

4 February 2023

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

TO: ENVIRONMENT COMMITTEE

SUBMITTER: WATER NEW ZEALAND

INTRODUCTION

1. Water New Zealand (Water NZ) is a national not-for-profit organisation which promotes the sustainable management and development of New Zealand's water environment, particularly the three waters (drinking water, wastewater and stormwater). Water NZ provides leadership and support in the water sector through advocacy, collaboration, and professional development. Its ~3,000 members are drawn from all areas of the water management industry including regional councils and territorial authorities, consultants, suppliers, government agencies, academia and scientists.
2. Water NZ welcomes the opportunity to provide a submission on the Natural and Built Environments Bill (NBEB) and the Strategic Planning Bill (SPB). Our submissions on both Bills are covered in this one document but dealt with in separate parts with the SPB submissions being made first.
3. As stated in our early involvement in this reform programme Water NZ generally supports the objectives of the review of the resource management regime. We want to see a system that is efficient, simple, cost-effective and gives effect to the principles of Te Tiriti o Waitangi.
4. However, Water NZ members have reservations about whether the three new pieces of RM legislation will achieve a simpler, more efficient system. Reducing the number of plans will not necessarily drive simplicity and efficiency. The Bills add significant complexities, unnecessary length to the statutory framework and expensive governance and plan making processes for communities and ratepayers. The focus of reform should not be on the number of plans, but on simplicity, efficiency and integration, otherwise there is the real possibility of repeating the issues that have plagued the Resource Management Act 1991 (RMA). We are yet to see evidence of intended cost or time savings under the new system.
5. Water NZ notes that many of its members will be making their own submissions on issues specific to their areas of expertise and interest, particularly those from local authorities.

6. Given the important of the matters that this reform package seeks to address, we ask the Government seeks cross-party support for these reform programmes.

OVERVIEW

7. This submission is structured in as follows:
 - i. An overview of the submissions made by Water NZ to the reforms to date;
 - ii. A discussion of Water NZ's submission points on both the SPB and the NBEB; and
 - iii. An appended list of all recommendations
8. Given the length and complexity of the Bills, and the very tight submission timeframe, our submission focuses solely on our key issues.

ENGAGEMENT AND TIMEFRAMES

9. Before turning to consider the submission, we wish to make a comment about the engagement to date and timeframes for feedback.
10. While we support the intent of the RM reforms, our members are expressing concerns over the extremely short timeframe for providing feedback on the bills. Given the complexity and sheer length of the bills, and the significance of resource management for our country, it is disappointing to see such a limited time period afforded for public submissions. This has been exacerbated by the majority of the submission period falling over the holiday period between Christmas and mid-January, when many people are away.
11. There has been little over six weeks from the bills' first readings to review, make comment and have a draft submission approved by the governing entities of submitters and submitted in the timeframes provided. The short timeframe for providing feedback, means that Water NZ and its members are unable to provide a thorough, detailed clause by clause analysis.
12. In addition, as we are sure the Committee is aware, there has been little engagement on the detail behind the bills with many members of the public. We understand that what engagement that has occurred has been limited to very select working groups. This is, therefore, the first time since the Review Group Report and the Exposure Draft that Water NZ has seen the detailed provisions contained within the bills – particularly the Natural and Built Environments Bill.
13. Compounding the issue is that our members and advisers have spent the last two years responding to multiple new planning documents, as well as the Three Waters Reforms, the broader Future for Local Government and the interdependencies between them all. Resources are spread thin, consultation-fatigue is high, making it challenging for members to interact meaningfully on these bills.

THE SUBMISSIONS MADE BY WATER NZ ON THE REFORMS TO DATE

14. Water NZ actively participated in the process that led to the release of the Exposure Draft. At that time (January 2020) we noted that the three waters sector was experiencing a time of unprecedented legislative and structural change. Three years ago there were a number of government legislative proposals in various stages of development that impact directly on the sector. That reform package has now partially landed and the remaining pieces of the legislative puzzle are currently before Select Committee. What the sector is facing is a new legislative and regulatory framework that includes:
- The establishment of a drinking water regulator (who will also have functions for wastewater and stormwater in due course) under **Taumata Arowai - the Water Services Regulator Act 2020**;
 - The passing of the **Water Services Act 2021** which sets up the regulatory framework for drinking water including the obligations, duties and functions of drinking water suppliers and the regulatory functions of Taumata Arowai;
 - The passing of the **Water Services Entities Act 2022** which establishes four publicly owned water services entities who have the function of providing safe, reliable and efficient water services in place of that role currently undertaken by local authorities;
 - The introduction of the **Water Services Legislation Bill** just before Christmas 2022 which is an omnibus bill (that amends various pieces of legislation) and establishes and empowers water services entities by setting out their functions, powers, obligations and oversight arrangements.
 - The introduction of the **Water Services Economic Efficiency and Consumer Protection Bill** just before Christmas 2022 which provides for the regulation of price and quality of water infrastructure services and consumer protection for such services.
15. There is also a myriad of other reforms that impact on water services as well as the resource management reform package. Water NZ's members are directly affected by a resource management reform as most of the activities undertaken by water service providers require planning and policy support and generally need to obtain resource consents.
16. The key themes of Water NZ's input to reform process to date can be summarised as follows:
- **Legislative architecture** - Water NZ recommended that a more holistic approach is taken, across reforms and other programmes, to broader infrastructure planning and regulatory frameworks to ensure consistency, efficiency and ultimately good environmental outcomes while ensuring communities have safe delivery of essential services.

