

Spatial Planning briefing, 5 December 2022

Process	The Spatial Planning Bill was introduced to Parliament on Tuesday 15 November and has been referred to select committee. Submissions are open until Monday 30 th January 2023.												
Background	NZPI published a position paper on spatial planning prior to the release of the SP Bill. The position paper is available here . This briefing paper assesses the SP Bill against the positions in that paper and considers other issues not addressed by the paper.												
Documents	The SP Bill is available here An MfE factsheet on the SP Bill is available here												
Key abbreviations	<table border="0"> <tr> <td>NBE Bill</td> <td>Natural and Built Environment Bill</td> </tr> <tr> <td>SP Bill</td> <td>Spatial Planning Bill</td> </tr> <tr> <td>NPF</td> <td>National Planning Framework</td> </tr> <tr> <td>RSS</td> <td>Regional Spatial Strategy</td> </tr> <tr> <td>NBE Plan</td> <td>Natural and Built Environment Plan</td> </tr> <tr> <td>RPC</td> <td>Regional Planning Committee</td> </tr> </table>	NBE Bill	Natural and Built Environment Bill	SP Bill	Spatial Planning Bill	NPF	National Planning Framework	RSS	Regional Spatial Strategy	NBE Plan	Natural and Built Environment Plan	RPC	Regional Planning Committee
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Summary of assessment	<p>The SP Bill is largely as anticipated. It is short and relatively straight forward. It affords a high degree of flexibility to Regional Planning Committees (RPCs) as to process of development. Key points include:</p> <ul style="list-style-type: none"> - There is no need for the SP Bill to be a separate piece of legislation – it could easily be incorporated into the Natural and Built Environment Bill (NBE Bill). - As anticipated, Regional Spatial Strategies (RSSs) need to give effect to the National Planning Framework (NPF), and NBE Plans need to be consistent with RSSs. But both RSSs and NBE Plans provide strategic direction, and this overlap needs to be considered further. - The SP Bill goes some way to addressing Te Tiriti o Waitangi and te ao Māori points from our submission. - Some functions of a national spatial strategy may be picked up by the NPF and Government policy statements. This needs to be investigated further. - The process in the SP Bill for developing RSSs is very flexible. The implications of this need further consideration, including for robust decision-making and public engagement. The government rep on RSS committees is not guaranteed (Minister ‘may’ appoint). - Integration of RSSs with LGA planning is provided for, but the strength of this linkage, and of the linkages to other funding source and other infrastructure providers, may not be very strong. - Key information relevant to RSSs can be carried over from RMA documents without re-litigation. - Initiation of NBE Plan development is linked to adoption of RSS – this appears to preclude NBE Plans being developed alongside RSS. 												

Detailed assessment	
<i>The following sections of this briefing provide detail on the points summarised above, addressing each of the headings from the NZPI position paper on spatial planning.</i>	
1. Te Tiriti o Waitangi and te ao Māori	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - The SP Bill includes a requirement to ‘give effect to the principles of te Tiriti o Waitangi’ (s5). - There is a requirement to review the effectiveness of RSSs and implementation plans in giving effect to the principles of te Tiriti o Waitangi. - There are a number of provisions throughout the SP Bill that protect and preserve Māori interests, rights and responsibilities, and address the relationship of the SP Bill to other legislation such as Treaty settlement legislation. - There will be at least two Māori members on the Regional Planning Committee (RPC), and the Māori ‘appointing body’ that selects those representatives will review the draft RSS prior to notification. - There are also a number of provisions that address Māori participation in the spatial planning system, separate from a role on the RPCs. For example, ‘iwi authorities and groups that represent hapū’ are identified as interested parties with associated requirements to be consulted. <p><i>Comments</i></p> <ul style="list-style-type: none"> - NZPI’s position was to support giving effect to te Tiriti, rather than the principles. - On first look, the SP Bill seems to do some of the things suggested in the position paper. Advice from Papa Pounamu would be helpful to fully understand if the provisions go far enough in providing for tino rangatiratanga and te ao Māori.
2. National spatial strategy	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - There is a requirement for RPCs to have particular regard to Government policy statements when preparing RSSs, and the relevant statements are listed in Schedule 3 (s24). - An RSS must give effect to the NPF where directed to do so (s15). - The NPF must set strategic direction on achieving outcomes and resolving conflict, among other things (s56 of NBE Bill). <p><i>Comments</i></p> <ul style="list-style-type: none"> - Some functions of a national spatial strategy may be picked up by the NPF and Government policy statements. These provisions will need to be considered further to assess their adequacy. - There does not appear to be a spatial element to the strategic direction within the NPF and Government policy statements.
3. Purpose and place of RSS in planning hierarchy	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - The purpose of the SP Bill is to provide for RSSs that assist in achieving the purpose of the NBE Act, including upholding te Oranga o te Taiaio; assist in achieving the system outcomes in the NBE Act; and promote integration between functions under the

