

# Resource Management Reform

## New Acts & RMA Policy Updates

**August 2023**

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# Key themes

## What is changing?

- **Environmental protection** takes priority
- Significantly **stronger role for Māori**
- **New Acts:**
  - **Natural and Built Environment (NBE) Bill**
  - **Spatial Planning Bill (SP)**
- **Parallel evolution of RMA Policy and Plans** – National Policy Statements, RPS, Regional and District Plan Reviews
- New Acts and RMA policy moving in same direction

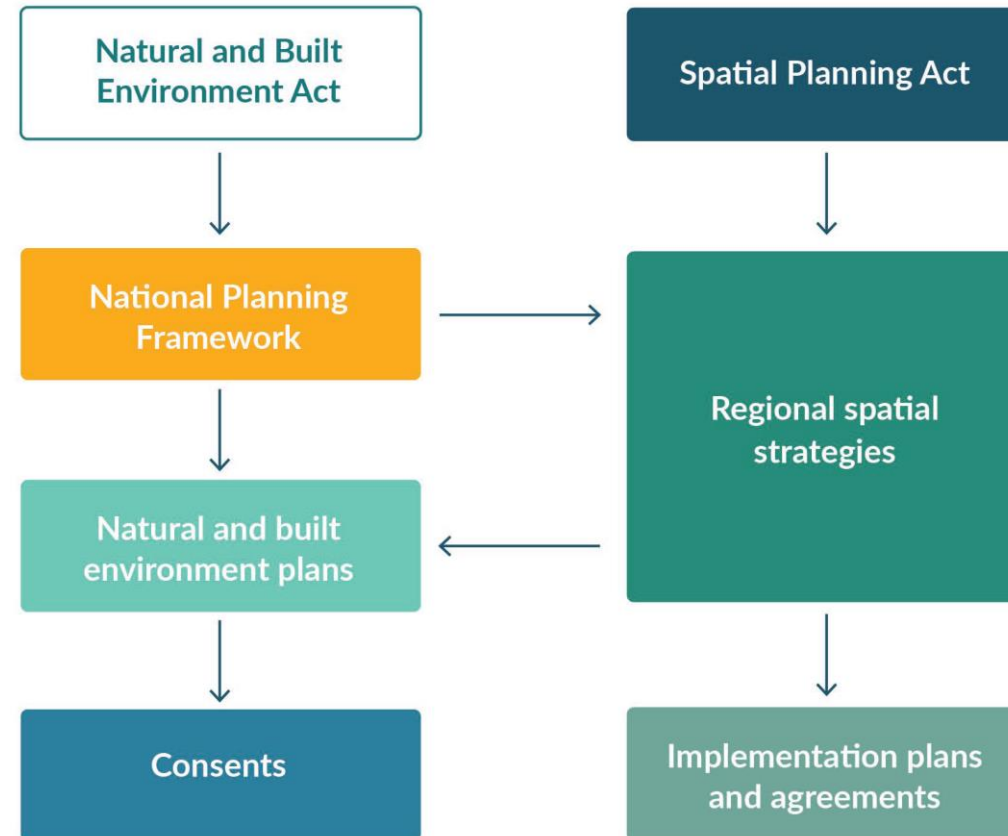
# The New Acts

- **Natural and Built Environment Act** – NBA: the “primary replacement” for the RMA, performing essentially the same purpose in prescribing the “nuts and bolts” for plan making, consenting, appeals, etc.
- **Spatial Planning Act** – SPA: a new element introducing long-term (30yr + ) statutory strategic plans, known as Regional Spatial Strategies (RSS).

# The New Acts

## System Components

### A single integrated system



# Key features of the new system

## National Planning Framework

- NPF will set the overarching rules.
- Again, important to engage at this stage (Board of Inquiry).
- First iteration imminent (expected within a matter of weeks).
- The first NPF will consolidate the existing direction of National Policy Statements (NPS) and National Environmental Standards (NES), but its ultimate scope is much wider.
- MfE has advised that NPF will not influence decision making on RMA consents during the transition, but this needs to be treated with caution as it is not quite what the Bill says!

# Key features of the new system

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## Regional Spatial Strategies

- RSS sets the stage – NBE plans *must be consistent* with the RSS.
- Important to engage in RSS development:
  - Identify mineral resource areas.
  - Establish enabling provisions for mineral working.
  - Advocate for safeguarding measures (avoid sterilisation by other development).

