes for responding. This mismatch has led to regional policy/plans lagging 3 to 5 cycles behind national direction, which has hampered central government's ability to influence many responses to environmental and infrastructure issues. It may be that faster processes such as those under the Local Government Act are more appropriate for changes to a Natural Environment Plans that are simply responding to changes in national direction.

It is also important to consider how new technical information, such as mapping of drinking water source protection zones or natural hazards, is introduced and progressively updated. These technical assessments should be not part of a formal plan change process.

### *Implementation options*

- The Natural Environment Act (and the Planning Act) could introduce categories of plan change such as urgent, minor, (for example to reflect new science, new information, new activities), targeted (to a single activity or industry), or a full change.
- Consider including in the Natural Environment Act the ability to use a process similar to the special consultative procedures in the Local Government Act for some changes to Natural Environment Plans for example where the change is in response to new national direction.
- Allow for regional authorities to keep registers of information/maps that can be regularly updated without formal plan changes.