- **Purpose and principles of the RMA** - Generally Water NZ considered that the purpose and principles of the RMA are fit for purpose in any new environmental regulatory regime going forward but clarity and leadership from central government is needed. The purpose of the RMA in section 5 has not been applied by decision-makers on plans and policy and resource consents in the way intended. Added to this was that when the RMA was enacted it was largely left to local authorities to get on with it with limited guidance or support from central government. That coupled with an ideology at the time that the focus of decision making should be on environmental effects and nothing else (the market will determine everything else) has left enormous gaps in the way in which we have planned for both our urban and our rural environments. Water NZ made the submission that this time around local authorities need significant direction and guidance to help them apply the purpose and principles. Resources need to be focussed on not only implementation but monitoring and compliance to ensure implementation is actually occurring.
- **The integration of land use planning and other natural and physical resources** – it was Water NZ's view is the best mechanism to achieve this is to mandate a form of spatial planning throughout New Zealand. The spatial plan would set the blueprint for a region for a lengthy time period – such as 30 years. It would focus on all the well-beings and outcomes not just environmental. It would need to be delivered across a range of regulatory tools including plans developed under the RMA and any successor. Those plans should be required to give effect to the spatial plan in the same way they are required to give effect to higher order policies such as National Policy Statements (NPSs) and Regional Policy Statements (RPSs).
- **Climate change** – Water NZ noted that issues associated with climate change, both in terms of planning for the effects of climate change and mitigation of such effects, are critical cultural, social, economic as well as environmental issues. The infrastructure that the members of Water NZ manage are vital for safe and healthy communities and given the location of these they are at the forefront when natural disasters (including those exacerbated by climate change) occur. Climate change management should be a part of every councils' strategic, spatial and operational planning. It must be included as integral to those processes not a tick box to be considered and moved on from. In addition, policy decisions around national greenhouse gas reduction can and should occur at a national level but to the extent appropriate be given effect to locally by local authorities.
- **National direction** – Water NZ strongly supported national direction and noted that we have a plethora of approaches to environmental matters that should have been dealt with at a country level. Some examples in the water space are:
 - Varied approaches to the setting of limits and regulatory frameworks for freshwater;
 - Every district plan adopting different definitions for terms that should be consistent across the country;

- Every wastewater treatment plant having different design and treatment standards to meet even though on the whole generic standards are appropriate tailored for the local situation;
- Lack of synchronised development of policies and plans such that in some parts of the country we have regional and district plans are yet to give effect to more up to date RPSs and NPSs;
- Continuous 'reinvention of the wheel' and a lack of learning from past experiences or the experiences of others.

Further Water NZ noted that it is critical that there is national guidance (both mandatory and non-mandatory) to accompany any re-setting of the RM framework. It is also critical that there are appropriate transitional arrangements in place so the problem of policy and planning documents being unsynchronised is kept to a minimum.

- **Policy and planning** – as already noted it is the view of Water NZ that if there is mandated spatial planning, a greatly improved integrated decision-making framework and significant national level guidance and direction then the quality of policy and planning document should naturally follow.
- **Consents** - Water NZ considers that dealing with the higher order areas will result in significant improvements to processes for consents and approvals. The consent process provisions in the current Act have been 'tweaked' more often than the policy and planning ones. The result is lengthy, time-consuming, costly and inefficient processes that many local authorities are struggling to undertake. The fact that many consents are not notified only tells half the picture of what really goes on in consent teams within councils. Our members tell us that consent processes are unwieldy and do not necessary deliver any environmental improvements.
- **Allocation** - Water NZ is directly affected and has been involved in previous reforms regarding the allocation of water. The Government is developing its freshwater allocation policy through its Essential Freshwater work programme. There is an inherent tension in having legislation that is allocating resources and managing environmental outcomes. Water NZ considers that there was therefore merit in the idea of removing allocation from the RMA and having allocation dealt with by other processes – many of which already exist such as DOC concessions for areas that that Department administer.
- **Compliance, monitoring and enforcement** – Water NZ considers that compliance monitoring and enforcement under the RMA is piecemeal and largely ineffective. One only has to look at the decline in freshwater quality over the last 30 years to see that something has gone very awry. Water NZ considers that there should be national oversight of compliance monitoring and enforcement across all the matters covered in the RMA – policy and plans and consents. Such national oversight would include setting up standardised templates and processes for monitoring and would also require strong regulatory tools of enforcement to ensure that poor performance is addressed.

- **Institutional roles and responsibilities** - Water NZ considers that changes to institutional roles and responsibilities are essential to ensure a new environmental system works as intended. The elements need to include:
 - New roles and functions in relation to spatial planning;
 - National oversight of compliance monitoring and enforcement;
 - A greater level of national guidance and direction either via increased activity at the MfE or via a new agency;
 - Consideration of how the management of freshwater ought to be dealt with in light of the changes signalled (and noted above) in the water industry.

RECOMMENDATIONS ON THE NATURAL AND BUILT ENVIRONMENT BILL AND THE SPATIAL PLANNING BILL

17. Continuing the themes Water NZ have raised in our submissions to date, to ensure the best outcomes for the water industry, whilst ensuring the future planning regime is the best it can be to allow efficient and effective management of water services in Aotearoa we have the following recommendations.

Climate change is not recognised strongly enough in the bills

18. The NBEB provides an ineffective framework for delivering climate action (both mitigation and adaptation), and only weakly links with the Climate Change Response Act. Specifically, planning instruments are not required to give effect to emissions reduction plans (they must only be consistent with them), and although existing use rights can be altered or extinguished where needed to adapt to climate change, this may be constrained by the inability to render land incapable of reasonable use or compulsorily acquire land.
19. We support the Government's intention to develop a Climate Adaptation Act (CAA) as the third piece of legislation in the RM Reform programme. However, we are concerned the CAA is on a considerably slower track than the NBEB and SPB. This is despite the climate change adaptation challenges facing Aotearoa New Zealand and our communities, infrastructure and property. There is as strong need for this piece of legislation as there is for the the NBEB, the SPB and the proposed National Planning Framework (NPF).
20. Water, wastewater and stormwater infrastructure is already vulnerable to a broad range of climate change impacts including more frequent and severe extreme weather events that damage infrastructure and disrupt supply; rising sea levels that can cause saltwater intrusion into coastal aquifers; changes in precipitation patterns that can affect availability and quality; and increased demand for water due to higher temperatures and changing precipitation patterns.
21. As has been seen across New Zealand in the past few months, including Auckland, Tairāwhiti, Canterbury and Nelson, climate change is increasing frequency and

intensity of storm events, along with growth and intensification of our urban environment, both increase the risk of flooding.

