

28 February 2022

Ministry for the Environment

RE: Far North District Council's feedback on the Ministry for the Environment. 2021. Transforming Aotearoa New Zealand's resource management system: Our future resource management system - Materials for Discussion. Wellington: Ministry for the Environment.

The Far North District Council (Council) welcomes the further opportunity to provide feedback and help shape the Natural and Built Environment Act (NBA) and Spatial Planning Act (SPA), for which Bills will be introduced into Parliament later this year. As with the feedback provided on the exposure draft in August 2021, Council is limited in terms of what it can meaningfully feedback given the limited detail provided both in the exposure draft of the NBA and the more recent materials for discussion.

In summary Council's submission on the exposure draft concentrated on the following topics:

- Territorial authority functions – what role does local democracy have in the new legislative framework;
- Tangata whenua – what is tāngata whenua's role in the new legislation and how will that role be resourced. What is the relationship with treaty settlement legislation;
- The purpose of the NBA – what is the relationship between the natural and built environments;
- Environmental limits and outcomes – how will environmental limits be set and will they be consistent across the country. Will there be a hierarchy for environmental outcomes;
- Implementation and resourcing – how will the transition from the RMA and implementation of the NBA be resourced. Where will the responsibility lay to resource the research to set environmental limits.
- National planning framework (NPF) – what is the role of local government in developing the NPF and what functions will sit with territorial authority's vs planning committees;
- Planning committees – what level of local representation will there be on the planning committee.

Council makes the following comments in response to the questions raised in the materials for discussion.

National Planning Framework

Council considers that the NPF needs to be in place and cover the full range of resource management issues, including the important issues of climate change, prior to any regional spatial strategies or NBA plans being released. Further, it needs to clearly define the definition of and methodology for giving effect to the principles of the Te Tiriti o Waitangi.

There is scope for this to reduce pressure on the planning system by:

- Specifying standards for the management of well understood resource management issues which are currently subject to extensive and costly debate through the resource consents process.
- Specifying limits and identifying the pressures on those limits through regional spatial strategies (RSS). This would allow NBA plans to prescribe rules to prevent breaching of these limits.

- A strategic use of prohibited activities and a lower reliance on subjective analysis of effects would improve certainty of outcomes from plans.

The current timeframes in the RMA for review and monitoring seem appropriate. The issue is more the length of time it takes to undertake a full review of a plan and then taking it through a Schedule 1 RMA process. It is important that the timeframe chosen aligns with other council documents such as the long term plan, so strategies, planning and infrastructure funding can be aligned.

Regional spatial strategies

To deliver a successful RSS it is essential that the RSS outcomes and deliverables are anchored into practical implementation plans with triggers to deliver wider infrastructure requirements and funding. Any agreements around who pays for what, how and when needs to be cemented up front to ensure that RSS can be implemented, is legally transparent and is binding. It is likely that RSS will be ineffective unless they can be enforced.

It is important to have representatives at a local level on the RSS joint committees as this is the only way a true understanding of each districts issues and aspirations is understood. Council considers that representation should at a minimum include an elected member and staff who are subject matter experts.

NBA plans

Council generally supports the stated objectives of the reform but remains of the opinion that it is fundamental that local democratic input be maintained in any plan or placemaking process involving their communities and how they are developed. What a community looks and feels like is highly localised, and something that should be determined by local people. In most cases local authorities, through their community boards, work with their communities to deliver outcomes and ensure the appropriate placemaking provisions are present in statutory documents.

The idea of sub-regional plans has merit to ensure input at a localised level, however without any detail on how this may be achieved it is difficult to understand if they would be effective. What would they include? Would they have statutory weight and what obligation would the NBA plan have to include in its content?

RSS and NBA joint committees

While several proposals for the makeup of RSS and NBA joint committees are identified, little detail surrounds how they will function. While it is stated that RSS and NBA joint committees will have representation from local government, hapū/iwi/Māori and central government, concern remains. It is stated that there is a preference (not requirement) for representation of all local authorities in the region on the committees. It is difficult therefore to understand the influence local authorities would have within their jurisdiction.

A joint committee model consisting of representation from mana whenua and local community groups would build on the wealth of community relationships held by the Far North District and tangata whenua and would assist in effective representation and local decision making. 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.

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.

Consenting

In theory the new framework should be a marked improvement with simplified activity classes, consistency of rules, definitions, and clarity as to which applications are to be notified. The current debates over the level of adverse effects and subsequent notification decisions engages a considerable amount of both council planning officer and consultant time.

Concern remains how councils will apportion rights to adversely affect natural resources where they are approved under the NPF. How will these systems ensure environmental bottom lines are not crossed in instances where there are cumulative effects? Will rules have the capacity to transition from permitted to prohibited if it is identified that a bottom line has been reached?

