13 February 2026

HRCID-1668982324-4228
2026 LS:MM

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REGIONAL LEADERS SUBMISSION (MANAWATŪ-WHANGANUI REGION) – NATURAL ENVIRONMENT BILL AND PLANNING BILL

Introduction

This is a joint submission on behalf of the local authorities of the Manawatu-Whanganui Region (the Region) represented by the chair of the Horizons Regional Council and the mayors of Palmerston North, Manawatū, Horowhenua, Whanganui, Ruapehu, Rangitīkei and Tararua. In the spirit of collaboration envisaged by the Government it reflects the collective view of the region on overarching aspects of the Planning and Natural Environment Bills (the Bills).

The Manawatū-Whanganui Region accounts for around 8% of New Zealand's total land area and has a population of approximately 260,000 and encompasses economic activity which contributes around 4% to national GDP (approximately $16 billion per annum.

The Region is home to appropriately 35 formal iwi and hapū groups. Some of these groups have unique and complex Treaty of Waitangi settlements with the Crown which interface with the Resource Management Act, including two that have resulted in detailed statutory arrangements related to rivers[1]. There are a number of iwi and hapū in the region that do not have a Treaty settlement, and we advocate that unsettled iwi are considered throughout this process.

Our collective position

Like many other local authorities across the country, we recognise that the Resource Management Act (RMA) is not delivering the environmental and land use outcomes anticipated, including adequate protection of the natural environment. The RMA has also not been as effective and efficient as it could have been in enabling housing, business or infrastructure development. In light of this we acknowledge and generally support the system reform objectives and intent proposed in the Bills. We also support the aspiration for a more integrated, consistent and future focused planning framework.

It is important that legislation provides a planning framework and decision-making and governance structures that strikes the right balance between ecological health, population, geography, local democracy, development and Treaty obligations – one that enables housing, infrastructure, and regional economic development while also delivering better environmental outcomes for our regions.

[1] Te Awa Tupua (Whanganui) under the Te Awa Tupua (Whanganui River Claims Settlement) Act 2017, and Te Waiū o Te Ika (Whangaehu) under the Ngāti Rangi Claims Settlement Act 2019

Although there are core elements of the reform package that are supported, we are concerned these are counteracted by several system related aspects of the Bills. which are highlighted below.

1. Centralisation of Power

We have concerns over the extent to which the Bills will enable the Minister to direct how local authorities implement their statutory functions and duties, and the wide-ranging nature of these powers. As proposed, these extend to cover such matters as:

- 'particularisation' of the foundational goals in each of the Bills,
- prescribing the governance arrangements for spatial planning committees,
- standardised content to be included in regional spatial plans, land use and natural environment plans, and
- the regulation of local authority processes, powers to intervene, and powers to direct local authorities to prepare of change plans to achieve outcomes.

This expansion of the regulatory powers available to the Minister represents an explicit erosion of 'localism' and the principle of subsidiarity. Subsidiary (the concept that functions should be performed locally, by those most affected, with the greatest local knowledge, and best placed implement them) is fundamental to why New Zealand's local authorities exist. There are many local, nuanced matters, which risk being managed inappropriately if a one-size-fits-all national approach becomes the default setting.

The concepts of localism and subsidiarity have underpinned the development and determination of statutory instruments like regional plans and district plans under both the Resource Management Act (RMA) and the preceding Town and Country Planning Act 1977. Weakening the application of these concepts dilutes the important, long-standing concept of such instruments being shaped and 'owned' by relevant communities through the role that elected representatives play in their development and subsequent decision making – something that will be lost in future with the proposed shift to increased reliance on ministerial directed standardisation.

We also note concern that increased ministerial involvement has the potential for frequent and rapid changes in national policy settings which then flow down to local policy. This contradicts the intent of creating a stable, consistent planning system which provides confidence and certainty for all.

Relief sought:

a. *The legislation provides a more structured framework for the exercise of Minister powers which includes having regard to:*
    - *Balancing the national interest with localism and the principle of subsidiarity,*
    - *Whether the exercise of the Minister's powers is consistent with creating a stable, consistent planning system capable of providing confidence and certainty for all stakeholders, and*
    - *Principles of natural justice (particularly the right for those who will be affect by the exercise of powers to have a say).*

2. Proposed Regulation and National Instruments

Both Bills contain extensive references to various national instruments and regulations, the intent of which is to distil and expand on statutory directives in the Bills and to build in a degree of regulatory agility to enable them to adapt to changing circumstances. Overall, we are supportive of the introduction of stronger national direction where it promotes a justifiable commonality of provisions and administrative efficiency. We support standardised provisions which provide simple, clear and standardised direction for decision-making and plans and guides the effective development of regional spatial plans and natural environment and land use plans.

