



NZPI Position Paper: An Outcomes-based System

Introduction

This position paper is one of four in a series on RM Reform, prepared by NZPI in preparation for the introduction to Parliament of the Natural and Built Environments Bill and the Spatial Planning Bill. The four papers address outcomes-based planning, spatial planning, NBA planning, and consenting under the new system and should be read together. They reflect NZPI's position as at 9 November 2022, before the Bills have been introduced and the detail reviewed. Other position papers, including one on digital transformation, will be added to the series in due course.

Overall position

NZPI supports the move to an outcomes-based system for resource management in New Zealand on the basis it provides an aspirational and forward-looking planning approach. 'Outcomes-based planning' that requires us to focus on the future and how we can achieve positive outcomes will allow us to be more purposeful and specific in the way we manage development and the environment to provide for te Oranga o te Taiao and the wellbeing of present and future generations.

What we know of what's proposed in the new system

The Natural and Built Environments Act (NBA) will legislate 'outcomes-based planning'. The NBA will direct that use of the environment must comply with environmental limits, and promote environmental outcomes, and manage adverse effects¹. The focus on limits and outcomes is intended to change the current focus within the system on managing adverse effects.

Outcomes have not been specifically referenced in the legislation before. Under the NBA, promoting outcomes is set out as a means to achieve the purpose of the new legislation, which is focused on upholding the concept of te Oranga o te Taiao and using the environment in a way that supports community wellbeing².

The Exposure Draft of the NBA identifies outcomes in four categories: the natural environment, cultural values, climate change and natural hazards, and well-functioning urban and rural areas³. A number of these outcomes look very similar to the RMA section 6 matters of national importance, while others are new to resource management legislation in New Zealand.

The National Planning Framework (NPF) will direct decision-makers on how they are to achieve the environmental outcomes, and how conflicts between or among the environmental outcomes should be resolved⁴. All plans under the new legislation will need to provide for these outcomes⁵, but it appears from the Exposure Draft that plans will not include region-specific outcomes. That is, the outcomes in the legislation are the only outcomes to be promoted.

¹ Section 5(2)(a) and (c) of the Exposure Draft of the NBA, as attached to the Environment Committee's report and recommendations, November 2021

² Section 5(1)

³ Section 13A

⁴ Sections 13B and 14

⁵ Section 13A

How is this different to the current system?

Sustainable management is the purpose underlying the RMA, and this includes providing for community wellbeing now and in the future, sustaining life-supporting capacity of air, water, soil and ecosystems, and avoiding, remedying or mitigating adverse effects on the environment. The NBA changes this approach by replacing sustainable management with te Oranga o te Taiao and community wellbeing, and by being more specific about how to achieve the new purpose: compliance with environmental limits, promotion of outcomes, and management of adverse effects⁶. While management of effects is required under the RMA, the requirement in the purpose section of the NBA to comply with limits and promote outcomes is new.

The intention of introducing a requirement to promote outcomes in the NBA is to add a forward-looking aspect to how we manage the natural and built environment. While we have had the ability to do outcomes-based planning under the RMA (it is good practice to frame objectives in planning documents as statements of what is to be achieved), management of the adverse effects of activities has been a large focus under the RMA. This has meant a focus on the negative effects of development and how to minimise them, rather than a focus on how we can achieve positive outcomes. Objectives in plans have tended to focus on how to manage effects rather than setting future states to work towards and achieve. However, we do acknowledge that it is becoming more common to see objectives framed as positive outcome statements in contemporary plans. What the new system offers is outcomes in the *legislation*, which should embed outcomes-based planning to a greater extent than under the RMA.

Outcomes-based planning allows us a greater say in what is OK and what is not, by providing a clearer direction of what we, as a society, are trying to achieve. In terms of plan drafting, achieving outcomes allows us to be more aspirational and craft plan provisions aimed at what we want the future to look like. A planning framework with clear outcomes means more certainty for resource consents, making it easier to say ‘yes’ and ‘no’.

Our position on outcomes planning as proposed

The environmental outcomes included in the Exposure Draft of the NBA are not aspirational, and while some are forward focused, they are not true outcomes. Rather, they represent a list of actions or processes. They are almost exclusively framed with verbs, and are focused on doing something (protecting, reducing, promoting, enhancing etc). In both subject matter and framing, there are strong overlaps with what we are used to seeing in Part II of the RMA, and we see this similarity as a barrier to transformative change to the way we undertake planning in New Zealand. The benefits of changing to an outcomes-based system will not be realised unless true outcomes are included in the legislation.

