

3 August 2021

Ministry for the Environment

RE: Far North District Council submission on the exposure draft for the Natural and Built Environments Act

The Far North District Council (Council) welcomes the opportunity to provide feedback to the Environment Select Committee (Select Committee) on the exposure draft for the Natural and Built Environment Act (NBA). Council acknowledges that the NBA is one element of the new legislative system replacing the Resource Management Act 1991 (RMA) and that drafts of the Spatial Planning Act (SPA) and the Climate Change Adaptation Act (CAA) will be available for feedback over the coming years along with the balance of the NBA. Council looks forward to providing comment on the balance of the NBA and the remaining pieces of legislation once they become available for comment.

Council generally supports the stated objectives for reform as identified in the accompanying parliamentary paper but has concerns about some of the detail. Council is however limited in terms of what it can meaningfully feed back given the high-level content provided in the exposure draft of the NBA and the significant gaps in the information provided.

Further limiting is the absence of a National Planning Framework (NPF), as well as content for the SPA and the CAA. Understanding how the exposure draft meets the identified objectives will depend on further drafting of the NBA, SPA and the CAA and how well they integrate with other reforms being proposed such as three waters.

Council's CEO is a member of the Department of Internal Affairs led Local Government Chief Executive Forum for Resource Management Reforms. The aim of this forum is to ensure the reform policy is of high quality and that legislation will work for local government (and others) on the ground. It also has input into how the transition to the new system will be managed, as well as how it will be implemented in line with the reform objectives.

Council also has representation on the Resource Management Reform Reference Group (RMRG) that input into the submission on the exposure draft of the NBA by Taituarā and supports the content within that submission. To reduce duplication this submission concentrates on those matters in the exposure draft of the NBA that are of particular relevance to the Far North District (FND) and provide context. Council's submission should be read in conjunction with the Taituarā submission.

Territorial Authority functions

Council considers it fundamental that local democratic input must be maintained in any plan making process involving their communities and how they are developed. New Zealand has a well-developed democracy where grass roots participation of New Zealanders has insisted on, and won, influence in the way territorial authorities make decisions about the future of how their communities look and feel and how sustainable management is achieved.

We must have a structure where democratically elected local representatives retain the ability to have input into plan making that affects their constituents. Orthodoxy is anybody from any community being able to talk to a Community Board and/or Council, who are local government

representatives that are democratically accountable to their communities and are elected to make decisions on their behalf. While we appreciate that central government wants New Zealand to look a certain way, not enough conversation about what that looks like has been undertaken in a bottom up approach.

The NBA is regionalising issues and processes that are best addressed at the local level. What a community looks and feels like is highly localised, and something that should be determined by local people. Creating new regional plan making functions and regionalised rules has the potential to undermine the ability of local communities to influence and make decisions about the places in which they live.

We question whether local representation could be achieved through the proposed membership of planning committees that will be responsible for making NBA plans. The accountability relationship between planning committees and their constituent Territorial Authorities is unclear.

It is essential that Councils are given clear direction around the continuation of plan making under the RMA. We are currently undertaking a consolidated review of our district plan and intend to notify it at the end of this year. Significant time and resources have been invested to prepare the district plan and Council needs to understand if this process should be stopped. It is necessary for Council to understand how the legal framework applies if our plan is notified prior to the repeal of the RMA. Commentary on this matter is imperative so Council can focus resources in a timely manner that can best prepare us for the suite of changes that lay ahead.

We need to know what, if any, provisions from second generation plans can be transferred into the new resource management system. It is anticipated that it would take a number of years to write a 'regional plan' under the new legislation. In the interim the existing district plans would apply and it is unclear whether there will be scope for private plan change applications to still be made over that time.

Tangata whenua

Approximately half of the Far North population is of Māori descent and 17% of all the land in the FND is whenua Māori under Te Ture Whenua Māori Act 1993. This illustrates the importance of working in partnership with tangata whenua in the FND and ensuring the relationships and support/resource is available so meaningful contributions can be made. In that respect Council is concerned that tangata whenua have not been included in the conversation around the NBA early enough and have not been sufficiently included in the co-design of the legislation. While the language and intent of the legislation is one of inclusion, understanding what that means for Māori being able to exercise kaitiakitanga is not well understood.

FND have 11 iwi authorities for the purposes of the RMA 1991 and there are between 160 and 200 hapū. To contextualise this further, Te Rarawa have 23 hapū, Ngāti Kahu have 18 hapū and Ngāpuhi, Aotearoa's largest and most dispersed iwi, has 110 hapū, of which approximately 92 are located within the boundaries of the FND.

A core feature of Ngāpuhi is hapū rangatiratanga or the right to self-determination particularly in relation to social, economic, cultural, environmental and political development. To this end Ngāpuhi have established 10 Takiwā each with their own boundaries, which are made up of hapū and marae.