The underlying policy intent that national direction delivers on a clear set of foundational goals and recognises environmental limits is also supported as these form the backbone of the new planning system. To achieve this this though the nature and scope of these goals and the roles, accountability, and decision-making responsibilities to inform their implementation will need to be clearly defined. It will also need to ensure the limits within which natural resources are used, developed or protected are clear, enforceable, regionally grounded, and properly resourced.

An area of concern though is the extent to which regulation and national instruments are proposed to be used to deliver the finer grained detail that direct how key elements of the system are intended to be interpreted and implemented (e.g. goals, spatial plans, land use and natural environment plans), with no supporting or detailed supplementary material provided as to what they are likely to contain.

This concern is further compounded by the fact that the preparation of signalled regulation and national instruments is at the discretion of the Minister, with no specific statutory requirement for local authorities, treaty partners or other stakeholders to be actively consulted on their relative prioritisation and involved in their development. Given the uncertain scope of these instruments, and the corresponding level of detail that might be included, sole reliance on the ministerial discretion to 'consult on a proposal with any person who may have an interest in it' (cl.46(3)) is both insufficient and alarming. It is also inconsistent with:

- The principles of natural justice (those affected should be able to a have say)
- The consultation principles that apply to local authorities under the Local Government Act 2002 (e.g. s.82)

Relief sought:

a. *The Bills make express provision for local authorities to be consulted on and be provided an opportunity to submit or comment on the preparation of regulations, national instruments or directions is particularly pertinent regarding direction on regional spatial plan and land use and natural environment plans.*
b. *The Bills provide for engagement with the community, ensuring Treaty Partners can participate in a meaningful manner.*

3. Implementation Timeframes, Resourcing and Cost

The timeframe to implement the Bills appears to be overly ambitious and, by extension, highly unlikely to be achieved as currently proposed unless, amongst other matters, urgent priority is directed towards ensuring:

- Government departments responsible for preparing the National Policy Direction and supporting national standards are fully resourced to undertake the work required within the signalled timeframe
- There is a realistic Government funding programme approved to support timely implementation of the new system

As it stands the intended sequencing of instruments would see regional spatial plans being prepared before the environmental limits and relevant standards they are required to implement are in place. Currently, these plans are scheduled for notification by mid-2027, with National Policy Direction and an indeterminate suite of supporting national standards issued later this year – an allowance of only six months to 'set the strategic direction for development and public investment priorities in a region'.

This, in turn, places local authorities and third parties in an untenable position, one that not only imposes unrealistic demands on their capacity to deliver but jeopardises the effectiveness of regional spatial plans in directing next level land use and natural environment plans. The timing of national direction is therefore critically important and needs to be in place well ahead of regional spatial plan drafting so that the criteria applied, spatial extent and any constraints can be clearly identified to fully inform the development of next level plans.

Aside from issues around timing, implementation of the reform package will have significant resourcing and funding implications for local authorities. In terms of resourcing this is exemplified by the requirement for secretariats to be established to support the committees responsible for delivering spatial plans.

To meet this requirement what is likely to occur at a practical level is that local authority staff will either be transferred or seconded to secretariats to ensure they have the necessary capacity and capability to undertake their anticipated functions. However, in doing this local authorities will conceivably be left in the invidious position of having insufficient residual capacity to carry out other statutory obligations such as progressing exempted and private plan changes, processing land use consents and natural environment permits and meeting the enhanced compliance, monitoring and enforcement responsibilities set out in the Bills. This issue is compounded for smaller territorial authorities who already operate at a reduced capacity but who will want to ensure they are meeting their obligations at both regional and local levels.

