

GOOD, BAD, UGLY OF PLANNING LAWS

 HELEN
ATKINS

What is covered

- The political landscape
- The components of RMA reform
- Other relevant proposals
- Where to from here

The political landscape

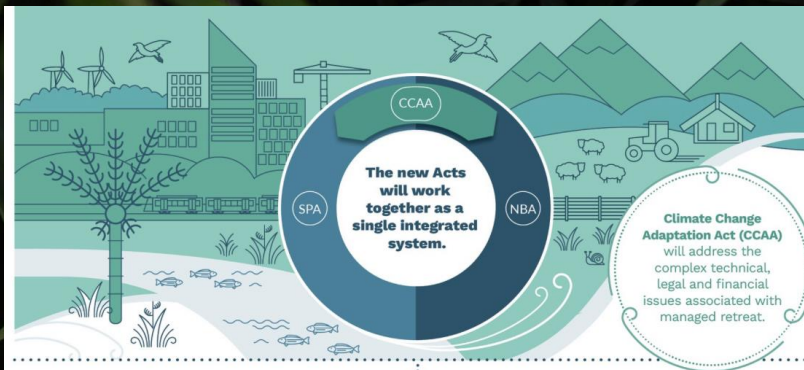


The components of RMA Reform

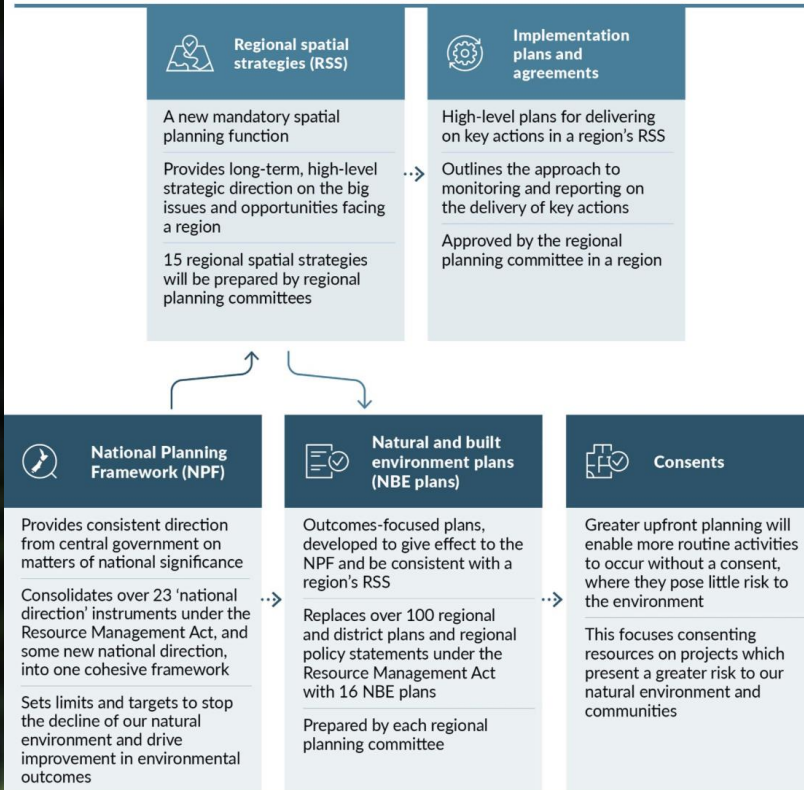
- Natural and Built Environments Act 2023
- Spatial Planning Act 2023
- Climate Change Adaption Bill

The components – an overview

- Natural and Built Environments Act (NBA)
 - Sets out how the environment will be protected and used.
 - It covers land use, environmental protection, water takes, discharges and use of the coastal marine area
- Spatial Planning Act (SPA)
 - Mandates that each region shall create a long-term spatial strategy
- Climate Change Adaption Bill (CGAB)
 - Will address community-led retreat; and
 - Climate adaption funding and financing



Spatial Planning Act (SPA)



Natural and Built Environment Act (NBA)

What is in effect now

- Fast-track consenting process
- New maximum duration for some freshwater related consents
- Compliance and enforcement
- Contaminated land
- Aquaculture management
- Requiring authorities under the NBA

Fast-track consenting process

- For certain infrastructure and housing activities
- Available for both resource consents and for notices of requirement to designate land, from 24 August 2023
- Activities eligible for fast-track consenting:
 - Communications – a broadcasting facility and a telecommunications network
 - Housing - a housing development, subject to criteria in clause 16(3) of Schedule 10 of the NBA
 - Other central or local government, or private facilities: correction facilities (including the provision of rehabilitation and reintegration services); defence facilities operated by the New Zealand Defence Force; educational facilities ; fire and emergency service facilities; health facilities
 - Transport: an airport operated by an airport authority as defined in section 2(1) of the Airport Authorities Act 1996 (including any airport-related navigation infrastructure); a port operated by a port company (as defined in section 2(1) of the Port Companies Act 1988); the New Zealand rail network, including the interisland ferry facilities; the state highway network, local roads, or rapid transit services
 - Water: flood control and protection (including drainage); the distribution or treatment of water, wastewater, or stormwater
 - Energy: electricity or gas distribution or electricity transmission network; renewal of a consent for renewable energy generation (including hydro-electricity, a facility for wind or solar energy generation)
- For more detail see : [Fast-track-consenting-process.pdf \(environment.govt.nz\)](https://www.environment.govt.nz/consenting/infrastructure-and-housing/fast-track-consenting-process)

