



Kaipara District Council's submission to: Natural and Built Environments Bill: Parliamentary Paper Exposure Draft – July 2021

Introduction

Although population wise, Kaipara District is one of the smaller Councils in New Zealand, similar to our larger Council counterparts, our district is grappling with the effects of fast-paced growth and development, whilst attempting to strike a balance to manage our natural environment and physical resources.

The Kaipara District covers a vast area of land between the east and west coasts of Northland and comprises one of the largest harbours in the Southern hemisphere, the Kaipara Harbour.

Whilst our towns and settlements are small by comparison to many other districts, we are the fastest growing rural district in the North Island and are experiencing unprecedented growth due to our proximity to Auckland and the flow on effects of its housing market.

Like many other rural Councils across New Zealand, Kaipara District Council (KDC) is under-resourced across the Council business to manage the impacts of growth: from the funding of infrastructure to processing the resource and building consents required to build additional housing within the District.

KDC are working extremely hard to be resourceful within current limits and are working hand in hand with our communities to deliver what Council feasibly can. We are committed to making a difference to the wellbeing of the people who live in our District and to growing a better Kaipara.

In order for us to deliver on our promises to our communities, Council is concerned that the proposed Natural and Built Environments Act (NBA) exposure draft does not deliver assurances to Council as a local authority that we will be able to uphold these promises. The key reasons, which will be covered in further detail in our submission are outlined as follows:

- KDC does not consider there to be sufficient detail in the Natural and Built Environments Bill to provide any indication as to what the future for smaller Council's such as Kaipara looks like.
- KDC is concerned about the timeframes for the National Planning Framework to be implemented and for regional direction to be developed, leaving Council's in a state of uncertainty.
- The exposure draft does not provide any guidance or direction in respect to the core functions of territorial authorities and whether these functions will largely remain the same or change considerably. This uncertainty has significant consequences for current processes, including District Plan development and consenting.
- KDC has concerns in respect to how it will be represented on the proposed Planning Committee and particularly how this will work practically. Whilst we envisage a Northland Region planning committee, Council would like to understand what this means in terms of decision making. For example, we would

like to understand what input will be required from the Council's Elected Members, if any; what accountability the Planning Committee has; what the function of the territorial authority will be in terms of supporting the Planning Committee Member is and how this Planning Committee works in practice, such as how will Council initiated Plan Changes and Private Plan Changes will be dealt with to accommodate rezoning of land within Kaipara's jurisdictional boundary.

- KDC has concerns about how it will fund the transition and re-structure the organisation in response to the new legislative requirements, once the legislation in conjunction with the Strategic Planning Act (SPA) and Climate Change Adaption Act (CAA) are enacted.
- KDC has a well-established relationship with its iwi partners, Te Uri o Hau and Te Roroa, which works efficiently and effectively in terms of Council's current business. Council has concerns that this relationship will become strained as a result of the new direction, given that the legislation places more emphasis on iwi participation and yet does not provide solutions as to how this will be resourced or funded to ensure iwi have the resources and ability to participate.

Submission

KDC staff have reviewed the Natural and Built Environments Bill exposure draft (NBA) and the Parliamentary Paper in conjunction with the Randerson Report and are cognisant of the upcoming Strategic Planning Act and Climate Adaption Act, which are discussed in some detail in the Parliamentary Paper.

In general, KDC considers the NBA exposure draft to be very "light touch" on what territorial authorities are most interested in regarding their current functions and powers.

The following points capture Council's current thoughts in terms of the proposed parts and specific sections:

Part 1 Preliminary provisions

- In section 3, there is some confusion about the use of different terms for 'natural environment', 'urban form' and 'environment' and 'built environment'. This creates challenges in respect to interpretation (particularly for sections 5 and 8).
- The recommendations for "cultural landscapes" included in the Randerson report (at Chapter 3) were in respect of a Te Ao Maori world view. The definition of "cultural heritage" under the NBA broadens this. Council questions whether this was intentional.

Part 2 – Purpose and related provisions

- While KDC generally supports the approach taken to section 5, we consider section 5(1) will be difficult to implement in practice. For example, in resource consents both clauses (a) and (b) are very broad and will often be difficult to argue where applications for resource consent do not meet these requirements. Council anticipates these sections will certainly be challenged, meaning that caselaw will provide the hierarchy Council's should consider.
- KDC generally supports the use of environmental limits and the outcomes for the benefit of the environment being promoted. However, we have reservations about how these will impact local authorities. Further in respect section (2)(c) our experiences with "avoided", "remedied" or "mitigated" in terms of consenting is that using these tests often leads to more costly and in-efficient consenting, particularly in more complex consenting matters. We question whether this will remain the same in

this proposed legislation.

