

**REPORT OF THE RESOURCE  
MANAGEMENT REVIEW PANEL  
JUNE 2020**

**Address to the Resource  
Management Law Association**

**22 October 2020**

**Hon Tony Randerson QC**

# New legislation recommended

- Repeal the RMA and replace it with a new Act to be called the **Natural and Built Environments Act**.
- New legislation to be called the **Strategic Planning Act**.
- New discrete legislation to be called the **Managed Retreat and Climate Change Adaptation Act**.
- Importance of viewing these as a *comprehensive package* to improve the resource management system.

# The Natural and Built Environments Act (NBEA)

## Purpose and principles

- The NBEA would replace the RMA but retain some of its key principles such as sustainability and the wellbeing of present and future generations.
- Integration of the natural and built environments would remain.
- Development would be enabled but **subject to** sustainability and to mandatory limits to protect biophysical resources.
- There would be a new focus on enhancing the quality of both the natural and built environments and promoting positive outcomes as well as the management of adverse effects of activities on the environment.

# Replacement section 5 RMA

The indicative drafting of a new purpose of the NBEA is:

- (1) The purpose of this Act is to enhance the quality of the environment to support the wellbeing of present and future generations and to recognise the concept of Te Mana o te Taiao.
- (2) The purpose of this Act is to be achieved by ensuring that:
  - (a) positive outcomes for the environment are identified and promoted;
  - (b) the use, development and protection of natural and built environments is within environmental limits and is sustainable; and
  - (c) the adverse effects of activities on the environment are avoided, remedied or mitigated.

- (3) In this Act **environment** includes—
- (a) ecosystems and their constituent parts;
  - (b) people and communities; and
  - (c) natural and built environments whether in urban or rural areas.
- (4) In this Act **wellbeing** includes the social, economic, environmental and cultural wellbeing of people and communities and their health and safety.

# Other changes to Purpose and Principles

- NBEA would no longer give precedence to the “Matters of National Importance” currently set out in s 6 of the RMA.
- Instead, a new section 7 would identify a series of outcomes to be provided for in the natural and built environments; outcomes to protect Māori interests and values; outcomes expected in rural areas and for historic heritage.
- A new section 8 would require the Minister to prescribe environmental limits to protect biophysical features of the natural environment.

- A new section 9 would identify a series of principles to be adopted in the implementation of the NBEA.
- This section would also set out Ministerial duties. Chief amongst these is a requirement for the Minister to prepare and issue national directions on a range of topics which would prescribe environmental limits; provide specific detail of the outcomes identified in section 8 (for example the identification of outstanding natural landscapes) ; and set targets for continuing progress towards those outcomes.

- An important part of the new section 9 would state explicitly:
  - (5) The use and development of natural and built environments must be within prescribed environmental limits and comply with binding targets, national directions and regulations.
  - (6) Subject to (5), any conflict in or doubt about the application of matters in section 7 must be reconciled and clarified as necessary in a way that gives effect to the purpose of this Act:
    - (a) by the Minister through national direction or by regulation; or
    - (b) in the absence of any such direction or regulation, by the provisions of policy statements and plans.

- Pages 82-83 of the Report outline what is intended:
  - (a) Key elements of the Supreme Court's King Salmon decision are preserved including the rejection of the overall broad judgment approach when weighing competing interests and the recognition of the hierarchical approach in the RMA from purpose and principles to national direction to plans and consents.
  - (b) While the distinction between the relative weight to be accorded to the matters specified in the present sections 6 and 7 of the RMA has been removed, section 9(5) of the NBEA would clarify that the use and development of the natural and built environments must first comply with prescribed environmental limits and with any applicable binding targets, national directions and regulations.

- Potential conflicts in the outcomes in a new section 7 would be resolved through the system of environmental limits, binding targets and national direction. Any remaining conflicts would be resolved by Ministerial direction or through combined plans.

# Te Tiriti and Te ao Māori

- The Report recommends substantial strengthening in the recognition of Māori values and tikanga as well as a direct role in decision-making at the strategic end of the resource management system.
- The recommendations reflect the concept of partnership under Te Tiriti and its role in our unique constitutional arrangements.
- The new purpose and principles would require decision-makers to “give effect to the principles of Te Tiriti o Waitangi”.
- The Minister would be required to give national directions clarifying how the principles would be given effect by those exercising functions and powers under the NBEA.