We are also concerned at the apparent truncation of the use of outcomes as a tool at the legislation level. All planning instruments below the legislation, including the NPF, are focused on *providing for* the outcomes, but without the apparent ability to translate those outcomes into the local context. This gives the outcomes in the legislation a very similar function to the matters of national importance in Part II of the RMA, which are to be recognised and provided for. When combined with the similar drafting described above, this suggests no significant change from the status quo. Outcomes need to be a tool used in the planning instruments in the new system, including the NPF, Regional Spatial Strategies (RSSs), and NBA Plans. Outcomes need to become more specific as they are translated to the local level, and communities need input to local-level outcomes.

⁶ Rather than ‘avoid, remedy or mitigate’ as under the RMA, the NBA takes an ‘effects management hierarchy’ approach, where effects are to be avoided, minimised, and remedied where practicable, with remaining effects offset or compensated.

The language of ‘promoting’ outcomes in the purpose section of the NBA, and ‘providing for’ outcomes in plans, is not strong enough to ensure outcomes are something we work towards. Rather, we should be ‘achieving’ outcomes.

What improvements can we make?

Better integration of te ao Māori

An outcomes-based system should allow for better integration of te ao Māori into our planning system because it provides a focus on the future and a more purposive approach. The new purpose of the NBA incorporates both te ao Māori and Pākehā concepts. These need to both be threaded through the revised drafting of the outcomes in the legislation, and as outcomes are developed in the NFP, RSSs and NBA Plans. The new system needs to recognise Māori outcomes that already existing in iwi and hapū planning documents, such as iwi management plans, and iwi and hapū need to be given the opportunity, resources, and flexibility to participate in a meaningful way to the development of outcomes at all levels, particularly those that relate to te Oranga o te Taiao.

We consider the direction to be provided in the NPF on how to achieve outcomes is a key opportunity to embed te ao Māori within the system, similar to the way the Freshwater and Indigenous Biodiversity National Policy Statements have done. The NPF should apply te ao Māori through reference to tikanga, mātauranga Māori, kaitiakitanga, manaakitanga, mana whakahaere and other principles and practices.

Redrafting outcomes

Outcomes included in the new legislation need to be true outcomes. That is, they need to be aspirational statements of desired end-states or results. Put another way, they should state what we want the future to be. Outcomes should be the step before the ‘doing’ step. We need to ask ourselves why we are protecting outstanding natural landscapes, why are we reducing risks from natural hazards, why are we enabling urban development to meet changing needs – what is it we want to achieve by doing these things, what is the result or outcome we are after? Clearly stating this in the legislation at a national level will set up the system for more specific outcomes to be developed at the regional and local levels.

Part of the answer to these questions can be found in the purpose of the new legislation, which includes the concepts of te Oranga o te Taiao and community wellbeing. These concepts lend themselves well to outcomes. All of the outcomes identified in the legislation should be re-framed to be desired end-states directly related to te Oranga o te Taiao and community wellbeing.

Examples of how to frame outcomes can be seen in overseas jurisdictions, for example in the Scottish National Planning Framework⁷. Suggestions for how this could be done in the NBA context are set out below, to prompt discussion, with additional examples included at the end of this paper:

- *We value and treasure our outstanding natural landscapes and they enrich our health and wellbeing.*
- *Our rivers provide a flourishing instream environment for our native flora and fauna and a healthy source of water for our communities.*
- *Mana whenua, with their tikanga and traditions, have a strong relationship with their ancestral lands, waters, sites, wāhi tapu, wāhi tupuna, and other taonga.*
- *Our communities are safe from the risks of natural hazards.*

⁷ [National Planning Framework 3 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/national-planning-framework-3/pages/100.aspx)

- *We live in vibrant, healthy communities with enough good quality homes to meet demand and diverse business and employment opportunities.*

Outcomes framed in this way provide flexibility for how they are achieved, as they do not attempt to prescribe the method or action needed to achieve them. The way to achieve them is likely to be different in different circumstances. For risk from natural hazards, for example, the outcome above requires an understanding of what level of risk threatens the safety of communities, something that could be set in the NPF. For existing development facing higher levels of risk, reduction may be needed, and for a new development, ways to manage risk so it does not threaten the safety of the future community will need to be considered. As a true outcome statement, it is able to provide clear direction for all situations. The alternative in the Exposure Draft of the NBA, “reduced risks arising from natural hazards” only requires reduction actions, and provides no way of knowing how much reduction might be needed.

Positively framed outcomes also provide a clear way in which to consider positive effects alongside adverse effects. For example, an outcome of a flourishing instream habitat for our native flora and fauna can allow consideration of how a wastewater treatment plant helps achieve this, rather than focusing on the negative impacts of the plant.