22. The long life nature of water infrastructure, with many pipes built 100 years ago, still in operation, means it's imperative that adaptation for the future climate is part of infrastructure design. Water service providers need to understand likely and future worst-case conditions to develop operational policy and design responses accordingly.
23. Accordingly the DIA National Transition Unit/ Water Service Entity (WSE) Establishment CEs (until 1 July 2024) and the WSEs (or their chief executives) who should have the primary responsibility for advocating for and participating in NBEB and SPB policy plan development in the interests of three waters infrastructure rather than councils.
24. Action 4.5 of the National Adaptation Plan sets out how reform of the institutional arrangement for water services could support climate adaptation planning. To support this, provisions are needed in the NBEB and SPBs to facilitate proactive planning through identification of hazard areas, to inform both the location of future developments and infrastructure provision and areas needing adaptation.
25. A national spatial strategy (and the suggestions the Local Government Resource Management Steering Group has made around this, informed by the All of Government resilience work) would help to provide certainty around significant areas that are suitable or unsuitable for future development, and where future adaptation action may be needed.
26. A national spatial strategy (discussed below) would help to provide tools to restrict further development in areas of high or increasing risk, and facilitate the retreat of communities, homes and infrastructure from areas where risks are intolerable. Priority should be given to developing a national spatial strategy ahead of full implementation of the new resource management system.
27. Given that the transition to the new resource management system will take some time, we recommend the Government makes allowances for fast-track revisions to existing Regional Policy Statements and District Plans to give effect to a high level national spatial strategy, to allow for new climate change provisions that pre-empt the CAA, and restrict further development in areas of high or increasing risk in the short term.
28. Analysis provided by the Water Industry Commission for Scotland (WICS) has identified that between \$120-\$185b of investment is required over the next 30 years to improve the New Zealand water system to meet existing standards. This will result in a significant contribution of greenhouse gasses unless direct action is taken to understand and reduce emissions.
29. The SPB must require the implications of climate impacts and carbon emissions on proposed infrastructure lifecycle asset management decisions and take a long-term approach to service delivery.

Climate related recommendations

30. Water NZ's recommendations are:
- a) that the Government prioritises filling the gaps in existing national direction; most notably, a lack of existing national direction on climate change.
 - b) the Government should make considerable progress on the CAA before the end of this parliamentary term.
 - c) the NBE and SPBs enable proactive planning through identification of hazard areas, to inform both the location of future developments and infrastructure provision and areas needing adaptation.
 - d) WSEs must have the primary responsibility for advocating for and full membership for participating in NBEB and SPB policy plan development in the interests of three waters infrastructure.
 - e) a national spatial strategy is developed ahead of full implementation of the new resource management system.
 - f) allow fast-track revisions to existing Regional Policy Statements and District Plans to give effect to a high level national spatial strategy, to allow for new climate change provisions that pre-empt the Climate Adaptation Act, and restrict further development in areas of high or increasing risk in the short term.
 - g) require that climate impact assessments and carbon emissions on infrastructure lifecycle asset management decisions are part of decision making and to ensure there is a long-term approach to service delivery.

Te Oranga o te Taiao in the natural and built environments

31. Compared to the existing framework, the bills take significant steps towards a genuine partnership approach between Māori and public authorities in the management of the environment, not only in terms of specific involvement in decision-making, but also in recognising and seeking to embrace a Te ao Māori approach.
32. At its heart is Te Oranga o te Taiao – a concept drawn from Te ao Māori, and an intergenerational ethic that speaks to the health and wellbeing of the natural environment, and the essential relationship between a healthy environment and its capacity to sustain all life. Yet this concept, and any Te Reo Māori or Mātauranga Māori concepts do not make it into any of the other clauses of the bills.
33. Water NZ are concerned as to how Te Oranga o te Taiao integrates with the concept of Te Mana o te Wai (which is integral to Three Waters Reform and the National Policy Statement (NPS) for Freshwater Management). We question how will the concept of Te Mana o te Wai be integrated into the new RM system? We are also concerned the lack of reference to Te Mana o te Wai in the NBEB will lead to fragmented and poor planning outcomes.

34. Water NZ highlight again that iwi/Māori must be resourced to participate in the new system. Government must ensure that iwi/Māori have the capacity to participate in the new system in the manner that is envisaged.
35. While there is a commitment to partnership with Māori, little detail is provided about how tangata whenua will be involved in articulating, designing and delivering policy. It is for iwi and hapū partners to comment on the workability of this and on whether it goes far enough to enable mana motuhake.
36. We strongly encourage the Government to support iwi/hapū/runanga to share their knowledge and concepts of te kōiora and whakapapa. This will ensure that local plans and policies, consider local kaupapa Māori solutions and deliver better decision-making structures for tangata whenua.

Te Oranga o te Taiao Recommendations

37. Water NZ's recommendations:
 - a) the Government must provide adequate funding and capacity building for iwi/hapū/runanga so that tangata whenua aspirations for articulating, designing, and delivering Te Oranga o te Taiao policy can be met.
 - b) clarifying how Te Mana o te Wai is integrated within the resource management reforms.
 - c) iwi/Māori must be resourced to participate in the new system.
 - d) more meaningful use of Te Reo Māori through the NBEB and SPBs.

