



19 February 2023

Environment Committee
Parliament Buildings
WELLINGTON

By email: environment@parliament.govt.nz

To whom it may concern:

Kaikōura District Council submission on the Natural and Built Environment Bill

1. The Kaikōura District Council (KDC) thanks the Environment Committee for the opportunity to make a submission on the Natural and Built Environment (NBE) Bill.

Background and context

2. Our beautiful district spans from the Haumuri bluffs in the south to the Kekerengu valley in the north, covering 2,046 square kilometres of diverse landscape. The inland boundary of our district is the Inland Kaikōura Range, climbing 2,885 metres. Māori history and culture are an integral part of Kaikōura, and there is evidence of Māori settlement in the area up to 1,000 years ago. Historically the district has thrived in the fishing, farming and dairy industries. Today Kaikōura is a world-class tourism destination, attracting one million visitors each year pre COVID-19, yet still maintaining its fishing and farming heritage.
3. Our community is involved in determining our vision for the future of our town through public participation and planning documents.
4. Following the 2016 Earthquake, Kaikōura District Council developed a new vision - "Moving Kaikōura Forward". Moving forward is an appropriate vision for several reasons. The first is that it acknowledges we have a point in time to move forward from – the 2016 earthquake. It recognises that the earthquake changed our lives forever, one way or another. It recognises that the earthquake also resulted in significant changes for our community. Moving forward means letting go of the past. The second reason is that "Moving Kaikōura Forward" also recognises the rebuild projects that have now all been completed, and we can enter the next phase of recovery which is our new normal. Our new normal has seen the review of the natural hazards chapter of our district plan, which takes into account climate change. Sea level rise as yet has not been included due to delays in technical information as a result of earthquake uplift¹. We are currently working with our community to develop a spatial plan to ensure a

¹ <https://mpi.govt.nz/dmsdocument/29933-kaikoura-earthquake-and-tectonic-deformation-of-the-kaikoura-coastline>

dedicated vision to move us forward. It will create a long term, 30yr plus vision for the future growth of the Kaikōura township and immediate surrounding area. It is important that such visions can be drawn into regional spatial plans.

5. It is from this perspective of moving forward that we have provided our submission on behalf of our community for the National Built Environment Act outlined below. This submission seeks to support the Canterbury Mayoral Forum submission which has been developed with input from across Canterbury Councils some specific changes have been included which relate to the KDC circumstances.
6. The Kaikōura District Council does wish to appear in support of this submission, in particular to address any questions which may arise.
7. The KDC acknowledges the significant amount of work the Ministry for the Environment (MfE) has undertaken in developing the Spatial Planning Bill.
8. The KDC generally supports the need for greater integration of the resource management and infrastructure legislative systems and sees regional spatial strategies as an important tool to enable that integration. Notwithstanding, our general support, the KDC considers that several important amendments to Bill are required to be an effective planning instrument. The key amendments requested are set out in the following section and are very similar to the Canterbury Mayoral Forum submission.

General

9. The KDC generally supports the need for a new resource management system, the intent of the NBE Bill including the five objectives of the new resource management system to:
 - a. protect/restore the natural environment
 - b. better enable development within environmental biophysical limits
 - c. give effect to the principles of te Tiriti o Waitangi
 - d. better adapt to climate change and its risks
 - e. improve system efficiency and effectiveness, while retaining local democratic input.
10. The KDC also generally supports the focus of the new system on outcomes that will be achieved, amongst other things, by environmental limits and targets. Further, it supports the consolidation of the multiple existing plans and policy statements into one combined integrated plan. The enhanced enforcement powers are also strongly supported, as is the ability to create sub-regional committees.
11. Notwithstanding, our general support, the KDC considers that a number of important amendments are required to ensure the NBE Bill meets the reform objectives. Our key comments on the NBE Bill are set out in the section below.

Time and cost during the Plan Making Period

12. The NBE Bill provides a four-year period to make the new combined NBE plan, with a two-year period to prepare the plan and a two-year period to make decisions on submissions. The CMF believes this period is far too short, especially for the first NBE plan, and attempting to comply with this timeframe will risk:

- a. creating poor planning decisions and outcomes
 - b. not giving effect to the principles of the te Tiriti o Waitangi
 - c. inadequate community consultation
 - d. obtaining insufficient technical input
 - e. placing the resource management industry under extreme pressure.
13. Preparing a combined regional and district plan is an enormous and complex task in the Canterbury context which includes eleven local authorities and a range of environments from the Kaikōura Peninsula to the Central City of Christchurch. It will potentially involve over 100 chapters of objectives, policy, rules, and standards that are interrelated and manage complex resource management issues for a range of different environments. Further, the mixed governance of the Regional Planning Committee (RPC) and the collaborative approach to developing the NBE plan is expected to take longer than through a single Council. The responsibility placed on councils to fund and resource the Committee seems unfair given that any individual council has, in reality, variable influence over the activity they will end up overseeing.
14. Given the scope, complexity and challenges of this task, the KDC considers the four-year plan making period is completely unrealistic. The speed at which so much work will be required to meet the four-year timeframe will lead to poor planning decisions. The plan provisions resulting from these poor decisions could endure for over a decade and may subsequently result in poor on-ground outcomes that will endure for generations. The limited third-party appeal rights will exacerbate this, as appeal rights normally address poor decisions.
15. The short plan making period also has the potential to undermine engagement with Māori. This is concerning as giving effect to Te Tiriti o Waitangi is a key objective of the NBE Bill and one which Canterbury Councils take seriously. It is our experience that meaningful engagement with Māori takes time and is not well served by adherence to short timeframes.
16. Similarly, there is insufficient time for meaningful engagement with local communities. Considering the potentially daunting and intimidating nature of engaging with a regional policy document and considering the potential litigious nature² of engaging with the Independent Hearings Panel, community engagement in the NBE plan is likely to be low. Accordingly, adequate time needs to be provided at the start of the process to provide for meaningful community engagement. Ultimately, the planning system is intended to serve the community and therefore we see community engagement as a crucial part of the planning process. Sufficient time is needed to conduct this.
17. There is also a risk of not obtaining sufficient technical input required for the NBE plan. KDC has already experienced long delays and shortages in obtaining technical information when reviewing our natural hazards provision post the 14th November 2016 earthquakes. GNS Science provided excellent advice but expert advice takes time to achieve and in our case this was further delayed by the Covid 19 pandemic. With more than 9 months being added to the project as a result of these delays. Similar delays are likely especially with

² The reduced rights of appeal will result in the hearings necessitating greater scrutiny of the proposed NBE plan and greater evidential requirements.

small market for specialised technical advice in some fields. A lack of sufficient technical input creates a risk that plans will not be based on robust technical evidence. Again, this could lead to poor plan provisions and subsequently poor on-ground outcomes. For example more than six years have passed since the Kaikoura earthquakes and we are still yet to see changes to the coastal plan.

18. The four-year plan making period is also expected to place the resource management industry in Canterbury under extreme pressure given:
 - a. the size, complexity and challenges of creating the new NBE plans discussed above
 - b. that RMA plan reviews/changes are still being progressed
 - c. that the planning industry in Canterbury and across NZ is already suffering from acute staff shortages.

19. The KDC believes that this pressure will have a seriously negative effect on the wellbeing of the people involved in it. At the time of writing New Zealand is in a National State of Emergency as a result of Cyclone Gabrielle. From Kaikōura District Council own experience this will place sufficient pressure on Civil Defence Staff which are also the same staff who will be reviewing planning documents. Such events combined with short statutory plan making period will led to staff burn out and loss of staff from the industry. For Kaikōura this has meant that we now only four of the 30.6FTE that were employed before the earthquake. Creating burnout is counterproductive to an industry that is short of human resources and contrary to an employer's health and safety obligations.

20. In summary, the KDC believe the four-year plan making period is unrealistic. Attempting to comply with this timeframe will undermine confidence in the new NBE plan and NBE from the outset.

Amendment requested:

21. The plan preparation period is extended to 6 years overall, with a three-year period from commencement to notification of the plan and a three-year period from notification to making decisions on submissions.

22. The Minister decides the sequencing for the commencement of each plan having regard to a readiness assessment.

23. The Minister should fund in collaboration with local government, both the implementation and operational cost associated with RPCs and the Secretariat.

Increase public participation

24. The KDC is seriously concerned with the lack of public participation opportunities provided for in the NBE Bill, both through the plan making and consent processes.

25. Public participation in the plan making process has been limited throughout the NBE Bill, including by:
 - a. the limited 2-year plan making period that will significantly limit public engagement at the start of the plan making process
 - b. initial plan engagement consultation being limited to major regional policy issues, as opposed to district or local issues

- c. RPCs being responsible for plan making, which limits local authorities' involvement in plan making
- c. requiring evidence to be submitted with submissions, which will likely be an impossible task for most submitters given the scope of the combined plan
- d. the Independent Hearing Panel process that will be litigious, expensive and daunting for most members of the public

26. One of the stated objectives of the NBE Bill is to retain local democratic input. The KDC considers this has not been achieved and that the public should be provided with reasonable and genuine opportunities to engage in plan making. We consider this a fundamental democratic right that is supported by s.82 of the Local Government Act 2002. Further, it is our experience that not providing adequate engagement opportunities significantly reduces the quality of plans. Resource management issues by their nature are complex and affect people in different ways. The range of views the public bring to resource management issues in plan making processes is very helpful as it provides different perspectives not necessarily available to staff and decision makers. This greatly enhances the ability to make well informed decisions.

