

Briefing on outcomes-based planning, 5 December 2022

Process	The Natural and Built Environment Bill and the Spatial Planning Bill were introduced to Parliament on Tuesday 15 November and have been referred to select committee. Submissions are open until Monday 30 th January 2023.												
Background	NZPI published a position paper on outcomes-based planning prior to the release of the NBE and SP Bills. The position paper is available here . This briefing paper assesses the NBE and SP Bills against the positions in that paper.												
Documents	The SP Bill is available here The NBE 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>NZPI supports the move to an outcomes-based system for resource management in New Zealand on the basis it provides an aspirational and forward-looking planning approach. Our position pre-release of the bills was that the environmental outcomes included in the Exposure Draft of the NBA were not aspirational, and while some were forward focused, they were not true outcomes. True outcomes should be aspirational statements of desired end-states or results.</p> <p>As anticipated, the outcomes in the NBE Bill look very similar to those in the Exposure Draft. There were 13 outcomes in the Exposure Draft, and there are 18 in the NBE Bill. There is no priority provided between the outcomes. While outcomes have been integrated throughout the planning hierarchy and in consenting, there is not as much strength to this integration as there could be. Our position that more change is needed in the legislation to make the shift to an outcomes-based system remains relevant.</p>												
<p>Detailed assessment</p> <p><i>The following sections of this briefing provide detail on the above summary. First, the way outcomes-based planning works under the new system is explained, then an assessment against each of the headings from the NZPI position paper on outcomes-based planning is provided.</i></p>													
Outcomes-based planning in the new system	<p><i>Summary of the relevant provisions, from the top down</i></p> <p>Purpose of the NBE:</p> <ul style="list-style-type: none"> - The starting point of outcomes-based planning in the NBE is s3 Purpose. The purpose of the NBE Bill is to enable the use, development, and protection of the environment in a way that ... promotes outcomes for the benefit of the environment 												

- s5 contains a list of 'system outcomes' that the NPF and all plans must provide for. Note there is no requirement for consents to provide for the system outcomes, and the requirement is aimed at planning documents rather than actors in the system such as RPCs (compare 'all persons exercising functions and powers under this Act' language in the RMA).
- Altogether s5 has 18 outcomes and there is no priority between or among them.

NPF:

- The purpose of the NPF includes 'helping to resolve conflicts about environmental matters, including those between or among system outcomes' (s33), and there must be content in the NPF on this (s57).
- The NPF must include content that provides direction for each system outcomes (s57). It seems there may be a word missing here, such as 'achieve' – provide direction for *achieving* each system outcome.
- The NPF may state outcomes and policies. These outcomes are 'framework outcomes' (s60).

RSSs:

- The purpose of the SP Bill is to provide for RSSs that assist in achieving the system outcomes set out in the NBE Bill (s3 of SP Bill). RSSs do not set outcomes. This is discussed further in section 3 below.

NBE Plans:

- NBE Plans must provide for system outcomes, subject to any direction in the NPF, and resolve conflicts between or among the environmental outcomes stated for the region and its constituent districts (s102).
- NBE plans may include 'plan outcomes' and policies, rules and other methods (s105).
- The purpose of including rules in plans includes to enable a local authority to achieve the outcomes and policies specified in the plan (s117).
- There is very limited reference to outcomes in the provisions relating to decision-making on NBE Plans. The replacement s32 (clause 25, Sch 7) requires an assessment against the purpose of the Act. The purpose in s3 refers to 'outcomes for the benefit of the environment', but it does not directly reference the outcomes in s5 or any outcomes that might be in the NPF. The implications of this should be considered further.

Consenting – notification:

- The purpose of notification, in s198, is to obtain further information about an application, including to better understand how the proposed activity meets or contributes to outcomes (as well as better understanding the effects of the activity). Determining who is affected includes similar considerations (s201).

	<ul style="list-style-type: none"> - Setting notification status in plans is linked to whether any further information as a result of notification is likely to make a material difference to the consent decision (s200). - The NPF and NBE Plans must require public notification where there is sufficient uncertainty as to whether an activity could meet or contribute to outcomes (or the activity would breach a limit) (s205). And the reverse is required – notification must be prohibited if an activity is clearly aligned with the outcomes or targets set by legislation or plans (s207). <p>Consenting – decision-making:</p> <ul style="list-style-type: none"> - Decision-makers on consent applications have to have regard to effects on the environment and contribution to outcomes, among other things (s223). This is discussed in section 5 below. <p><i>Comments</i></p> <ul style="list-style-type: none"> - The strength of the direction in the NBE Bill for outcomes is not strong enough, and NZPI’s position paper sought stronger direction. For example, rather than ‘promoting’ outcomes in s3, which is a carry-over from the requirement to promote sustainable development in the RMA, the purpose of the NBE Bill should include ‘achieving’ outcomes. Where ‘achieve’ is used for outcomes, such as in s117 (purpose of rules to achieve outcomes), the result is a much more specific and directive provision. - It does not appear necessary to distinguish between ‘system outcomes’, ‘framework outcomes’, and ‘plan outcomes’, especially when s3 refers to ‘outcomes for the benefit of the environment’. ‘Environmental outcomes’ is used in s102, and in some provisions just ‘outcomes’ is used (s198). The use of at least five different ways of referring to outcomes brings a high risk of confusion. - The restriction of the application of s5 ‘system outcomes’ to the NPF and plans is likely an attempt to codify the Davidson decision. Section 223 of the NBE Bill allows a consent authority to have regard to the NPF only if the plan does not deal with a matter adequately, and to the purpose of the NBE Bill only if the NPF does not deal adequately with the matter. It is not clear that the reference to ‘purpose’ in s223 includes the s5 system outcomes. There should be reference back to the s5 outcomes when s223 applies, and s5 should be amended to allow for this. The role of notification in an outcomes-based system needs further consideration. The notification provisions in the NBE Bill are not quite what was expected, and closer examination of how this part of the system works is needed. This is a good candidate for input from the Think Tank.
<p>1. Better integration of te ao Māori</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - As anticipated, the purpose of the NBE in s3 includes both Māori and Pākehā concepts – wellbeing of present and future generations and te Oranga o te Taiao. - There is provision for an iwi or hapū to provide a statement on te Oranga o te Taiao to the RPC (s106).