- KDC agrees with section 5(3) and supports Te Oranga o te Taiao being included prescriptively in the legislation. However, we question how this will be applied in practice given its broad definition.
- In respect to section 6 (Te Tiriti o Waitangi), while we support the change in direction to “give effect” to the principles of te Tiriti o Waitangi, we have many questions about how Council will implement this and specifically what this will mean for our iwi partners, who are already stretched in terms of resources to respond to Resource Management matters.
- KDC supports the use of environmental limits as a new concept but have many questions about how these will be developed at both a national and regional scale and what data (if any) will be used to support the new limits.
- KDC also questions what these limits and outcomes will mean for territorial authorities where often unique environments exist and where having environmental limits set at National or Regional scale will not work for those communities, particularly where the national direction conflicts with one another. For example, some of Kaipara District’s future land-use issues will require us as a Council to balance the impacts on highly productive land; protection of indigenous biodiversity; natural hazards and climate change. Given the imminent release of national direction on all of these matters (i.e. through National Policy Statements and the Climate Change Adaption Act), Council’s are gearing up to respond to the new directions through plan making processes.
- Councils are yet to determine what the conflicts will be between the environmental limits and environmental outcomes, if any, and how they relate to their District’s unique environments, particularly where major infrastructure projects may be required in certain locations. One specific example to Kaipara is our township of Ruawai, which is currently susceptible to natural hazard risk, which will likely be exacerbated by the impacts of climate change. However, Ruawai is at the heart of Kaipara’s ‘agricultural delta’ and comprises highly productive land, which may be compromised by increased exposure to natural hazard risk. Without knowing how the national or regional direction will impact our decision making into the future, this township is at a stalemate in terms of new investment and development.
- KDC also has concerns about how the precautionary approach may be applied to situations such as our example of Ruawai. The limits will likely be inherently cautious and therefore could be resistant to change. It could be that Ruawai is also signalled through the SPA spatial plan as an area which is identified as being “off-limits”, which would delineate this as an area where there should be no further development. KDC will certainly need to be part of these upcoming discussions as we will not be turning our backs on our communities.
- KDC supports the environmental outcomes included in section 8, which will be addressed in further detail in the planning framework. However as previously highlighted, we have concerns about the interplay between these environmental outcomes for District Council’s and how to strike a balance. For instance, one of Kaipara’s current key issues is managing the effects and impacts of growth and development, which we need to promote and enable, yet we are also constrained by some of the other environmental outcomes which also need to be carefully balanced in decision making. Being a

predominantly rural district, section 8(m) could present some interesting debates, particularly when also trying to balance several of the other matters included in section 8.

Part 3 – National planning framework

- Council generally supports a National Planning Framework (NPF), which should provide a more holistic assessment of development. We have anticipated the need for this since the increase in National direction set by the Ministry for the Environment over the past few years. KDC believes that this will lead to better planning outcomes for developments, where currently there are certain matters which only Regional or Territorial authorities assess. For example, stormwater, discharges or large-scale earthworks.
- We generally support the proposed contents of the NPF, however similar to our previous comments in respect to Part 2, Council has some reservations about how the framework will apply to local authorities.
- KDC supports section 14 requiring strategic directions to be included, but questions how competing issues will be managed from both National direction and in the regional spatial strategies and how environmental limits will be set, balancing the wellbeing of present and future generations, particularly when at the community level, expectations of what is acceptable and appropriate, depend on the issue.
- KDC notes, section 15(1)(c) which applies direct legal effect to provisions without being incorporated into a plan or provided for through a regional spatial strategy. Clarification in respect to what this may include would be helpful.
- In respect to section 16 regarding application of a precautionary approach, we are interested to see how this will eventuate into the setting of the environmental limits and how this will impact on provisions and decision making. Given that the precautionary approach has not been included in legislation previously, it has enabled decision makers to have some flexibility in its application and where it practically makes sense. Given the direct nature of the drafting in the NBA exposure draft, it is now a mandatory requirement for the precautionary approach to be applied to the environmental limits. Our concern is that this may lead to perverse outcomes for local authorities if the consequences of its application are not thoroughly considered.