27. People should also be provided with appropriate opportunities to participate in consent processes when they are affected by a development and when it is outside of what is expected by a plan. However, the new consent notification provisions in the NBE Bill appear as if they have been designed to significantly constrain affected party involvement.

For instance:

- a. The new ability to weigh positive effects of an activity against its adverse effects has the potential to dismiss important adverse effects when considered against the broader positive effects of an activity.
- b. The new requirement to consider whether information from the potentially affected person is necessary to understand the effects of an activity and whether their involvement will result in information that will make a material effect on the decision, both has the potential to dismiss an affected party's unique point of view and their local knowledge about the effects of the activity in that location. It will be difficult to know if the information held by a potentially affected person will have a material effect without first knowing their views.
- c. The absence of special circumstances means that consents cannot be notified/limited notified in situations which are unanticipated. For example, when a NBE Plan does not give effect to the NPF.

28. To constrain people's involvement in consenting processes that affect their property limits their rights in relation to something which has very high importance. People have made substantial investments in their properties, in many cases their life savings. They are also often emotionally invested in their properties and the amenity and attractiveness of their property contributes to their wellbeing and is a key source of pride and social status. It is our experience that not providing people affected by development with participation rights in consent processes creates substantial discontent. Accordingly, the KDC requests amendments to ensure consent notification is triggered by an adverse effects threshold.

29. With these matters in mind, the KDC requests several amendments to increase public participation.

Amendments Requested:

30. Provide a 6-year plan making period to help ensure adequate community engagement.

31. Broaden the scope of the regional planning committee's engagement policy to include district and local issues.

32. Not require evidence to be submitted with submissions.

33. Ensure that public and limited notification of resource consents is triggered by adverse effects thresholds.

Reduce political interference

34. The NBE Bill provides opportunities for central government political interference in plan making including the Minister's ability to:

- a. appoint a substitute to the regional planning committee (s.632)
- b. direct the preparation of a plan change or variation (s.633)
- c. direct a plan review to commence (s.634)
- d. direct any other action to be taken (s.635)
- e. direct the preparation, change and variation to plans that relate to the coastal marine area (s636)
- f. direct exemptions to environmental limits (s.44).

35. The KDC considers this is contrary to good governance practice, which, as outlined by the auditor general³, should separate governance from management. In this context, central government should focus on creating appropriate legislation and national policy, while RPCs should focus on implementing that legislation and national policy through the NBE plan.

36. As proposed the NBE Bill potentially politicises the planning system by providing an opportunity for the government of the day to make changes for political gain. Such changes could be unintended by the government that passed the NBE Bill.

37. The KDC acknowledges the need to review the performance of the regional planning committees and the need to direct changes in the interest of national importance. However, it considers that it would be more appropriate for the Minister to direct an independent authority (e.g. the Environment Court) to investigate and direct those changes. It is important that any such authority is not appointed or aligned with a political organisation. This would ensure planning decisions are based on evidence and good practice as opposed to political motivations, or a result of lobbying. The KDC considers it is vital to protect the integrity of the planning system.

³ [Good Practice Summary: Good Governance](https://oag.parliament.nz/good-practice/docs/good-governance.pdf) (oag.parliament.nz/good-practice/docs/good-governance.pdf)

Amendments Requested:

38. Amend sections 632 to 635 and section 44 of the NBE Bill so that the Minister can only refer these matters to Environment Court for their consideration and determination.

Clarify the Bill's purpose

39. A particular issue with the NBE Bill is that its purpose is unclear. It has two purposes that are inconsistent and overlap each other. The Canterbury Mayoral Forum (CMF) has requested amendments to the purpose of the NBE Bill to help address these matters and clarify its meaning, this is supported by the KDC. It is vital the purpose of the Bill is clear as it will affect the interpretation of the remaining parts of the Bill, the National Planning Framework and NBE Plans.

Amendments Requested:

40. Amend section 3 to help clarify the purpose of the NBE Bill.

Address the Bills conflicting objectives

41. Another important issue is that system outcomes under section 5 of the NBE Bill are not prioritised and conflict with each other. This is concerning as it creates on-going confusion about what the system is trying to achieve. If clarity is not provided, it will be difficult for the National Planning Framework and NBE Plans to resolve these conflicts. Leaving these conflicts to be resolved through the National Planning Framework also provides the opportunity for the government of the day to pick and choose what is prioritised. It took years for the Environment Court to clarify that section 6 of the RMA constitutes environmental bottom lines. Not only was this costly to resolve, but it also resulted in years of inconsistent decision-making and poor on-ground outcomes. Accordingly, the KDC supports the CMF requests amendments to resolve the potential for conflicting system outcomes. Ideally this would constitute a list of prioritised system outcomes.