- The revised purpose of the NBEA would include recognition of the concept of Te Mana o te Taiao, which would be defined as meaning “the importance of maintaining the health of air, water, soil and ecosystems and the essential relationship between the health of those resources and their capacity to sustain all life” (compare section (5)(2)(b) RMA).
- The new section 7 would include outcomes for Māori already recognised under the RMA but would add the protection and restoration of “cultural landscapes” described as “ a defined area or place with strong significance for mana whenua arising from cultural or historic associations and includes connected natural, physical or metaphysical markers or features”.

- The definitions of iwi authority and tangata whenua would be replaced with a definition of mana whenua defined as “an iwi, hapu or whanau that exercises customary authority in identified areas”.
- The recommendation for the creation of a National Māori Advisory Board should assist in providing advice about who amongst Māori are to be consulted in resource management processes.
- Critical as well is the recommendation to utilise enhanced integrated partnership processes between mana whenua groups and local authorities. These would build on the current Mana whakahono ā rohe process under the RMA.

- The role of mana whenua in strategic decisions would be greatly improved by a partnership role with central and local government in the preparation of regional spatial strategies under the Strategic Planning Act and a partnership role with local government under the NBEA in the preparation of combined plans for each region.

# The Salmon lecture by the Parliamentary Commissioner for the Environment, Rt Hon Simon Upton (12 October 2020)

## **Key issues raised about the Review Panel's Proposals on revised purpose and principles**

- The Parliamentary Commissioner supported the Panel's recommendations on integration of planning and environmental protection, mandatory environmental limits, regional spatial strategies, combined plans and IHP's with more limited appeal rights.
- Debate is encouraged but desirable to be clear about what the Panel has recommended.
- Parliamentary Commissioner raises some issues about aspects of the proposed new purpose and principles.
- Inappropriate focus on outcomes and quality of the natural and built environments
- Insufficient focus on primacy of protecting biophysical resources and life supporting capacity of natural resources.
- Opening up the door to the overall broad judgment approach cf King Salmon

- Lack of clarity about the weightings to be given to specific outcomes.
- Use of open-ended terms such as “wellbeing”:
- Mandatory environmental limits supported but present section 5 should remain with some tweaking.

# Brief response:

- Panel firmly of the view that there should be a positive focus on better outcomes rather than merely controlling adverse effects.
- A new approach widely supported in consultation.
- Protection of the biophysical environment and life supporting capacity is given primacy: s 5(1) - recognition of Te Mana o te Taiao; and s 5(2)(b); s 8; s 9(5)
- The “overall broad judgment” approach is specifically rejected by the Panel with key principles in King Salmon retained.

- The internal hierarchy in the present ss 6 and 7 is not supported by the Panel. Instead it proposes the identification of specific outcomes for the natural and built environment, rural, heritage and Maori.
- Relegating things such as climate change to a matter to which “particular regard” must be given (while still declaring it to be a matter of national importance) does not resolve conflicts between outcomes.
- The importance of the implementation section 9 has been overlooked. Any doubt over outcomes must be clarified by mandatory Ministerial direction and any conflicts resolved by the same means or in combined plans (Implementation s 9).
- Terms such as wellbeing are not problematic and already feature in the present s 5 and in the Parliamentary Commissioner’s draft.
- Tweaking the present sections 5-8 cannot achieve the outcomes and level of change required.

# Strategic Planning Act (SPA)

- The Parliamentary Commissioner was critical of the Review Panel's proposal for separate legislation to provide for long term regional strategic planning and the integration of relevant functions under the NBEA, LGA, LTMA and CCRA (the specified legislation).
- The Parliamentary Commissioner supported spatial planning as recommended by the Panel but considers it should be included in the NBEA.
- The Parliamentary Commissioner interpreted the Panel's recommendation as being that the specified legislation would be "subject to" the SPA.

- The Panel considered in detail whether spatial planning functions should sit in the NBEA, the LGA or in separate legislation and concluded separate legislation was the preferred option.
- The desired degree of integration could not be achieved by either of the other two options given their separate purposes.
- Under the Panel's proposals, central and local government would be obliged to work together.
- Necessary infrastructure and associated funding and investment would be facilitated.

- The Panel recommended that the SPA be subject to national direction under the RMA and that the specified legislation would have to be “consistent with” the SPA but would not override it.
- The Panel does not recommend that the specified legislation be “subject to” the SPA; regulatory control would remain under the NBEA.
- The Panel sees regional spatial planning under the SPA as having other real advantages in setting high level, long term strategic goals for the natural and built environments; dealing with cumulative effects and climate change; reducing ad hoc decision making; and providing for growth as well as the protection of areas unsuitable for development.