New maximum duration for some freshwater related consents

- Applies to some freshwater-related consents applied for between:
 - the day after the NBA receives Royal assent (24 August); and
 - the date that allocation methods in a region's first NBE plan have legal effect
- Doesn't apply to freshwater-related consents applied for on or before 23 August 2023
- Applies to:
 - Water permits for activities that take, use, dam, or divert freshwater
 - Discharge permits for activities that discharge any contaminant or water into freshwater
 - Discharge permits for activities that discharge any contaminant onto or into land and may lead to that or a resulting contaminant entering freshwater
 - Land use consents for activities that would contravene section 15(1)(b) of the RMA (freshwater only)
- Does not apply to:
 - Construction, operation, upgrading, or maintenance of: local authority or community reticulated water supply networks; infrastructure that forms part of a public wastewater or stormwater network; specified nationally significant infrastructure activities; and the replacement, repair, or removal activities
 - Operation, upgrading, or maintenance of any existing hydroelectricity generation schemes
 - An activity specified in regulations as exempt by the Minister for the Environment
- For more information see: [New-maximum-duration-for-some-freshwater-related-consents.pdf \(environment.govt.nz\)](#)

Compliance and enforcement

- Part 12 of the RMA will remain in force until 10 days after a regional planning committee has notified the decisions version of its first NBA Plan
- This means:
 - offending that occurred before 24 August 2023 will continue under the RMA;
 - offending that occurs from 24 August 2023, but before a region's NBEA date, will continue under the RMA (some provisions will be available to use)
 - from a region's NBEA date enforcement activity will occur under the NBA (meaning that Part 11 of the NBA will come into force in different regions at different times)
- For more information see: [Compliance-and-enforcement.pdf](#)
([environment.govt.nz](#))

Contaminated land

- NBEA applies the 'polluter pays' principle which means those who cause or allow contamination to occur are held accountable for the costs of managing the pollution
- Regional councils have certain responsibilities that apply from 24 August 2023, including to:
 - identify all HAIL land within their regional boundaries
 - maintain a publicly available register that contains an up-to-date record of all HAIL land identified within their boundaries
- The Minister (in consultation with the Environmental Protection Authority (EPA) and the relevant local authority), has the power to classify or declassify an area as a significant contaminated land site
- Once land is identified as significant contaminated land, the EPA takes over the role as lead regulator using RMA powers, until the region's natural and built environment plan (NBE plan) comes into effect. The EPA then adopts the functions and powers of the local authority and regional council.
- For more information see: [Contaminated-land.pdf \(environment.govt.nz\)](#)

Aquaculture management

- Most of the immediate changes apply to the powers of the Minister of Aquaculture to suspend consent applications, make regulations and make decisions on the allocation of aquaculture space.
- Regional councils have responsibilities to update mapping in certain circumstances
- For more information see: [Aquaculture-management.pdf \(environment.govt.nz\)](#)

Requiring authorities under the NBA

- The NBA contains provisions relating to requiring authorities that will take effect from November 2023
- A requiring authority is a person or entity that can require land to be set aside (designated) for a public purpose such as a hospital, school or network
- The NBA:
 - adds council-controlled organisations
 - enables more network utility operators to apply to be requiring authorities
 - enables 'other applicants' to apply to be requiring authorities
- Until November 2023, the requiring authority provisions in the RMA will continue to be in effect
- For more information see: [Requiring-authorities-under-the-NBA.pdf](#)
[\(environment.govt.nz\)](#)

National Planning Framework (NPF)

- What it is:
 - Secondary legislation
 - An essential part of the new system
 - Brings all national direction into one integrated framework to inform and support regional decision-makers in the development of the Regional Spatial Strategies and NBE plans

NPF (cont...)

- What it is:
 - Direction on matters of national significance, environmental limits and targets
 - Help resolve conflict among outcomes
 - Important role in relation to wider Government priorities such as housing, infrastructure, sustainable use of productive land, climate change and freshwater

NPF (cont...)

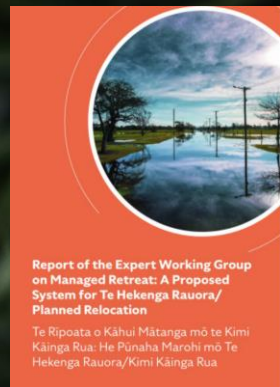
- Engagement on the transitional NPF to make sure it is fit for purpose when it is released for public consultation in April 2024
- Will go to a Board of Inquiry who will call for public submissions
- Minister must give regard to the Board's recommendations when making final decisions on the transitional NPF in 2025
- See the draft NPF here: [Engagement-draft-Natural-and-Built-Environment-Transitional-Nation-v34.0.pdf](#)

Spatial Planning

- Requires each region to develop a regional spatial strategy that sets out the long-term issues, opportunities and challenges for development and the environment in the region
- The Spatial Planning Board an interdepartmental executive board (CEs of Ministries of Environment, Housing and Urban Development, Transport and DIA and DOC)
- Responsible for
 - overseeing the transition and implementation of the SPA, and monitoring, evaluating, and reporting on the effectiveness of the Act.
 - coordinating central government involvement in the development of regional spatial strategies and support the development of each strategy's implementation plan.
- See the Board's website: <https://www.spatialplanning.govt.nz/>


Climate Change Adaption


- The Parliamentary Environment Committee's Inquiry into Climate Adaption is considering community-led retreat and how the costs of adapting to climate change could be met
- Will inform development of a CCAB in 2024
- See the MfE :
 - [Community-led retreat and adaptation funding – issues and options | Ministry for the Environment](#) and
 - [Report of the Expert Working Group on Managed Retreat: | Ministry for the Environment](#)
- Submissions are open until Wednesday 1 November 2023.
- For more information and to make a submission see: [Inquiry into climate adaptation - New Zealand Parliament \(www.parliament.nz\)](https://www.parliament.nz)




Watch this space

HELEN  ATKINS

 021 405 464

 helen.atkins@atkinslaw.nz

 www.helenatkins.co.nz