The legislative architecture aims to integrate decision-making across several Acts

38. Water NZ acknowledges that these Bills will integrate decision-making across several Acts. We are concerned there is little alignment and integration between NBEB and SPBs (and the proposed CAA) and between these and other significant reform programmes. It is difficult to predict how, or whether, the three will fit or work together as one coherent package.
39. The lack of integration and alignment between these concurrent reforms is of significant concern. This creates a risk that each programme's objectives will not be met and that there may be duplication, planning and service delivery gaps as well as a lack of clarity around roles and responsibilities. This particularly applies to the Three Waters Reform and the Future for Local Government review.
40. Given the estimated \$120-\$185b investment required in three waters over the next 30 years, the WSEs are predicted to be one of the biggest users of the NBE regime. However, except for one reference to the Government policy statement on water services under the Water Services Entities Act 2022 (WSE Act) in the SPB, and a mention of it in Schedule 15 of the NBE, there are no other references to the WSE Act or WSEs in the draft legislation.
41. We suggest better integration of the NBE and SPBs with other legislation, including the Water Services Entities Act 2022, by adding a new decision-making principle

(clause 6) that requires all decision-makers to have regard to statements, plans and strategies prepared under other legislation, or at least the Water Services Entities Act 2022.

42. We do recommend that a more holistic approach is taken, across reforms and other programmes, infrastructure planning and regulatory frameworks to ensure consistency, efficiency and ultimately good environmental outcomes while ensuring communities have safe delivery of essential services. Statutory spatial planning under the SPB and plans under the NBEB should better align with other legislation, programmes and frameworks, especially for those providing for infrastructure provision (Climate Adaptation Act, Te Waihangā Infrastructure Strategy, Water Service Entity Act infrastructure strategies and asset management planning).
43. WSEs must have an active role in NBE and spatial plan-making. Alas, neither reform process provides clarity about WSEs' role in the new plan-making processes. This role will be critical for timely and strategic delivery of three waters infrastructure, as sought by both reforms.
44. Water NZ request the ability of WSEs to participate meaningfully in NBE and SP policy and plan development be strengthened.
45. We recommend amending the SP and NBE to clarify that it is the DIA National Transition Unit/WSE Establishment CEs (until 1 July 2024) and the WSEs (or their chief executives) who have the primary responsibility for advocating for the interests of three waters infrastructure in the new system rather than councils.
46. There are many other key plans to be prepared under the WSE Act including: the Statement of Strategic and Performance Expectations (prepared by the Regional Advisory Group); Te Mana o Te Wai Statements (prepared by mana whenua); a Statement of Intent (prepared by the WSE board); and Asset Management Plans and an Infrastructure Strategy (prepared by the WSE itself). These are all relevant to, and would add value and efficiency to, the RSS and NBE plan process. There is no need to duplicate statutory planning processes; each should work with the other.
47. National Planning Frameworks should provide a national framework that is enabling, flexible and responsive to local issues – one that allows communities to respond to specific issues 'on the ground'.
48. However, the Government needs to provide nationally consistent direction by making clear decisions about how the trade-offs between different and competing outcomes (such as adaptation and enabling housing and infrastructure development) should be managed. We note that this is the intention of the NPF (clause 33). However, without the contents of the NPF known at this stage it is unclear whether this significant matter will be appropriately addressed.
49. Similarly, without the NPF it is very hard to comment on the workability of a number of aspects of the NBEB. Water NZ supports the proposal for the provision for a National Spatial Strategy, (guided by national population strategy to inform

sustainable levels of growth in Aotearoa New Zealand) which the regional spatial strategies must give effect to. Alternatively, we call for the Government to provide regional statements of the Government's investment priorities to inform programme funding in RSS.

50. We request the Government makes amendments to the SPB to clarify which transition tranche each region will be part of and how these tranches align with the new WSEs.
51. Similarly, we ask the Government to provide clarity about when parts of the NBE take effect and when parts of the RMA will fall away. To avoid confusion, and allow transition to a simpler, more efficient system.

Legislative recommendations

52. Water NZ's recommendations:
 - (a) ensuring integration and alignment of all reform programmes, other legislation, reviews and frameworks.
 - (b) confirming that there will be explicit provision providing for the WSEs to be able to participate meaningfully in NBE and SP policy and plan development.
 - (c) clarifying that it is the DIA National Transition Unit and the WSEs (or their chief executives) who have the primary responsibility for advocating for the interests of three waters infrastructure in the new system.
 - (d) the provision for a National Spatial Strategy and /or regional statements of the Government's investment priorities to inform programme funding in RSS.
 - (e) clarifying which transition tranche each region will be part of and how these tranches align with the new Water Services Entities

How the transition to the new system is resourced will be critical.

53. The resource management reform, like three waters reform, sets out a shift to an aggregated, regional approach to planning, funding and delivery. This must be balanced with local consultation and democratic input from the communities as well as available funding, resources and other operating constraints. It is imperative that enough time and resource is provided for this transition to occur.
54. Implementing the new system poses significant resourcing and capacity challenges all sectors involved or impacted by resource management. Across the water sector there will be restraints on capability and capacity to implement such transformative change while operating 'business as usual' and delivering on the three waters reforms. Allowance must be made as the country transitions from one regime to another, noting the significant skills capability and capacity resources required for regional spatial planning, developing and implementing NBE plans, national frameworks and guidance etc.

55. How the transition to the new system is resourced will be critical. Transformational reform requires transformational resourcing and in particular resourcing and capacity and capability development for iwi/Māori.
56. Central government must provide funding to ensure iwi/hapū can participate in the new system as envisaged under both Bills, particularly given its role as the Treaty partner. This includes supporting iwi/hapū to build the necessary capability and capacity to engage.
57. It is critical that there is national guidance (both mandatory and non-mandatory) to accompany any re-setting of the RM framework. It is also critical that there are appropriate transitional arrangements in place so the problem of policy and planning documents being unsynchronised is kept to a minimum.

Transition recommendations

58. Water NZ recommends that
 - (a) provision of guidance and clarity around arrangements for transition to and implementation of the new system.
 - (b) Governments funding commitment to ensure sufficient capability and capacity to implement the new RM system, while parties are operating 'business as usual' and facing other reforms. provide appropriate funding to enable Māori participation in the system, particularly given its role as the Treaty partner.

Institutional roles and responsibilities are essential

59. Water NZ considers that changes to institutional roles and responsibilities are essential to ensure a new environmental system works as intended.