Additionally, Council is a signatory to a governance level relationship agreement between Tai Tokerau mayors and chair and Te Kahu o Taonui chairs called Whanaunga kī Taurangi, which was signed in 2019. Six of the eleven iwi authorities are signatories. Council have four other memoranda of understanding between iwi, hapū and an incorporation. Some of these are at governance level and others at the operational level. Council also has 14 iwi and hapū environmental management

plans lodged. This shows the level of complexity when working with tangata whenua in the FND which will need to be adequately provided for and resourced within the RMA reform.

Council also has six iwi in the district that have Treaty of Waitangi Claims Settlement Acts, enacted.

Council notes that there are a number of terms associated with tangata whenua that are not clearly identified within the exposure draft of the NBA, they include:

- kaitiakitanga
- mana whenua
- iwi and hapū
- customary rights
- Te Oranga o te Taiao
- cultural landscape

We note that clause 5(3) 'incorporates' a list of matters that relate to Te Oranga o te Taiao. Council considers that the concept must be clearly defined in clause 3 as the matters listed are not exclusive. Like many Māori words and concepts there may be numerous meanings or interpretations, and while there is guidance in clause 5(3) it is considered that implementation of this concept may suffer the same fate as 'sustainable management' in the RMA, in so far that it will likely take years/decades of case law to establish what it means and how it is applied.

Council would have expected 'cultural landscapes' to be defined separately or included within the definition of cultural heritage, given the context within which it is used in clause 8(h) which states "*cultural heritage, including cultural landscapes...*"

Council supports the approach of 'giving effect' to the principles of Te Tiriti, and the strategic role that is envisaged for tangata whenua in the new system. We would like to see the principles of Te Tiriti explicitly stated in the drafting of the NBA, so that they are generally understood and not up for debate.

The principles of Te Tiriti are not fixed but are broadly understood to be Partnership, Participation and Protection. However, tangata whenua will have strong views on these and without the principles being identified and codified within the NBA, we are concerned that persons exercising powers and performing duties and functions under it will not be clear on the obligations they are required to meet.

It will be important that this work is undertaken in close partnership with tangata whenua and that appropriate time and resource is provided by central government to ensure meaningful participation in decision-making processes. The wealth of tangata whenua representation in the FND will require significant investment in resources from central government if this process is to be successful.

Council also considers that the final NBA needs to clarify the relationship between NBA plans and the various pieces of Treaty settlement claims legislation. It must also clarify what will happen in respect of any existing or future Mana Whakahono ā Rohe (MWaR) arrangements. This is important to the FND in light of a MWaR request for implementation from Te Whiu.

Purpose of the Act

Council notes there is no explicit reference to the built environment in clause 5, although it does refer to enabling "*people and communities to use the environment*". The focus however of clause 5 clearly appears to be more on resource use than developing the built environment. While Council acknowledges that these matters may be addressed in more detail in the final draft of the NBA or within the SPA, we would like to see more explicit reference to enabling urban development within the built environment.

Council would like to see a definition for the 'built environment' included in clause 3, similarly to that for the 'natural environment' for clarity.

Environmental limits and outcomes

Council agrees with the intent of setting environmental limits as it makes those limits clear to landowners. Council has concerns however around how environmental limits will be set and whether those limits will be consistent across the country or set at a regional/district level. The FND has extensive areas of undeveloped land and land that has been identified as requiring protection under the RMA as matters of national importance.

It would appear similar protection will be required to protect those natural environments through clause 8 of the NBA. Council considers that the responsibility needs to be fairly apportioned across the nation and not left to a handful of districts to protect, unless adequate resource and financial assistance is provided to compensate landowners that have for the most part had opportunity to develop their land removed.

Our district economically underperforms compared to other regions and New Zealand as a whole. It is vital that we do not end up carrying the environmental responsibilities for the benefit of the nation or region at the cost of improving our economic and social wellbeing. In addition, it is likely Māori land would be heavily affected as it has not been actively utilised due to lack of access to resourcing, complex multiple ownership issues, and historical migration to cities.

The government has signaled a desire to enable better utilisation of Māori land and increase regional productivity, but it is unclear how that might be achieved if large areas of the district can't be utilised, or if 'conventional' development is cost prohibitive. Assistance with research or other resourcing may be required if owners are to achieve an economic return without compromising environmental integrity or quality.

Council is concerned that the NBA continues the RMA mantra of 'first come first served' in terms of allowable degradation of the natural environment within any set limits. It is considered that a more nuanced limit setting regime will need to be constructed to ensure that a handful of properties do not reach the limit for built development in an area envisaged to accommodate more. This is considered particularly important in the context of providing for growth and having enough housing and business land to satisfy that growth.