# Key features of the new system

## Natural and Built Environment Plans

- 15 Regions - Each region will develop an NBE Plan.
- NBE plans will replace existing district and regional plans under the RMA.
- It is intended that more activities will be permitted in NBE plans than is currently the case.
- Resource consents will focus on activities with less certain outcomes or higher potential for adverse effects (includes mineral working!).
- NBE plans are scheduled to be developed and implemented between 2028 and 2033.

# Key features of the new system

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## Environmental Limits and Targets

- Environmental limits and targets will be set through the NPF and plans, setting 'bottom lines' for the environment.
- Environmental limits must be set for air, water (including coastal water, estuaries and freshwater), soil and indigenous biodiversity, and may be set for any other aspect of the natural environment.
- Limits = prevent further degradation.
- Targets = drive improvements.



# Key features of the new system

## Stronger role for Māori

### Runs though the NBE Act, for example:

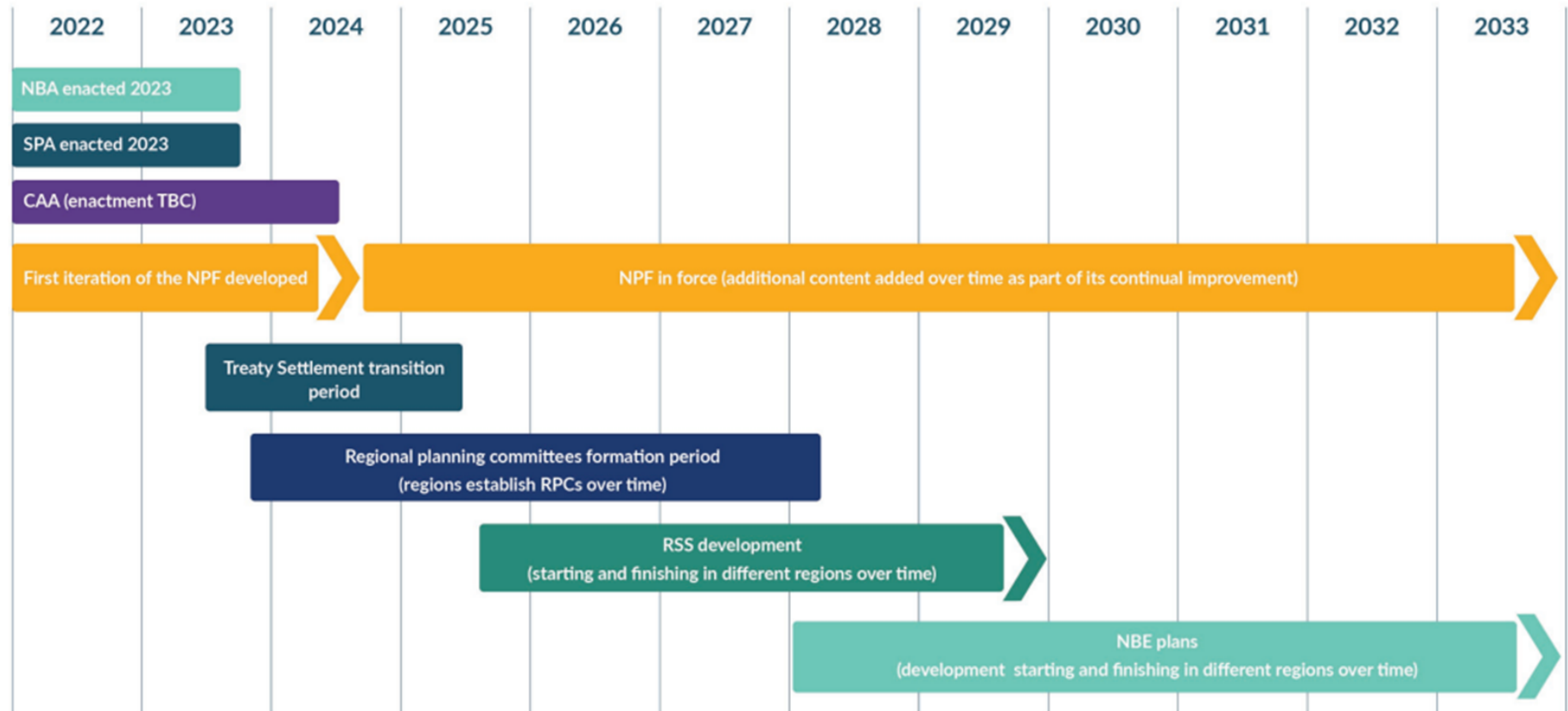
- **Purpose of the Act:** Uphold Te Oranga o te Taiao.
- **Stronger Treaty provision:** *All persons exercising powers and performing functions and duties under this Act must give effect to the principles of te Tiriti o Waitangi (Monitored by National Māori entity).*
- **Decision making principle:** *All persons exercising powers and performing functions and duties under this Act must recognise and provide for the responsibility and mana of each iwi and hapū to protect and sustain the health and well-being of te taiao in accordance with the kawa, tikanga (including kaitiakitanga), and mātauranga in their rohe or takiwā.*
- **Regional planning committees** must include iwi / hapū representatives.
- Plan-makers to have particular regard to *"any statement prepared by an iwi or hapū of a region to express their view on how te Oranga o te Taiao can be upheld at the regional and local levels"*