Roles and responsibilities recommendations

60. Water NZ recommends that the elements need to include:
 - (a) new roles and functions in relation to spatial planning;
 - (b) national oversight of compliance monitoring and enforcement;
 - (c) a greater level of national guidance and direction either via increased activity at the Ministry for the Environment or via a new agency;
 - (d) consideration of how the management of freshwater ought to be dealt with considering the changes signalled (and noted below) in the water sector;
 - (e) recognition and provision in the new system for the roles, responsibilities and functions of the new Water Service Entities (WSEs) in environmental management, consenting, monitoring, compliance and enforcement;

- (f) Come 1 July 2024, relevant water staff will transfer from Councils to WSEs, leaving councils without the capability and capacity to be meaningfully involved in three waters matters, specifically the plan-making processes. The WSEs must be involved in developing NPF content as it relates to three waters infrastructure and service delivery.

Regional Spatial Strategies are powerful documents

61. Regional Spatial Strategies (RSS) are powerful documents – setting out the strategic direction and key priority actions over a 30-year timeframe for a raft of matters designed to support the region in giving effect to the purpose of the NBEB.
62. We support the introduction of regional spatial planning, across the country. We believe there are multiple benefits to a range of entities from taking a more co-ordinated, future focused approach to planning and development. It enables many facets of public infrastructure provision, communities, and iwi to have a more joined up and consistent approach to the future and to identify where to put our scarce resources for the best outcomes.
63. Water NZ recommend RSS must be consistent with relevant catchment management plans and any asset management plan prepared by the provider of wastewater, water supply or stormwater network infrastructure.
64. Any regional growth is likely to increase the use of water or change the way that it is used. The SPB does talk to this matter being of a scale or significance that requires planning for, or investment in, infrastructure to be done or arranged at a regional level. As such the SPB must require the early engagement and consultation with three waters infrastructure providers in the regional spatial strategy preparation process. We request that Water Service Entities are added to the list of agencies with “Duty to assist regional planning committees”.
65. Conversely, not all infrastructure will be of a scale to be "spatially identified" in a regional spatial strategy. It must be ensured that the asset management of all network infrastructure be included in actions of a Regional Spatial Strategy (RSS) is also captured by the bill provisions. Water NZ seeks to ensure that agility of decision making is maintained for smaller projects in smaller communities.
66. In order to minimise the potential for plan changes which would place demands on infrastructure, resulting in upgrade work needed that are out of sequence with the RSS and therefore lack funding and resources, it is suggested ‘insufficient three waters capacity’ as a grounds for rejection of an out of sequence private plan change request. This would apply unless the developer had entered into a separate agreement with the WSE.
67. Likewise, we consider that the SPB should specifically provide that RSSs should include areas with infrastructure constraints to provide guidance about areas where any development or significant change in use needs to be carefully managed because of infrastructure limitations.

RSS recommendations

68. Water NZ recommends the following amendments;
- a) the asset management of all network infrastructure be included in actions of a RSS.
 - b) catchment management plans and any asset management plan inform the development of RSS
 - c) three water infrastructure capacity constraints inform RSS plans.

Funding mechanisms will need to balance a range of competing priorities

69. The Water Services Entities Act (2022), the Water Services Legislation bill and SPB intent need to be aligned to ensure planning and funding for water services renewals, and upgrades for growth, happen in a timely coordinated manner.
70. In developing a RSS, the committee will need to balance a range of competing priorities and interests when making decisions and trade-offs. Not all of these will be capable of being reconciled with each other. A RSS committee should be obligated to articulate how it has resolved and weighted competing considerations when making a funding decision that will result in a water services network group being disappointed with the outcome – including making its prioritisation/investment frameworks publicly accessible. This will help give smaller communities / water networks in particular assurance about how their assets needs will be included in work programmes and priorities.

Funding recommendations

71. Water NZ:
- a) strongly request that further clarity about the funding mechanisms for ensuring delivery of the RSS priorities, in particular from central government, is provided.
 - b) suggest provision be made that a RSS must outline a co-ordinated approach to infrastructure funding and investment by central government, local authorities, and other infrastructure providers.

Timeframes must provide certainty for planning and funding of infrastructure

72. Each regional planning committee must prepare and adopt an implementation plan for its RSS. The Bill sets seven years to produce a RSS. There are lessons that must be carried across from regions who have already developed spatial strategies – for example Wellington and Auckland.
73. The experience of Waka Kotahi and councils with the Government Policy Statement for Land Transport (including the impact of changes on long-run planning and funding commitments that link to projects that may take years to plan, approve and construct) should also be called upon to apply pragmatic overview of

whether an implementation plan can be delivered within the overall available funding, resources and other operating constraints.

Timeframe recommendations

74. Water NZ request that timeframes must be attached to priority actions in RSS to provide certainty for planning and funding of infrastructure.

Achieving positive outcomes and strengthening environmental limits.

75. In principle, Water NZ supports the intention of the objective (Better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure).
76. However, some members have concerns that simply changing the system, recognising the associated churn and disruption this will cause, is not necessarily going to realise these aspirational outcomes and objectives without more prescriptive guidance.
77. We note the current approach to resource management and land development can be damaging to our natural taonga through the way in which decisions are made, with te taiao (the environment) deprioritised in favour of economic factors. This must change if we are to protect the health and wellbeing of the whenua, the wai and te taiao. A healthy environment is not mutually exclusive of a sustainable growth agenda.
78. However, we see a lack of direction or guidance in the NBEB about how competing priorities (and conflicts between and among outcomes) will be managed.
79. We ask the Government to consider what level of growth can be sustainable given climate impacts on water availability, changing allocation to allow for Te Mana o te Wai, nutrient balances, Te Oranga o te Taioa, and climate and natural hazards. This detail should be described in the National Spatial Strategy proposed above.
80. Water NZ supports the shift of focus from managing adverse effects, under the current regime, to the proposed promoting positive outcomes. However, we do not support the lack of hierarchy among the outcomes.
81. The list of environmental 'outcomes' that decision-makers are directed to achieve has no hierarchy or clear weighting, meaning a significant amount of discretion exists to pick and choose development outcomes over core environmental protections. We consider it affords discretion for decision-makers in how and which limits and targets are met and uncertainty to plan users.
82. It is noted that the bill requires the NPF to provide an interpretation chapter to assist in navigating conflicts between outcomes when they occur. It could be the guidance in the NPF provides clear and useful direction on how the outcomes interrelate and provide a pathway through the various outcomes for activities such as infrastructure. However, without seeing the NPF or any guidance it is difficult to provide commentary.