There is also a high degree of uncertainty concerning the cost of implementing elements of the reform package, particularly those associated with national instruments, spatial plans, land use and natural environment plans and capacity and capability building. Although the supporting Supplementary Analysis Report and Regulatory Impact Statement notes that these reforms will have a short-term financial impact on local government but that this expected to be offset by substantial cost savings in the long-term, the extent to which this is realised is questionable. For example, the ability for the Minister to issue regulation that imposes unfunded obligations on local authorities is, as already noted, wide ranging under the Bills – something that is further compounded by the indeterminate scale and scope of national standards that might be issued to support delivery of the new system.

Additionally, expectations concerning the proportionate weight that local authorities bear in implementing the new system are currently unclear, with this dependent on the outcome of future Government funding decisions to support an associated implementation package. This

is highly concerning as it poses a major implementation risk given the fiscal constraints that local authorities are currently operating under and

- Further constraints proposed through the potential introduction of a rates cap.
- Other concurrent and cumulative financial and resourcing impacts on local authorities imposed by central government changes to local government (including those relating Civil Defence and Emergency Management, the Simplifying Local Government proposals, and changes to development levies and funding mechanisms).

Relief sought

a. *That the Environment Committee give consideration to a more logical sequencing and timing of central and local government planning instruments. This should include requirements that all relevant national instruments necessary for the preparation of regional spatial plans be in place before significant work is progressed on those regional spatial plans.*
b. *That implementation timeframes be made realistic and more reflective of limited local authority capacity, particularly in light of broader, cumulative resourcing demands that will be imposed by other central government changes to the local government system (and roles).*

4. Transitioning to the New System

The Bills require local authorities to implement existing RMA planning instruments modified by a substantial set of transitional rules and altered effects tests, while simultaneously preparing for the new system. Of concern is that these proposed transitional arrangements introduce additional complexity and associated interpretive and processing challenges for local authorities with no clear guidance provided to assist them to effectively navigate the change over.

An example of this are the proposed limitations on the scope of effects that can be considered in assessing consent applications during the transition period. Given the ambiguous nature of some of the excluded effects (eg. visual amenity, any matter where the land use effects of an activity are dealt with under other legislation) there is a high likelihood that interpretive issues and subsequent litigation will arise. Further, differences in how effects are considered by local authorities during transition will create uncertainty, inconsistent outcomes and a heightened legal risk, particularly in the period prior to the signalled national policy direction and first tranche of supporting national standards being issued.

As this is a situation that the system reforms are clearly intending to avoid it is imperative that relevant and timely guidance is produced to enable local authorities negotiate and successfully manage this transition.

Relief sought:

a. *Give further consideration to the design of transitional and commencement provisions in both Bills to ensure those provisions are clear and provide a robust framework which is able to minimise legal interpretation risks during the transitional period.*
b. *Consider whether, until corresponding national instruments, standards and regulations are in place, some commencement provisions (such as those relating to effects covered by s14 of the Planning Bill), should be delayed.*

c. *The Environment Committee recommend to the government that resourcing be put into ensuring sufficient and timely guidance to assist with implementation during the transition period of the Bills.*

5. Purpose and Goals

In contrast to the explicit 'sustainable management' aspiration in s.5 (Purpose) of the RMA the purpose statement in the Bills conveys little more than what they are intending to establish (e.g. a 'framework for planning and regulating the use, development, and enjoyment of land' in the Planning Bill), with more substantive, high level direction intended to be provided through their associated goals.

Given that these goals are the core foundational element that underpins the planning framework established through the Bill it is both notable and concerning that this relationship is not explicitly recognised in the purpose. Equally, although the intent of each Bill is to establish a framework the proposed wording of the purpose statement noticeably omits to clarify for whom it is being established and over what timeframe. We submit that an effective Planning system should include intergenerational equity or a similar concept that is focused beyond the immediate future.

As for the proposed goals we note that these are non-hierarchical in both Bills with direction as to how they are to be 'particularised' set out in supporting, yet to be issued national instruments, particularly the proposed National Policy Direction. We also concerned to note the absence of goals relating to matters over which the Government has clear international commitments (such as climate change and protection of wetlands, biodiversity and habitats of indigenous species).

Given the foundational importance of the goals in delivering the objectives sought by the new planning system and informing its implementation through national instruments, spatial plans and land use and natural environment plans the intended reliance on regulation to set the parameters around how they are to be interpreted and implemented is again concerning. In particular, it opens up an avenue whereby the meaning of these statutory goals or scope of their intent is able to be reframed or qualified at any time through the exercise of ministerial discretion rather than following a normal legislative process – something that in turn has the potential to undermine the certainty and consistency required to 'bed in' the new system.

