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5th February 2023



Natural and Built Environment Bill

The New Zealand Association for Impact Assessment (NZAIA) thanks the Select Committee for the opportunity to submit on Natural and Built Environment Bill [NBA Bill in the following]

About the New Zealand Association for Impact Assessment (NZAIA)

NZAIA is a community of impact assessment (IA) specialists and supporters. Our membership comprises about 100 practitioners: environmental and social consultants; academics, researchers and students, and other assorted professionals and interested parties. Our members include many of the leading IA experts in NZ, with longstanding reputations and a wealth of New Zealand, Pacific and international experience. We all share a deep interest in ex ante impact assessment, a decision-support method for evaluating proposed policies, plans and projects for their unintended consequences, and therefore one of the most widely practised and important global tools for safeguarding the environment, and the people and communities who rely on it.

NZAIA is an affiliate of the International Association for Impact Assessment (IAIA), a professional association with some 1700 members located across 120 countries. NZAIA is also partnered with the Environment Institute of Australia and New Zealand Inc. (EIANZ); and the Secretariat of the Pacific Regional Environment Programme (SPREP).

Submission

NZAIA supports the broad changes represented by the NBA Bill, in particular the emphasis on strategic level plans, and more directive outcomes and targets.

NZAIA particularly commends the emphasis on effects assessment in the Bill, but we have concerns about some of the provisions in the Bill which we detail below.

Effects assessment is the New Zealand version of the internationally recognised concept of impact assessment. The RMA was drafted deliberately to avoid using the term environmental impact assessment, as the process was intended to be fully integrated with the resource management consent processes. But the same good practice principles have always applied, and the NBA provides the opportunity to improve effects assessment practice, especially with respect to AEEs.

There is a well-developed international and national community of professional impact assessment practitioners, and a substantial body of knowledge and guidance about the process. Legislative provisions do not guarantee good practice, but poor provisions make good practice much harder to achieve.

Specific concerns.

1. We are pleased to see explicit reference to managing adverse effects in the Purpose (s3(1)(4)), and the emphasis on effects throughout the Bill. However, we are concerned that the Decision-making Principles (s6)(1)(b-d) place so much emphasis on achieving outcomes, that managing effects could become secondary to achieving those outcomes, to the detriment of the environment. The requirement that decision-makers manage cumulative effects is a very important inclusion in s6, but could also be downweighted in light of the previous Principles.

2. Tiered assessment of effects is a well-established principle in international impact/effects assessment practice. This recognises that assessments of policies and plans for their wider implications, especially potential adverse effects, are as necessary as the assessment of individual projects, and may well reduce the number of resource consent applications requiring assessment. To achieve this requires a coherent framework of assessment requirements from the NPF to the NBE plans, and including Regional Spatial Strategies under the proposed Spatial Planning legislation.

a) We are concerned that the NPF does not contain provisions for effects assessment in relation to the outcomes, targets and strategic directions to be developed through the NPF processes. The potential wider, and possibly adverse, implications of such high level decisions should be considered as part of NPF processes; if embedded within the processes they can provide reassurance to the public and gain wider support for the outcomes, targets and strategic directions.

The Effects Management Framework (EMF) is of particular concern. It seems to provide for a higher standard for managing activities that would have significant effects on indigenous biodiversity and cultural heritage, but the question arises: higher standard than what? In the absence, as we have noted above, of a clear statement that effects assessment (and therefore subsequent effects management) is to be a key step in the NPF, the EMF seems to imply high level strategic decisions and instruments only need to be assessed for their effects on those two key aspects. Surely this is not the intention?

b) We note that NBE plans will be subject to evaluation reports (cl25, Schedule 7) and we support the need to make such reports more succinct, and more readable for decision-makers and the public. However, the removal of an explicit requirement to consider costs and benefits of plans will rob the evaluation reports of their critical role in assessing the wider implications of plans. We agree the s32 evaluation reports under the RMA had problems, but many were due to an over-emphasis on justifying the particular choices made when selecting policies, rules, etc. Evaluation reports should be more concise and informative, and produced earlier in the process, but we believe removing (or at least seriously weakening) the need to assess effects is a backward step.