	<p>NBE Act, Land Transport Management Act, and the Local Government Act.</p> <ul style="list-style-type: none"> - RSS must set strategic direction for the use, development, protection, and enhancement of the environment of a region (s15). - RSSs must provide for integrated management including by setting direction for NBE Plans, regional land transport plans, and long-term plans (s15). - RSS must give effect to the NPF where directed to, and otherwise be consistent with the NPF (s15). - NBE Plans must be consistent with RSSs (s99, s104, s109 of NBE Bill) - NBE Plans must have strategic content that reflects the major policy issues of a region and its constituent districts (s102). - s19 requires RSSs to have a level of detail that provides certainty to those implementing it. <p><i>Comments</i></p> <ul style="list-style-type: none"> - The purpose of the SP Bill is not very well framed – rather than the purpose being to provide for a particular document (RSSs), it should be to provide strategic direction. - There appears to be overlap between the role of RSSs and NBE Plans in providing strategic direction for a region. This needs to be clarified. - The hierarchy language works well, with RSSs and NBE Plans needing to give effect to the NPF, and NBE Plans needing to be consistent with RSSs. - The strength and clarity of the requirement of RSSs to provide direction to NBE Plans (and land transport and long-term plans) needs further examination. Section 19 addresses this in an oblique way, but clearer direction would be better. This is important to make sure it is clear what NBE Plans need to do to ‘be consistent with’ RSSs, and also to reduce the risk of re-litigation of what is decided in an RSS.
<p>4. Integration of processes and funding</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - RSSs have effect under the NBE Act, Land Transport Management Act, and Local Government Act (s4 and Schedule 5 Amendments to Other Acts). - The LGA is amended so that long-term plans must set out steps to implement the priority actions in the RSS (Schedule 5). - The Land Transport Management Act is amended so that regional land transport plans have to be consistent with RSSs (Schedule 5). - RSSs must provide for integrated management including by setting direction for NBE Plans, regional land transport plans, and long-term plans, and by supporting a co-ordinated approach to infrastructure funding and investment by central government, local authorities, and other infrastructure providers (s15). - Central government and local government infrastructure providers, council-controlled organisations, private infrastructure providers, and industry bodies are identified as ‘interested parties’

	<p>with associated requirements to be consulted and involved in the process of developing a RSS (Schedule 4).</p> <ul style="list-style-type: none"> - Implementation plans must be developed alongside RSSs (s52). These plans set out the key steps to deliver the priority actions and who is responsible, and how progress will be monitored (s54). - Parties with responsibilities in implementation plans need to agree to having those responsibilities (s53) – this implies they agree with what is in the RSS, although requirement is for consultation on RSS, not agreement. This needs to be considered further. - Implementation agreements are between two or more persons with implementation responsibilities and set out a programme of actions and identify funding sources and legal requirements for the funding. These agreements are optional and are not enforceable (s57). <p><i>Comments</i></p> <ul style="list-style-type: none"> - Statutory linkages appear to have been put in place to ensure planning integration with NBE planning, land transport planning and local government planning. Further consideration could be given to whether all necessary parties are on the list of ‘interested parties’ and whether the role for these parties in the process of developing RSSs is sufficient. - Funding linkages with local government through the LGA are not particularly strong or robust. Funding linkages to other infrastructure providers is not clear and needs further investigation, particularly the implications of implementation agreements being optional and not enforceable. - The opportunity to provide for linkages with non-infrastructure funding sources for achieving positive outcomes has not been taken up. - There is no provision for integration with the Climate Change Response Act. This seems to be a big lost opportunity.
<p>5. Timeframes</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - RSS is to provide strategic direction for not less than 30 years (s15). - 9 year renewal cycle, with review of RSS required before renewal process starts (s46). - Review required following amended or replaced NPF and if there is new information or a significant change in the region (as defined by the RPS) (s47 and s48). - 3 year review cycle for implementation plans, and when RSS changes (s55). Annual reporting on delivery of implementation plans (s56). - NBE Plans follow RSSs – resolution to begin drafting an NBE Plan must be made within 40 working days of RSS being adopted (Schedule 7 NBE Bill, Cl(2)). - There appears to be no maximum time period within which an RSS needs to be prepared.