Outcomes in NFP, RSSs and NBA Plans

As stated above, as well as national-level outcomes in the new legislation, the system needs the ability for the NPF, RSSs and NBA Plans to set more specific outcomes. This is essential for successful implementation. In an outcomes-based system, there needs to be a hierarchy or cascade of outcomes from the national level down to the local level for nationally important issues and matters that require national consistency. Local input, including from iwi and hapū, is required to ensure context- and place-specific outcomes are developed. Outcomes translated into the local context will be more effective than relying on general and broad national-level outcomes.

Local decision-making is an important underpinning concept in our resource management system at the moment and it is well recognised that local diversity and values can be very important to community wellbeing. While we support strong national direction on national issues, we also support the continuation of local decision-making on place-specific matters and the achievement of important place-based outcomes. Regional and local communities, and iwi and hapū, should have input to how the national-level outcomes translate down to regional and local levels. We need to let planners do what they are best at – work with their communities to determine what the future should look like and how to get there.

To ensure outcomes-based planning is embedded within the new system, the use of ‘objectives’ in planning documents (NFP, RSSs and NBA Plans) should be replaced with the use of ‘outcomes’, with clear guidance and direction on how outcomes should be framed. This guidance can build on the experience of drafting outcome-based objectives in contemporary plans. A new tool, as such, is more likely to contribute towards a change in practice than trying to improve the way we currently use objectives. Re-worded outcomes in the legislation, and outcomes to replace existing objectives in the new NPF, are an opportunity for leadership by example.

Resolving conflict

An outcomes-based system should allow us to resolve conflicts in a more holistic way than under the effects-based system, as future-focused outcomes should be more holistic and less siloed than under an effects-based system. But this requires clear, holistic, future-focused outcomes to be set at the highest level, providing overarching strategic direction on the future state for New Zealand, so that

the NPF, RSSs and NBA Plans can provide place- and context-specific outcomes that help to achieve the national-level strategic outcomes.

There are 13 outcomes in the Exposure Draft, and these are grouped into four categories. There is no priority between the 13 outcomes, but inherent conflict between them, setting the new system up with arguably less assistance from the legislation to resolve those conflicts (the RMA creates a two-tier hierarchy between matters of national importance (section 6) and other matters (section 7)). This puts significant reliance on the NPF to resolve national-level conflicts or provide direction on how to resolve these conflicts. While this is an appropriate role for the NPF, the legislation itself could be clearer and more directive by providing more holistic outcomes that are future-focused. As an example, we note that the Scottish National Planning Framework has just four national-level outcomes.

Resource consent assessments

It is vital that the new legislation gives significant weight to outcomes in the assessment of resource consent applications of all types. Without this, there is unlikely to be any change in practice and the focus will stay on managing effects. In addition, it is essential that outcomes considered at the consenting level are specific and clear and translated from the national to the local level.

Currently, resource consent assessments need to 'have regard to' objectives and policies of RMA planning documents, just as they are required to have regard to any actual and potential effects on the environment. This gives objectives and policies the same weight as the effects assessment. If outcomes are to have greater significance in the new system than effects, the direction to consider outcomes needs to be stronger than the direction to consider effects. A requirement to 'give effect to' outcomes, or similar strong direction, will be required if we are to work towards and achieve outcomes. A requirement to merely 'promote' outcomes will retain inherent weaknesses experienced under the RMA and will not be sufficient.

Monitoring and review

Monitoring and review are important in an outcomes-based system. We need to know if we are achieving outcomes or not and make adjustments to methods if necessary. We also need to understand if the outcomes themselves need adjusting, to respond to new pressures or information. Clear and specific outcomes will assist with monitoring and review. The NBA needs to include a robust requirement for monitoring and review of outcomes and of the efficiency and effectiveness of methods to achieve them. This type of monitoring is much more valuable and important for the overall success of the system, and should have more emphasis in the legislation, than monitoring of processes, such as how many resource consents were processed within timeframes.

Outcome examples

The following outcomes are hypothetical examples to try and demonstrate what aspirational, future-focused and more holistic outcomes could look like, at the national NPF level and within an NBA Plan.

NPF level *Areas of highly productive soil are available for agricultural and horticultural use, and the way we grow food respects the health, mana and mauri of the soil, water and air.*

Urban communities enjoy a choice of good quality homes that provide healthy inside living environments and benefit from the ecosystem services that are available and can be enhanced in the vicinity.

NBA Plan level The community in Residential Area Y enjoys the benefits of quality sunlight in homes, accessible green spaces, frequent public transport, and clean air to breathe.

Land use practices in the Z rural area operate within local climatic constraints, contribute to a high functioning freshwater ecosystem, and respect the mana and wellbeing values of the surrounding landscape.

Lake X is a place where the community and visitors recreate and native flora and fauna flourish.