83. With no hierarchy or poor guidance to outcomes there will likely be significant inconsistency and uncertainty in approach across the country.
84. There also needs to be a stronger recognition that synergies between different outcomes are to be pursued or preferred where practicable. At present, the Minister is invited to simply prioritise outcomes using their own discretion. This could, for example, see the perpetuation of traditional approaches to stormwater conveyance (eg concrete pipes and outfalls) rather than encouraging nature-based solutions (eg wetland planting and reduction of pollution at source) that can provide the same services while improving environmental outcomes.
85. The Government needs to provide nationally consistent direction by making clear decisions about how the trade-offs between different and competing outcomes (such as adaptation and enabling housing and infrastructure development) should be managed.
86. It is noted the current framing of the infrastructure outcome uses weaker language compared to other system outcomes. Given the purpose and importance of the infrastructure outcome to the NBEB framework, the infrastructure outcome needs to be strengthened. Possible wording could be "The protection, and enablement in a timely and efficient manner, of infrastructure to support the well-being of communities and the environment".

Limits and outcome recommendations

87. Water NZ recommends the Government
 - a) revisit its position that the list of outcomes for the natural and built environment set out in the NBEB be unprioritised, and that the exercise of prioritisation be left to regional joint planning committees.
 - b) provide nationally consistent direction to guide decisions about how the trade-offs between different and competing outcomes (such as adaptation and enabling housing and infrastructure development) should be managed.

How does Te Mana o Te Wai integrate with biophysical limits?

88. We strongly support the inclusion of clear environmental limits for particular domains under clause 38(1) of the NBEB. The RMA lacked a proper framework for establishing environmental bottom lines, beyond which no further harm would be allowed to the ecological integrity of the natural world.
89. Given that limits are defined as the current state of the environment, it is also unclear to us why they would be set by the Minister as a political actor and not by an independent, expert group. The current state is an objective matter, best determined through scientifically robust biophysical measurement rather than through a political process.
90. The biggest concern to Water NZ is how does the concept of Te Mana o Te Wai integrate with the NBEB outcomes and biophysical limits.

91. The NPS-FM in 2020 elevated Te Mana o te Wai as the foremost fundamental concept that will determine how New Zealand's freshwater resources will be managed. Te Mana o te Wai, makes the health of water central. Te Mana o te Wai creates a 'first right' for water, in the interests of both the environment and current and future generations.
92. Te Mana o te Wai must guide all proposals and planning options that impact on three waters, from the earliest stage of consideration, and before options are presented to either the RSS committee or consulted on with communities.
93. Environmental limits and targets that affect three waters infrastructure need to align with the environmental performance measures, targets and standards set by Taumata Arowai in accordance with the Water Services Act 2021.
94. The formulation of environmental limits for specific areas (described as management units) is going to be a challenge, not in the least because of the wide variance in quality data that is currently available on the existing ecological integrity of many of those natural environment features.
95. Water NZ suggests integrated catchment planning is only way the interrelations of these biophysical limits can truly be achieved, and avoid conflict between outcomes. We suggest a catchment approach be prescribed in both the SP and NBEB.
96. We have developed a table (below) to demonstrate how involved the water sector is to the biophysical limits. The table demonstrates how the water services industry work has influence and considerations against all biophysical limits, and each of the obligations of Te Mana o Te Wai statements produced by mana whenua.
97. These considerations will be integral for developing NBE plans, the NPF and consenting and compliance frameworks.
98. The table demonstrates how three water services touch on each of the biophysical spheres. As such, we have concerns that under strict biophysical environmental limits and targets will mean that it is almost impossible to operate or consent new three waters infrastructure (or even continue with existing infrastructure given the review powers).
99. To ensure that three waters infrastructure is able to be provided in the manner envisaged by the Three Waters reforms, a robust exemption regime will need to be provided for infrastructure that underpins safe and healthy communities and environments.
100. We consider that such an exemption regime and consenting pathway needs to be embedded in the NPF itself, rather than as currently drafted, which would require a regional planning committee to seek an exemption from the Minister. This is inefficient and impractical.

Te Mana o te Wai Hierarchy of Obligations			
Biophysical Spheres	<i>The first priority is the health and wellbeing of waterbodies and freshwater ecosystems</i>	<i>The second priority is the health needs of people (such as drinking water)</i>	<i>The third is the ability of people and communities to provide for their social, economic and cultural wellbeing</i>
Air (discharges to)		Carbon emissions from water networks Discharges from WWTP	Odour consents
Freshwater (take, ecological limits and discharges to)	Allocation, Environmental flows, fish passage, discharge quality and quantity.	Drinking water abstraction. Flood protection and control structures. WSUD/ nature based solutions, and water supply catchment protection.	Irrigation and other water takes.
Coastal and estuarine (ecological limits and discharges to)	Environmental flows, fish passage, discharge quality and quantity.	Dune and wetland restoration. Sea walls and revetment structures	
Indigenous biodiversity (ecology and flows)	Aquatic ecology. Wetland ecology. fish passage, discharges physical parameters (heat, quality, pH)	Native planting as nature based solutions (green infrastructure and WSUD)	
Soil (discharges to land)	Preference for discharge to land (not to water)	Liquid and biosolids discharges Erosion and sediment control	

Biophysical sphere recommendations

101. Water NZ recommends that

- a) a catchment approach be prescribed in both the SP and NBEBs.
- b) the ongoing provision and management of three water infrastructure be provided an exemption regime within the consenting framework.
- c) the bill be amended to include an exemption regime and consenting pathway needs to be embedded in the NPF, not at the discretion of the minister.