Promote good urban design

42. The KDC is disappointed that there is nothing in the NBE Bill that specifically promotes good urban design outcomes. The need to maintain and enhance amenity as required by section 7 of the RMA has not been included and nothing in the NBE promotes good urban design. It should be noted that the term 'well-functioning urban area' in section 5 is not itself defined and does not address urban design, or the quality and liveability of the built environment.
43. Approximately 87% of New Zealand's population reside in urban areas. Accordingly, it is appropriate that the planning system meets people's aspirations and contributes to making urban areas attractive places so that people want to live and work there. Although Kaikōura District is largely rural good urban design is still important to us, our small urban township is where the mountain meets the sea and without good urban design, some of the splendor of the natural environment could easily become lost due to poor urban design.
44. The KDC acknowledges there is a need for change in urban areas over time and that it is not always appropriate for existing character and amenity to be retained. New Zealand's

increasing population will result in greater need for intensification. However, it is important that the new system promotes good urban design outcomes that consider context, provide connections, encourage creativity, creates/enhances identity and character, and achieves a reasonable level of amenity.

45. The risk of not providing for good urban design as a system outcome is that good urban design will no longer be required or prioritised. Urban development will be left to the market, which if left unfettered by NBE plans to provide good urban design, will produce substandard development that adversely affects the lives of thousands of people. These affects will endure for decades. There are already examples of poor urban design in Kaikoura, with more in Canterbury, New Zealand and internationally. The conception of urban areas as purely functional has been comprehensively decried. Urban areas are places for humans and human nature appreciates the aesthetic appearance of things and the amenity that it provides. The KDC believes it is crucial for the well-being of people that good urban design is promoted in the NBE Bill. It is our experience that plans with discretion to consider design produce considerably better urban design outcomes than those that do not.

Amendments Requested:

46. Amend the system outcomes to include good urban design.

Reduce the human resources required to implement the Bill

47. While system efficiency is a stated objective of the NBE Bill, the KDC believes that several amendments need to be made to ensure that objective is achieved. Human resourcing is a particular issue for Canterbury Councils as there has been on-going shortages of qualified and experienced planning staff across Canterbury for years. This has been a major constraint in implementing the RMA. There is no merit in creating a system that cannot be properly implemented due to the lack of human resources. The impact on resourcing should therefore be a key consideration in the select committee's deliberations on the NBE Bill.
48. As discussed above, the short four-year plan making period is likely to create acute resourcing shortages for Canterbury Councils. Not only is creating a combined regional plan an enormous and complex task that will take all of Canterbury's resource of policy planners to achieve, but the existing resource of policy planners is already entirely taken up dealing with plan changes and reviews under the RMA. KDC for example has had to use external consultants to rehouse our district plan to meet national planning standards. This has taken more resources than anticipated. To resolve that situation, the KDC request the extension of the plan making period (as stated above). It also requests that transitional arrangements under the NBE Bill allow Councils that are working on plan changes and plan reviews under the RMA to have discretion as to whether to put their resources into continuing with their reviews or to focus their resources on transitioning to the new system. Although our community has an expectation that our very dated district plan will be reviewed to ensure zoning meets environmental requirements and community expectations, it would be non-sensical for Council's to start full plan reviews now.
49. The KDC also believe that proposed Permitted Activity Notices (PANs) will create significant resourcing issues as they will need to be prepared by planners (or someone with a high degree of training) and will need to be monitored for compliance. This will

exacerbate the existing shortage of planners and monitoring staff. While PANs are not compulsory, we request more limitations are placed on their use so that they do not create significant resourcing issues.

Amendments Requested:

50. Extend the plan making period to 6 years as already discussed.

51. All Councils discretion as to whether they continue with RMA plan processes.

Too much too soon?

52. Also as noted in Kaikōura District Councils submission on the Water Service Legislation Bill Council is concerned that the reform agenda is being single mindedly driven by central government on an aggressive timescale. The implications of which are significant on us as a small council and are unlikely to result in good outcomes for our ratepayers and community. The lack of "active listening" when dealing with three waters to date by central government agencies has impacted on our trust and confidence in the process and threatens the relationship between central and local government. The timetable for reform needs to focus on good planning outcomes as opposed to political timeframes.

Further information

53. Our Strategy, Policy and District Plan Manger is available to provide any further information or answer any questions about our submission. Contact details are Matt Hoggard, Kaikōura District Council, matt.hoggard@kaikoura.govt.nz, 027 242 8314.

Yours faithfully,



Craig Mackle

Mayor

Kaikōura District Council