c) Internationally, **strategic environmental assessment (SEA)** is seen as best practice in seeking to ensure proposed policies and plans deliver their intended outcomes without creating wider, unintended and problematic consequences. For example, the EU requires strategic environmental assessment (SEA) of a wide range of public plans and programmes, including those for land use, transport, energy, waste and agriculture, in order to integrate environmental considerations into the preparation, adoption and implementation of those plans and programmes to promote sustainable development. In Australia, the Federal *Environment Protection and Biodiversity Conservation Act 1999* requires strategic assessments of proposed plans; they have a number of purposes, including achieving better environmental outcomes, particularly in addressing cumulative impacts.

We recommend the inclusion of a coherent framework for effects assessment, based on international SEA models, set out in the NPF, that would link with the Effects Management Framework, and effects assessment and management requirements in the Spatial Planning Strategies.

More specifically **we recommend** revising Schedule 7, cl 25, to give plan evaluation reports a more explicit strategic assessment role, including a stronger mandate for effects assessments as part of plan development.

3. We are concerned about the retention, apparently verbatim from Schedule 4 of the RMA, of the information regarding AEE content for resource consent applications. Impact assessment/assessment of environmental effects is a recognised theory-based, practical

process, for which there are international best practice principles and a well-established community of practitioners. However, most AAEs are completed by people without that background. Simply basing assessments on the requirements set out in the Schedule, which are more about content rather than process, will not of itself produce quality assessments, as frequently demonstrated by AEEs under the RMA. Even for small proposals, resource consent applicants would benefit greatly from a process model based on recognised impact assessment methodology.

We note in Schedule 10(cl 8) that there are proposed powers to “make regulations prescribing the form and content of, and the procedure for, assessments of environmental effects.”

We strongly recommend either the inclusion in Schedule 10 of an indicative (not prescriptive) model of how environmental assessments would normally be carried out, based on internationally recognised good practice principles; or a revision of clauses 6 and 7 of Schedule 10 regarding the content of AEEs to reflect more clearly underlying good practice principles. An example of the latter (though aimed at large projects) is Schedule 4 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 from the UK.

Alternatively the NBA could reference in Schedule 10 the International Association for Impact Assessment (IAIA) as a source of guidance on good practice, following the example of the Convention on Biological Diversity and its EIA requirements.

4. NZAIA supports the recognition of Adaptive management (AM) (s86) as an important management tool, but we are wary about its potential abuse. The context for AM is outlined as one where there is potential for significant environmental change, but timing and magnitude of the changes remain uncertain. However, it could be argued that any significant adverse effect meets these criteria. We believe this could lead to minimum effort being made to assess environmental effects, and to move quickly to adaptive management strategies. There were examples of this in the early years of the RMA when applicants essentially equated AEEs with adaptive management plans. Such abuse opens the door for real damage to occur before changes are detected and responses formulated and implemented, and has the potential to undermine the value of ex ante effects assessment to avoid and mitigate potential changes.

We recommend that s233(3) be revised as follows:

- i. The consent authority must consider whether the assessment of effects has been carried out to an appropriate standard (i.e. not just a cursory assessment) before AM can be considered; and
 - ii. include a requirement that AM can only be used for environmental changes that are reversible.
5. In s108 *Matters that must be disregarded when preparing or changing plans* we believe that disregarding “any effect on scenic views from private properties” rules out legitimate visual impact concerns of communities that are not simply NIMBYism. Where a broad community group identify visual impacts as a potential issue, this should be respected by plan makers. For example, a community that relies on visitors, attracted by local scenic values, to support local business and employment would have a legitimate concern about any development that could threaten those values.

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On behalf the New Zealand Association for Impact Assessment Core Group.

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