	<p><i>Comments</i></p> <ul style="list-style-type: none"> - A minimum 30 year planning horizon with a 9 year review cycle aligns with NZPI’s position, as does 3 yearly reviews of implementation plans. - Closer examination is required to understand if there is any requirement for considering longer timeframes for climate change issues. NZPI’s position was that RSSs should consider climate scenarios for at least the next 100 years. - Preparing an RSS before an NBE Plan aligns with NZPI’s position, but the wording of Clause 2 of Schedule 7 of the NBE Bill appears to preclude an NBE Plan being developed alongside an RSS, as a resolution to start drafting an NBE Plan cannot be made until the RSS is adopted. - The system would have more certainty if a maximum time period for preparing an RSS was included.
<p>6. Content of RSS</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - RSSs must set out a vision and objectives for the region’s development and change over the period of the strategy, set out priority actions to achieve the vision and objectives, and provide strategic direction on strategically important matters (s16). - There is a long list of key matters that might be strategically important in s17, which cover all the categories identified in the NZPI position paper. Most are drafted in a certain way, but ‘may’ is used is (a) – areas that may require protection, restoration, or enhancement. - There is no specific requirement for an RSS to include maps of any kind, but there is reference to the form of RSSs being prescribed by the NPF and regulations. <p><i>Comments</i></p> <ul style="list-style-type: none"> - NZPI’s position was that RSSs should be high-level, strategic documents that are short and make effective use of maps. It is not clear that this will be the result of RSSs under the SP Bill. - The list of key matters needs closer consideration to understand if any should be modified, and whether any should be added or deleted.
<p>7. Process for developing RSSs</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - RPC to set the process for development of an RSS (s30) - Requirements to support quality decision-making (s31), encourage participation (s32) and be based on robust and reliable evidence and on mātauranga Māori (s28). - RPCs preparing RSSs must have particular regard to any statements of regional environmental outcomes and statements of community outcomes that have been prepared by local authorities, and to iwi and hapū planning documents (s24). - Engagement agreements with Māori groups (s37-s41) - Minimum key steps prescribed: preparation of draft RSS with input from interested parties, review by constituent councils and iwi authorities (appointing bodies), public notification of draft,

	<p>opportunity for further comment in some cases, public notification of adopted RSS (Schedule 4).</p> <ul style="list-style-type: none"> - Hearings are not compulsory, but if held, have to follow the ‘general hearing provisions’ in Schedule 7 of the NBE Bill, which is not an IHP hearing. At least some members of any hearing panel must be accredited (s35). - Evaluation requirements for the development of RSSs include consideration of scenarios and key options, summary of evidence, and review of the effectiveness of existing RSS (if there is one) (Schedule 4 clause 2). - There are no appeal or objection rights. <p><i>Comments</i></p> <ul style="list-style-type: none"> - There is a high degree of flexibility for the process an RSS might follow. Consideration needs to be given to whether the minimum requirements included in the SP Bill are enough to ensure a fair and transparent process. This includes decision-making, and the implications of an RPC making a decision without holding a hearing (risk of RSSs becoming highly politicised documents by decision makers without appropriate experience and expertise).
<p>8. Transition for existing spatial strategies</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - There are no provisions to transition existing spatial strategies or equivalent documents into RSSs. - There are transition provisions for information in existing RMA documents into RSSs, such as classification of particular features of the environment. This information can be included in RSSs without additional assessment or the need to re-litigate them through submissions on the RSS (Schedule 1). <p><i>Comments</i></p> <ul style="list-style-type: none"> - NZPI’s position was that existing equivalent documents are transitioned into the new RSSs. While this hasn’t been directly provided for in the legislation, it may be accounted for in the staging of the implementation for each region. That is, a recently repared spatial strategy may be a factor in delaying the new system applying to that region. - The transition for existing information in RMA documents is helpful, but closer analysis is needed to see if the type of information has been specified clearly enough.
<p>9. Central Government role on Regional Planning Committees</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - The NBE Bill sets out the requirements for RPCs. Clause 2 of Schedule 8 sets out that the responsible Minister may appoint 1 member to participate in the functions of the committee under the Spatial Planning Act 2022. <p><i>Comments</i></p> <ul style="list-style-type: none"> - The use of ‘may’ in Clause 2 of Schedule 9 means that the central government role on the RPCs for RSSs is not guaranteed. This is

	<p>inconsistent with NZPI's position that Government involvement in RSSs is essential.</p>
<p>10. Other issues identified</p>	<p>Need for a separate SP Bill There appears to be no reason why the SP Bill is a stand-alone piece of legislation. It does not actually stand alone, as it relies on the NBE Bill and could not operate without it. The SP Bill is clearly subservient to the NBE Bill – its purpose is to help achieve the purpose of the NBE Bill. The strategic direction that guides RSSs is set out in the NPF, not the SP Bill. It would make much more sense, and the system would be much more user friendly, if the SP Bill was inserted into the NBE Bill.</p> <p>Ministerial powers Part 3, subpart 1 of the SP Bill relates to 'Ministerial powers to intervene and assist'. This section needs to be considered in further detail to understand the extent and purpose of these powers, and what impact they might have on a fair and transparent process for developing RSSs.</p> <p>Transition Schedule 1 of the SP Bill sets out when the draft of the first RSSs must be notified. There is allowance for Orders in Council to specify dates for each region to notify its RSS. If there is no Order in Council, the first draft RSS for a region must be publicly notified within seven years of Royal assent. (Schedule 1). Seven years seems a long time for the first RSSs to be notified, even allowing for tranches of implementation.</p>