Mana whenua relationships (and early engagement) will become (even) more important.

# Transitional Arrangements

## Key Stages

### Transition and implementation timetable



Current RMA system will drop off as new strategies and plans come on stream.

Timeframes are indicative based on current information. These will be refined.

# Transition

- Estimated 10 years to fully transition.
- Transition will happen region by region.
- Meantime RMA plans, consenting and decision making generally continue to apply.
- So, for consenting associated with existing and new mining proposals, most things should remain the same...but watch the NPF.

# National Planning Framework

## Potential Implications

**The NPF could significantly affect RMA matters during the transition period.**

**cl. 75, 76:** *The national planning framework may direct consent authorities to review existing consents.*

**cl. 82:** *The national planning framework may include transitional provisions for any matter, including its effect on existing matters or proceedings.*

**cl. 277:** *A consent issued by a regional council may be reviewed where necessary to comply with limits and targets.*

# Transition

## Limited duration for freshwater consents

- Freshwater takes and discharge permits granted under the RMA during the transitional period will expire 5 years after the allocation rules of the NBE Plan for the region has legal effect.
- In practice this could mean anything from 7-15 years, depending on which region you are in!
- New system has a 10-year maximum duration for consents affecting freshwater resources (still 35 years for other discharges).

# Meanwhile - RMA Policy

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## National Policy Statements

- Recent National Policy Statements:
  - Freshwater.
  - Highly Productive Land.
  - Indigenous Biodiversity.
- All highly protective (environmental priority).

# Common Themes

## High levels of environmental protection

### Avoidance policies (strongest direction)

**NPS-FM:** “The loss of extent of natural inland wetlands is avoided”

“The loss of river extent and values is avoided”

**NPS-IB:** “Significant Natural Areas - loss of ecosystem representation and extent must be avoided”

**NPS-HPL:** “Territorial authorities must avoid the inappropriate use or development of highly productive land that is not land-based primary production”

# Common Themes

## Specific exemptions for mineral working

Allowances made for:

- **Mineral extraction** that provides **significant national public benefit** that could not otherwise be achieved using resources within New Zealand;
- **Aggregate extraction** that provides **significant national or regional public benefit** that could not otherwise be achieved using resources within New Zealand.

But with conditions...



# Effects Management Hierarchy

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## Must Apply the Effects Management Hierarchy

- (a) adverse effects are **avoided** where practicable; then
- (b) where adverse effects cannot be avoided, they are **minimised** where practicable; then
- (c) where adverse effects cannot be minimised, they are **remedied** where practicable; then
- (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, **offsetting** is provided where possible; then
- (e) if aquatic offsetting of more than minor residual adverse effects is not possible, **compensation** is provided; then
- (f) if compensation is not appropriate, the activity itself is **avoided**.

# Offsetting and compensation

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- To redress more than minor residual adverse effects after steps to avoid, minimise, and remedy adverse effects have been applied.
- Not appropriate where environmental values are vulnerable or irreplaceable, or where adverse effects are uncertain.
- Net environmental gain. Offset or compensation should be of greater value than that lost.

# Functional Need

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## Must demonstrate Functional Need

- **“Functional need”** means the need for a proposal or activity to traverse, locate or operate in a particular environment because the activity can only occur in that environment.
- Will often apply to mineral working (minerals can only be worked where they are found).

# Functional Need

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- What are the things you need to consider in determining a functional need?
  - Land ownership / control.
  - Material movement costs.
  - Geotechnical / hydrological.
  - Water management.
  - Construction efficiencies.
  - Effects of alternatives – higher or lower?

# Takeaways

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Things are changing and tightening – protection of the natural environment is increasingly important – clear evidence around this in applications and outcomes.

Although the new legislation isn't out yet and it may be repealed – Councils are starting to behave like it already applies.

Words matter in provisions.

Stakeholder participation – mana whenua – key relationship.

Relationships with the regulators is also key.