Part 4 – Natural and built environments plans

- Given the lack of detail provided in Schedule 2 regarding the preparation of natural and built environments plans, KDC is unclear how the transition from existing District Plans will be replaced by the Regional Strategy and what this process includes. As a local authority, Council would like to know what its involvement will be and what public participation looks like.
- Kaipara District Council is currently working on a review of the District Plan and anticipates notifying the Proposed District Plan in advance of the NBA, SPA and CAA Acts being enacted. As previously highlighted in our submission, we have determined that a District Plan review is necessary to ensure our Council can accommodate the pressures of growth on the District and provide up to date provisions, as the existing effects based plan is no longer providing good planning outcomes.
- Council has some concerns in regards to section 22(2) which states that a plan “may” set objectives,

rules, processes, policies, or methods; identify any land or type of land in the region for which a stated use, development or protection is a priority; and include any other provision. Council questions this suggestive wording, as opposed to it being a mandatory requirement. Having more certainty in terms of what the new regional plans will include would assist Council to understand how this affects its current plan making and resource consent processes.

- Clarification that the regional level plan will still include rules which can provide a specific and localised level of activity status and permitted activities would be helpful.
- The National Planning Framework being regulations which is a 'disallowable instrument' that can be reviewed and updated by the Regulations Review Committee could result in uncertainty and regular change if not managed correctly. Guidance on how Parliament can apply their powers to 'disallow' an instrument is required.

Part 4 - Planning Committees

- KDC have some concerns in respect to the structure and functions of the proposed Planning Committees, including the representation by each local authority and how this will work in practice, including how mana whenua representatives will be selected. As an example, KDC has well established relationships with our iwi partners Te Uri o Hau and Te Roroa. In a Northland context, we would want to have some certainty that the existing partnerships with iwi are recognised and that they would also have a seat at the table. While clause 3 of Schedule 3 indicates a placeholder, additional details would provide clarity to this matter, where dealing with multiple iwi authorities.
- We also have concerns regarding the ability of a planning committee to reject recommendations made by an independent hearings panel. It is not clear what course of action they would take if they reject a recommendation. This potential power has both financial and timing implications.
- KDC has significant concerns in respect to Clauses 5 and 6 of Schedule 3, which provides for the planning committee secretariat. Council would like clarity around how it is envisaged that the functions and processes detailed in clause 5(2) of Schedule 3 would work, given that these processes are currently being undertaken by separate territorial authorities. The legislation needs to be clear about how this would work across regions where multiple territorial authorities are involved.
- Clause 6 of Schedule 3 also states that local authorities are to fund the secretariat. Kaipara District Council would most certainly like some clarity and direction about how this would work where multiple territorial authorities exist. For example, in Northland, both Far North District Council and Kaipara District Council have a much smaller ratepayer base than Whangarei District Council.
- Section 24 provides matters the committee must have regard to. While matters (a) – (d) appear to be appropriate, we are interested to understand what additional matters will be added for consideration (section 24(5)) and how these will be applied in practice, particularly where conflicts exist between competing environmental issues.
- KDC would also like to understand what input territorial authorities have into the planning committee's decision-making process, particularly where the precautionary approach is being applied (section 24(3)). This may have significant consequences for our rural communities, particularly those within

coastal environments or where susceptibility to natural hazards are an issue.

- Similarly, in respect to section 25 (Power to set environmental limits for region), we would like to understand what involvement local authorities will have in setting the environmental limits for the region to ensure that any local examples where the limits may not work are provided for.

Summary of Submission

- Currently, the exposure draft provides little certainty for local authorities and if anything produces more questions than answers.
- Depending on the outcomes of the points raised above, KDC are concerned that the NBA could result in more complex and costly processes than the present RMA. While this remains to be seen, it is important for the Select Committee to understand that smaller territorial authorities such as KDC are already stretched in terms of resources, particularly planners (who are in short supply nation-wide), and in order for us to participate in the changes suggested by this legislation, our view is that additional funding is an absolute requirement.
- While KDC awaits the outcomes of the NBA, SPA and CAA, Council will continue to expedite the District Plan review to produce a new District Plan in advance of the NBA, which can hopefully eventually be incorporated into the new 'single' regional plan for Northland. Given the cost of producing this planning document and the associated processes that Council needs to step through to achieve this plan, it would be valuable to know that this work will not be wasted and if anything it acts as a placeholder for our communities to achieve good planning outcomes for current and future generations.
- Given the uncertainties surrounding the timeframes for the new NBA plans to be created once the new legislation is enacted, KDC will continue with business as usual in the meantime, despite fear of the additional workload once the changes are enacted. We request that information about timelines and transitional arrangements is produced as soon as possible.

KDC appreciates the opportunity to provide feedback on the exposure draft and looks forward to further consultation and opportunities to be involved in developing this 'once in a generation' planning framework.