We welcome an allocation regime which incentivises efficient water use.

102. Water NZ welcome the inclusion of an enabling framework for allocating freshwater in the NBEB, and the three principles of sustainability, equity, and efficiency that will guide the development of allocation methods.
103. Any directions for freshwater allocation need to be aligned with the Te Mana o Te Wai hierarchy of obligations

104. It is noted a Freshwater Working Group will be established to make recommendations on matters relating to freshwater allocation, and on a process for engagement between the Crown and iwi and hāpu, at the regional or local level, on freshwater allocation.
105. Given the importance of allocation of freshwater to the ability of three waters entities to deliver outcomes under the Water Services Entities legislation, it is critical that the WSE are represented on the Freshwater Working Group.
106. A resource management system which establishes an allocation regime incentivises efficient water use. However, we have concerns that without national guidance with direction for a local level there will be no discernible change from what currently happens, and an inconsistent approach across the country and or users.
107. NBEB clause 88 rules out any market-based allocation of freshwater. Charging for raw water abstractions is one proven means of achieving sustainable water allocation reflecting the benefits to ecosystem services and environmental flows along with economic activities.
108. We request that clause 88 “Use of market-based allocation method to determine right to apply for resource consent for certain activities. (4) (e)” is removed.

Allocation recommendations

109. Water NZ recommends that
 - a) WSE are represented on the Freshwater Working Group.
 - b) freshwater allocation is aligned with the Te Mana o Te Wai hierarchy of obligations
 - c) clause 88 (4) e is removed.

10-year maximum duration resource consents will have significant impacts

110. To meet demand and achieve three waters reform objectives, new three waters infrastructure will be needed. This infrastructure needs to be consented and designated. For major infrastructure projects, controlled activity status provides a highly efficient and effective pathway.
111. In terms of consenting, transitional uncertainty is likely to stifle investment in development, including critical infrastructure. Unfortunately, there is no clarity about how consent applications lodged before the NBE comes into force, or after the NBEA comes into force but before the NPF is notified, will be impacted by the NBE provisions.
112. We request that there is a clear consenting pathway for critical infrastructure.
113. Consistent with its wider move toward “adaptive management”, the NBEB proposes a 10-year maximum duration on resource consents granted for:

- the taking, using, damming, or diverting of water, excluding open coastal water and geothermal water;
 - the discharge of any contaminant or water into water;
 - the discharge of any contaminant onto or into land in circumstances that may result in that contaminant (or any other contaminant emanating as a result of natural processes from that contaminant) entering water; and
 - a land use activity that would otherwise contravene section 22(1)(a) and (b) (discharge relating to water).
114. Water NZ support this approach in principle. The rationale is understood to better enable water allocation and management of waterbodies more generally. However, a 10-year maximum duration will have a potentially significant (and negative) impact on the financial viability of large schemes which rely on secure access to water.
115. There are specific carve-outs from this maximum limit for public water supply infrastructure and other significant “public good” infrastructure.
116. There are some critical gaps in the exceptions to 10 year consents. For example, operation is not included for wastewater or stormwater networks and would therefore be limited to 10 years. For example, obliging operators of treatment plants to re-apply for operational consents every ten years is not an efficient use of resources, especially given that most consenting applications would need to commence years in advance. Any changes in the environment, technology and good practice can be addressed through review conditions.
117. While Water NZ supports the intent to streamline the consenting process, our members are concerned that the notification tests in the NBEB are broad and ambiguous, which creates significant litigation risk. Given that challenges to notification can now be determined by the Environment Court (as opposed to through judicial review in the High Court), it is essential that the test for who is "affected" is robust and as clear as possible. The RMA brightline affected person test should be reinstated, there is established case law on this test, and it will reduce litigation risk.

Consenting recommendations

118. Water NZ recommends
- (a) a clear consenting pathway for critical infrastructure.
 - (b) amendments to clauses relating to the exceptions for three waters infrastructure from the ten-year maximum limit, to include operations of wastewater and stormwater networks.
 - (c) reinstating the Brightline test into the NBEB.

A need for national oversight of compliance monitoring and enforcement

119. Water NZ considers that compliance monitoring and enforcement under the RMA is piecemeal and largely ineffective. One only has to look at the decline in freshwater quality over the last 30 years to see that something has gone very awry.
120. Water NZ considers that there needs to national oversight of compliance monitoring and enforcement across all the matters covered in the RMA – policy, plans and consents. Such national oversight would include setting up standardised templates and processes for monitoring and would also need to have strong regulatory tools of enforcement to ensure that poor performance is addressed.
121. From October 2023, Taumata Arowai, the water regulator, are responsible for monitoring and reporting on the environmental performance of wastewater and stormwater services.
122. Regional councils will remain responsible for regulation, compliance and enforcement of fresh, waste and storm waters quality. With Taumata Arowai having oversight and reporting responsibilities for these the environmental performance of drinking water, wastewater and stormwater.
123. Taumata Arowai can set wastewater measures, which outline the information required from wastewater network operators to understand their environmental performance. This information will be summarised and published in the annual Network Environmental Performance Report.
124. The Ministry must work with the water regulator to ensure future resource consent compliance, monitoring or enforcement provisions are not inconsistent with the wastewater standards and targets Taumata Arowai set. This will ensure the outcomes of the NBEB and the improved performance of fresh, wastewater and stormwater networks and operations.