The certainty and effectiveness of the proposed future system will be dependent upon its implementation. There was scope for the current planning system to be efficient and effective under the RMA but a lack of central government guidance from the outset through National Policy Statements and National Environmental Standards left territorial authorities and the courts to resolve issues.

Compliance, monitoring and enforcement (CME)

User pays in terms of compliance, monitoring and enforcement is more appropriate in circumstances where significant Council resource is required for investigation and enforcement. The burden of that cost would be more fairly apportioned to the consent holder. Council has the following questions:

- How will compliance and enforcement decision-making be independent and not subject to inappropriate influence or bias when it is anticipated that local authorities will continue to be responsible for the delivery of compliance, monitoring, and enforcement services, including decision-making about when to take enforcement action and what type of action to take?
- What benefit is there in increasing the statute of limitations? Will this not result in slower investigations and decision making?

Council agrees with the deferral of CME regional hubs, CME and local councils are intrinsically inter-twined and the level of separation created by regional hubs would appear to be counter intuitive.

Any new process promoted through legislation with new enforcement tools will require detailed training and mentoring. There are also likely to be significant system changes required. It will be challenging to resource implementation and training of new systems while addressing current staff workloads.

Monitoring and system oversight

In theory the proposed approach to monitoring and oversight is good and should lead to positive outcomes for the environment. It needs to be acknowledged however that implementation has the potential to impose a significant cost burden on Council, being the expectation is that councils will continue to be responsible for it. The Far North District (FND) is approximately 7,323 square kilometres with a comparatively small rating base (35,252 persons). FND also has extensive areas of land that has been identified as requiring protection under the RMA as matters of national importance.

Providing greater opportunities for Maori to be involved in monitoring activities is also a positive. How is adequate resourcing and education envisaged to be resourced in the Far North where we have 11 iwi

authorities and between 160 and 200 hapū? Resourcing and education are important so meaningful contributions can be made.

The responsibility to fund or resource monitoring needs to be fairly apportioned relative to the district's ability to fund it.

Role of local government in the future system

An effective relationship between local authorities and joint committees will be dependent on the requirement in the legislation to either 'consider', 'have regard' or 'give effect' to local place making. It will also depend on the type of representation each local authority has on the respective committees. The accountability relationship between joint committees and their constituent local authority is still unclear. There is a need for a clear process road map which demonstrates how local, regional, and central government contribute to the future resource management system. Not enough detail has been provided around process and the weighting of documents produced at local government level.

As Council has said previously, 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.

National Māori entity

Council considers the establishment of a national Maori entity in the new resource management system problematic, as the framework is addressing a regional environment. While a national Māori identity would provide oversight over systems and processes it would need to delegate true authority to the regional Māori (iwi/hapū) authority(ies). In the FND there are 11 iwi authorities and between 160 and 200 hapū. How is it envisaged that the interests of all these iwi and hapū are accommodated?

Enhanced Mana Whakahono ā Rohe arrangements, integrated with transfers of powers and joint management agreements

Enhanced Mana Whakahono ā Rohe processes could be enabled and integrated with transfers of powers and joint management agreements through education on the various functions of council about the intent of that particular document, then by streamlining internal processes to suit. It is noted that not all Mana Whakahono ā Rohe arrangements will be the same. It is important that enhanced Mana Whakahono ā Rohe should include all whenua, wai and taonga interests.

Funding in the future system

As mentioned, the Far North District (FND) is vast with a comparatively small rating base. FND has extensive areas of land that has been identified as requiring protection under the RMA as matters of national importance. Further, approximately half of the population is of Māori descent and 17% of all the land in the FND is whenua Māori under Te Ture Whenua Māori Act 1993.

Council considers that the responsibility in terms of funding the proposed functions under the new legislation needs to be fairly apportioned across the nation and not left to a handful of districts to protect. Local authorities are constantly being burdened with directives from central and regional councils that are not accompanied with funding assistance. 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 and costs for the benefit of the nation or region. Council recommends that a comprehensive funding report is developed so parliament, local government and communities can support and adopt it. A full and frank discussion on the issue is vital to ensure local government contributions are fair and affordable.

As mentioned in Councils original submission, 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.

In terms of tangata whenua, Ngapuhi which is New Zealand's largest iwi, are currently in the pre settlement space and are not resourced to the same level as other iwi groups across the country. This inhibits their ability to meaningfully respond or contribute in the resource management space. Resourcing is also considered in the context of human resource and training.

Summary

Council is thankful for the opportunity to provide further feedback for the NBA and has attempted to the answer the questions asked by the Ministry in the absence of substantive content and detail around the proposed legislative reform.

Yours sincerely



Darren Edwards
General Manager Strategic Planning and Policy