	<ul style="list-style-type: none"> - Outcome (e) in s5 is: <i>the recognition of, and making provision for, the relationship of iwi and hapū and the exercise of their kawa, tikanga (including kaitiakitanga), and mātauranga in relation to their ancestral lands, water, sites, wāhi tapu, wāhi tupuna, and other taonga.</i> <p><i>Comments</i></p> <ul style="list-style-type: none"> - NZPI's position was that the concept of te Oranga o te Taiao and Māori outcomes need to be threaded through the new system. Māori participation in the system is essential for this, and this aspect is addressed in the briefing papers on NBE Planning and the SP Bill. As stated in those briefings, advice from Papa Pounamu would be helpful to fully understand if the provisions go far enough in providing for incorporation of te Oranga o te Taiao and Māori outcomes.
<p>2. Redrafting outcomes</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - Outcomes are listed in section 5 of the NBE Bill. Some are grouped together and some are listed individually. There are a total of 18 outcomes, and no priority is provided between them. <p><i>Comments</i></p> <ul style="list-style-type: none"> - Our position was that the outcomes identified in the legislation be re-framed to be desired end-states directly related to te Oranga o te Taiao and community wellbeing. Nothing in the NBE Bill suggests this position should change.
<p>3. Outcomes in NPF, RSSs and NBE Plans</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - There are three types of outcomes: 'system outcomes' in s5 of the NBE Bill; 'framework outcomes' in the NPF (s60); and 'plan outcomes' in NBE Plans (c105). - The purpose of the SP Bill is to provide for RSSs that assist in achieving the system outcomes set out in the NBE Bill (s3 of SP Bill). RSSs do not set outcomes. Rather, they set out a vision and objectives for a region's development and the priority actions for achieving that vision and objectives (s16 SP Bill). <p><i>Comments</i></p> <ul style="list-style-type: none"> - The uses of 'outcomes' has replaced with use of 'objectives' in the NPF and NBE Plans, which is consistent with NZPI's position. - NZPI's position was that outcomes should also be set in RSSs, and outcomes are not a tool for use in RSSs. The nature of the vision and objectives set in RSSs and the outcomes in the NBE planning documents needs further consideration. Given the scope and purpose of RSSs, it may be appropriate for them to set visions and objectives rather than outcomes, especially as the purpose of RSSs is tied to achieving the outcomes in the NBE Bill.
<p>4. Resolving conflict</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - There are 19 outcomes in s5 of the NBE Bill, with no priority.

	<ul style="list-style-type: none"> - One of the purposes of the NPF is to help resolve conflicts between and among system outcomes (s33). - Resolving conflicts between system outcomes is also a consideration for NBE plan-making (s99). <p><i>Comments</i></p> <ul style="list-style-type: none"> - NZPI's position was that an outcomes-based system should allow conflicts to be resolved in a more holistic way than under the effects-based system, as future-focused outcomes should be more holistic and less siloed. This is not the way the outcomes in the NBE Bill are framed.
<p>5. Resource consent assessments</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - s223 of the NBE Bill is the replacement for s104. It requires consent authorities to 'have regard to' any actual and potential effects on the environment of allowing the activity, and to 'have regard to' whether, and the extent to which, the activity contributes to any outcomes, limits, targets, and policies. <p><i>Comments</i></p> <ul style="list-style-type: none"> - NZPI's position was that if outcomes are to have greater significance in the new system than effects, the direction to consider outcomes needs to be stronger than the direction to consider effects. This is not what the NBE does. Outcomes are given the same consideration as effect, which is no change to the current system.
<p>6. Monitoring and review</p>	<p><i>Summary of the relevant provisions</i></p> <ul style="list-style-type: none"> - Monitoring provisions in the NBE are more onerous than under the RMA, but there does not appear to be a large focus on monitoring achievement of outcomes specifically. <p><i>Comments</i></p> <ul style="list-style-type: none"> - Further review is needed to understand if a greater focus on monitoring progress towards outcomes should be sought.