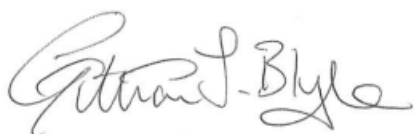
Definitions

125. The definition of bed in relation to a river as ‘the space of land that the waters of the river cover at its annual fullest flow without overtopping its banks’ is not fit for purpose in describing many of our rivers, not just those that are braided. We believe the way rivers are conceived of and defined in the proposed legislation needs to be changed to better reflect the distinctive characteristics and diversity of New Zealand’s rivers. The continual and sustained constriction of braided rivers is making rivers less resilient, which causes has economic, social, ecological risks. It also impacts on achieving Te Mana o te Wai and the mana of a river.
126. For the purposes of legislation and to ensure a sustainable, resilient approach to living with rivers, enabling Te Mana o te Wai, and more properly meets the purpose of this NBEB, we recommend the bed of a river should be defined as: ‘The active channel, which comprises perennial and intermittent water flow across periodically inundated and re-worked surfaces, the inundation and re-working of which by flows occurs at a frequency responsible for maintaining the overall natural active river form’.

Conclusion

127. Water NZ thanks the Ministry for the Environment for the opportunity to provide comments on this amendment. We look forward to continuing to work closely with the Government to draft and further refine legislation and policy.
128. If you have any queries in relation to this submission please contact Nicci.Wood@waternz.org.nz

Ngā mihi nui

A handwritten signature in black ink, appearing to read "Gillian Blythe". The signature is written in a cursive, flowing style.

Gillian Blythe

Chief Executive Officer of Water New Zealand

APPENDIX- Summary of ALL recommendations

Climate Action Recommendations	
	The Government prioritises filling the gaps in existing national direction; most notably, a lack of existing national direction on climate change.
	The Government to make considerable progress on the CAA before the end of this parliamentary term.
	Provisions are added to the NBE and SPBs to facilitate proactive planning through identification of hazard areas, to inform both the location of future developments and infrastructure provision and areas needing adaptation.
	WSEs must have the primary responsibility for advocating for and full membership for participating in NBE and SPB policy plan development in the interests of three waters infrastructure.
	A national spatial strategy ahead of full implementation of the new resource management system is developed.
	Provide for fast-track revisions to existing Regional Policy Statements and District Plans to give effect to a high level national spatial strategy, to allow for new climate change provisions that pre-empt the Climate Adaptation Act, and restrict further development in areas of high or increasing risk in the short term.
	Require climate impacts and carbon emissions on infrastructure lifecycle asset management decisions are part of decision making and take a long- term approach to service delivery
Te Oranga o te Taiao Recommendations	
	The Government must provide adequate funding and capacity building for iwi/hapū/runanga so that tangata whenua aspirations for articulating, designing, and delivering Te Oranga o te Taiao policy can be met.
	Iwi/Māori must be resourced to participate in the new system
	Encourage more meaningful use of Te Reo through the NBE and SPBs
	Clarify how Te Mana o te Wai is integrated within the resource management reforms.
Legislative Architecture Recommendations	
	Ensure integration and alignment of all reform programmes, other legislation, reviews and frameworks
	Provide for the WSEs to be able to participate meaningfully in NBE and SP policy and plan development.

	Clarify that the DIA National Transition Unit and the WSEs (or their chief executives) who have the primary responsibility for advocating for the interests of three waters infrastructure in the new system.
Transition and Implementation Recommendations	
	Provide guidance and clarity around arrangements for transition to and implementation of the new system
	Confirm Governments funding commitment to ensure sufficient capability and capacity to implement the the new RM system, while operating 'business as usual' and facing other reforms.
	Provide funding to ensure Māori participation in the system, particularly given its role as the Treaty partner
Institutional Roles and Responsibilities Recommendations	
	<p>The institutional roles and responsibilities need to include:</p> <ul style="list-style-type: none"> • New roles and functions in relation to spatial planning; • National oversight of compliance monitoring and enforcement; • A greater level of national guidance and direction either via increased activity at the MfE or via a new agency; • Consideration of how the management of freshwater ought to be dealt with in light of the changes signalled (and noted below) in the water industry • Recognition and provision in the new system the roles, responsibilities and functions of all the water industry in environmental management, consenting, monitoring, compliance and enforcement • The WSE must be involved in developing NPF content as it relates to three waters infrastructure and service delivery
Regional Spatial Strategies Recommendations	
	the asset management of all network infrastructure be included in actions of a RSS
	catchment management plans and any asset management plan inform the development of RSS
	three water infrastructure capacity constraints inform RSS plans.
Funding Recommendations	
	strongly request that further clarity about the funding mechanisms for ensuring delivery of the RSS priorities, in particular from central government, is provided

	provision that a RSS must outline a co-ordinated approach to infrastructure funding and investment by central government, local authorities, and other infrastructure providers.
Timing Recommendations	
	timeframes must be attached to priority actions in RSS to provide certainty for planning and funding of infrastructure.
NBE Objectives and Outcomes Recommendations	
	encourage the Government to revisit its current position that the list of outcomes for the natural and built environment set out in the NBA be unprioritised, and that the exercise of prioritisation be left to regional joint planning committees
	provide nationally consistent direction by making clear decisions about how the trade-offs between different and competing outcomes (such as adaptation and enabling housing and infrastructure development) should be managed.
Biophysical Limits Recommendations	
	A catchment approach be prescribed in both the SP and NBEs.
	Strengthened the infrastructure outcome wording to similar "The protection, and enablement in a timely and efficient manner, of infrastructure to support the well-being of communities and the environment".
	The ongoing provision and management of three water infrastructure be provided an exemption regime within the consenting framework.
Allocation Recommendations	
	WSE are represented on the Freshwater Working Group
	freshwater allocation is aligned with the Te Mana o Te Wai hierarchy of obligations
	remove clause 88 (4) e
Resource Consents Recommendations	
	a clear consenting pathway for critical infrastructure.
	reinstate the Brightline test into the NBEs.
	amend the bill to include an exemption regime and consenting pathway needs to be embedded in the NPF, not at the discretion of the minister.
Compliance, Monitoring and Enforcement Recommendations	
	ensure future resource consent compliance, monitoring or enforcement provisions are not inconsistent with the wastewater standards and targets Taumata Arowai set.

	Amendments to clauses relating to the exceptions for three waters infrastructure from the ten year maximum limit, to include operations of wastewater and stormwater networks.
Definitions	
	Introduce definitions of 'bed of river' and 'braided river' to the NBEB