The absence of a hierarchy for the environmental outcomes listed in clause 8 is problematic. If applications are referred back to Part 2 of the NBA, then that will inevitably lead to some outcomes being balanced against others. Strong direction will be needed for the environmental limits to ensure that development and wellbeing are to be achieved in ways that also improve the environment.

Implementation and resourcing

Limited detail has been provided around the transition from the RMA and implementation of the NBA, particularly in terms of how it will be resourced. It has been acknowledged by the local government sector that it is already experiencing significant difficulty attracting and retaining the capacity and expertise it needs to carry out its existing resource management functions. Many councils including our own are experiencing ongoing recruitment churn, which has significant time and financial implications.

The shift from managing adverse effects to complying with environmental limits and promoting outcomes for the benefit of the environment will require a change in culture. Resourcing of capability building, in terms of guidance and training, from local government will be needed for a smooth transition.

Arguably the transition from the Town and Country Planning Act to the RMA in the early 1990s could have been done better. The process was significantly impeded by a failure to adequately recognise and resource the necessary transition for professionals and other stakeholders, who had been trained and had practiced under a different set of imperatives and understandings. It would be unfortunate to repeat that historical error.

Council is interested in understanding how the baseline for environmental limits will be set and whether it will be a case of central government setting criteria by which each Council has to assess, investigate and report. If this is the case then it will be a resource intensive and expensive exercise if done properly and based on, amongst other disciplines, scientific and ecological evidence.

National Planning Framework (NPF)

Council generally supports the idea of having consistent and consolidated national direction in the form of a NPF. This should set a national direction from the start and should negate the need to continue to create national policy direction if and when required, as is the system we have now.

This will save Councils having to continuously change and update to reflect the latest national policy direction, which is a significant imposition on Councils' limited resources. However, the lack of detail around how it will work makes it difficult to provide meaningful feedback. For example, it is not clear what role local government will play in developing the NPF, nor is it clear what roles and functions will still sit with territorial authorities vs planning committees in terms of policy functions, compliance, monitoring, and enforcement functions.

Council supports the intent of clause 10(c) which as drafted proposes that the NPF is mindful that a 'one size fits all' may not be appropriate in all instances and may have unintended consequences for some parts of the country. By way of example, the impending National Policy Statement on Indigenous Biodiversity has significant implications for the FND.

Initial mapping indicates that approximately 42% of the FND is identified as SNA affecting approximately 9,000 landowners. This along with Outstanding Natural Landscapes, which cover approximately 22% of the FND, as well as high and outstanding natural character of the coastal environment, which covers approximately 50% of the terrestrial area identified in the coastal environment, already place a large burden on land owners in the FND.

With the further introduction of cultural landscapes in a district known as the birthplace of the Nation and where Māori settlement first occurred, the majority of the district could be identified with those values. Protection of such resources need to be proportionate to the communities that are protecting them for the benefit of the nation.

It would appear that the FND is over represented in this regard and it would not seem equitable for the FND to be the part of the country 'carrying the can' to protect these areas in perpetuity while other areas of the country do not.

Council is also concerned over the uncertainty of the protection of highly productive land. The exposure draft does not provide certainty that this land will be protected from land fragmentation and inappropriate land uses. Central government is creating a National Policy Statement for Highly Productive Land that needs to carry through and have a clear framework for its management and protection. Not requiring the outcome to promote highly productive land in clause 8(m)(iii) through setting a mandatory environmental limit in clause 13 seems at odds with the purpose of the NBA in enabling people and communities to use the environment in a way that supports the well-being of present generations, without compromising the well-being of future generations.

Planning committees

Council considers having limited local representation on the planning committee problematic. We have concerns around fair and appropriate community representation and the ability to garner feedback and contributions from the wealth of community relationships held by the FND and tangata whenua. While Council acknowledges the need for plan making processes to be efficient and not overly complex, this needs to be balanced with opportunities for the community to be provided genuine and meaningful input.

If communities and tangata whenua groups do not feel represented on the planning committee, they will likely feel disengaged which will make it difficult for NBA plans to reflect and meet the needs of the community.

Similarly, if the planning committee secretariat sits within regional councils and has little to no territorial authority input there will inevitably be issues around achieving appropriate representation of local interests.

Summary

Council is thankful for the opportunity to provide feedback on the expose draft for the NBA. Unfortunately, at this juncture there is not enough content or detail to understand important components around governance, resourcing and responsibilities, and what level of input territorial authorities will have in policy and plan making.

There are also outstanding questions in regard to where liability sits and territorial authorities' ability to challenge planning committee decisions should they feel they do not align with local planning initiatives.

As previously stated, Council supports the submission prepared by Taituarā and has not repeated that content in this submission. This submission is to be read in concert with the Taituarā submission.

Yours sincerely



Darren Edwards
General Manager Strategic Planning and Policy