Relief sought:

a. *That the purpose statements of each Bill incorporate the concept of sustainability, or at the very least, intergenerational equity.*
b. *Consideration be given to including additional goals relevant to the fulfilling New Zealand's international commitments.*

6. Regulatory Relief Regime

A novel but concerning aspect of the Bills is the introduction of a regulatory regime designed to 'encourage local authorities to use controls that impose significant costs or restrictions on the use and enjoyment of private property rights for wider public benefit' in a more targeted and proportionate way. It applies to 'specified rules' relating to:

- Significant historic heritage sites or structures

- Outstanding natural landscapes or outstanding natural features
- Sites of significance to Māori
- Areas of high natural character in the coastal environment, wetlands, lakes, rivers, or their margins

If a specified rule in a plan or proposed plan significantly impacts the reasonable use of land local authorities are required to develop an associated relief framework that, amongst other matters, sets out the nature of relief available to affected landowners (e.g. rates relief, bonus development rights, no-fees consents, land swaps, access to grants).

Although the scope of matters to which this regime applies is relatively narrow the likely effect is that the spectre of compulsory regulatory relief may act as a significant deterrent to local authorities including rules relating to specified topics in their land use plans – something highly at odds with the clear 'protection' outcome mandated by relevant foundational goals (e.g. cls.11(1)(g) and (i)).

Further, this proposal sets up an unworkable dichotomy where, in performing their functions, duties and powers under the Bill, local authorities are required to achieve, for example, the protection of significant historic heritage or outstanding landscapes within their districts with this then exposing them to the prospect of providing regulatory relief if this impacts the reasonable use of land.

If enacted the proposal will impose a significant unfunded mandate on local authorities at a time when they are already contending with a raft of parallel reforms and proposals (e.g. local water done well, earthquake prone buildings, simplifying local government, financial contributions review, rates capping) while also facing continued pressure from Government to keep expenditure and rates increases under control. Aside from the financial implications relating to the form of relief offered there will also be indeterminate ongoing compliance costs associated with establishing and administering the required regulatory relief framework, including potential litigation costs.

If the proposal is ultimately retained it will be imperative that the system of regulatory relief is fair and proportional. It also needs to be based on initially establishing whether the values or criteria for significant values are met prior to considering the quantum or relief, rather than conflating the two decisions. While it is acknowledged that there needs to be a strong evidential basis to justify the inclusion of provisions that could impact the reasonable exercise of private property rights, there are already sufficient checks and balances available in the Bill to negate the need for an onerous regulatory relief regime to be introduced (e.g. incentives, the ability to submit on plans and appeal decisions, and Environment Court orders to strike out or modify plan provisions).

Relief sought:

a. *That further consideration is given to the design of the regulatory relief regime, its financial impact of local authorities, and the relationship between the regime and other provisions of the Bill which provide for landowners to object to plan provisions or apply to the Environment Court for provisions to be struck out or modified.*

7. Increased use of non-regulatory tools

The value of non-regulatory methods such as incentives to achieve positive environmental outcomes is recognised and inclusion of related provisions in the Bills is supported. An example of where they have been successfully applied in the region is the Sustainable Land Use Initiative managed by Horizons. However, if it is the Government's intention to place increased reliance on non-regulatory methods to achieve the goals set out in the Bills, this will be difficult for local authorities to resource under a rates cap in the absence of supporting funding from Government.

Relief sought:

a. *Retain those provisions of the Bills which require explicit consideration of non-regulatory methods and assessments, but make their employment at the discretion of individual local authorities.*

Concluding remarks

We trust that the matters raised in this submission will assist the Committee's inquiry into the Bills and thank you for the opportunity to make this submission. To further reinforce and expand on the matters raised we would also like to take up the opportunity to make a further oral presentation to the Committee. Please contact the undersigned on mayor@horowhenua.govt.nz to arrange a speaking time.

Although this submission sets out the collective high-level views of the local authorities of the Region, it should be noted that separate submissions going into further detail have also been made by individual local authorities. These local authorities have also reserved for themselves the right to request the Environment Committee hear their own individual submissions.

Yours Sincerely

Mayor Bernie Wanden
Chair – Mayoral Forum
Manawatū-Whanganui Region Collective