

Property Council New Zealand

Submission on Environment Committee's Inquiry into the Natural and Built Environment Bill

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For more information and further queries, please contact

Liam Kernaghan

liam@propertynz.co.nz

021715108

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1. Recommendation summary

- 1.1 Property Council New Zealand (Property Council) is broadly supportive of the Government's work programme to repeal and replace the Resource Management Act 1991 (the RMA). In our view, the Natural and Built Environment Bill (NBE) is insufficiently detailed enough to provide certainty that the Bill will achieve its desired outcomes.
- 1.2 Property Council makes the following recommendations:
- Recognition of development in the purpose clause;
 - Recognition of private property rights and existing rights across property;
 - More granular consideration of environmental limits at local/regional levels;
 - Simplification of environmental outcomes, or, some hierarchy/conflict resolution mechanism to deal with tensions in environmental outcomes;
 - Support for local/regional voices in national planning framework regulations;
 - Consideration of dispute resolution mechanisms being set in primary legislation rather than in regulation;
 - More transparency around processes and mechanisms yet to be defined in the draft exposure bill – particularly around interactions with central/local government;
 - Consideration of other agency/departmental expertise and views apart from the Minister of Conservation in regards to planning committees;
 - Disclose drafting of placeholder provisions prior to the introduction of the Natural and Built Environments Bill so we can more fulsomely provide advice to the Government on their reforms.

2. Introduction

- 2.1 Property Council welcomes the opportunity to submit on the Environment Committee's Inquiry into the Natural and Built Environment Bill.
- 2.2 Property Council's purpose is "Together, shaping cities where communities thrive". We believe in the creation and retention of well-designed, functional and sustainable built environments which contribute to New Zealand's overall prosperity. We support legislation that provides a framework to enhance economic growth, development, liveability and growing communities.
- 2.3 Property is currently New Zealand's largest industry with a direct contribution to GDP of \$41.2 billion (15 per cent). The property sector is a foundation of New Zealand's economy and caters for growth by developing, building and owning all types of property.
- 2.4 Property Council is the leading not-for-profit advocate for New Zealand's largest industry- property. Connecting people from throughout the country and across all property disciplines is what makes our organisation unique. We connect over 10,000 property professionals, championing the interests of over 500 member companies have a collective \$50 billion investment in New Zealand property.

3. Overview

- 3.1 Reforming the resource management system is critical to speeding up and enhancing development in New Zealand. We commend the Government for tackling it head-on and getting the ball rolling. We acknowledge that the NBEB is the first part in a series of pieces of legislation overhauling the present Resource Management Act 1991.
- 3.2 The release and inquiry into the first piece of legislation marks another win for organisations like ours and our colleagues at the EMA and Infrastructure NZ, who have fought for planning laws that embrace the urgency of building more houses and encouraging development while protecting our natural environment.
- 3.3 Our initial view is that many of the processes and definitions within the NBEB and broader planning framework make it difficult for Property Council to articulate a view on whether the new framework will deliver the benefits the Government has outlined.
- 3.4 We are concerned that the Bill as it stands will, in some cases, make consenting and development more difficult. In our view, it is hard to see how meeting all of the listed environmental outcomes will make the process less bureaucratic and burdensome.
- 3.5 Equally, reducing the number of plans and policy statements from 100 to 14 around the country is welcomed and will mean a more streamlined approach can be taken to planning. But with this needs to be the commitment to resourcing authorities and consenting teams properly. Already local authorities are stretched. Ensuring they are resourced to make implementation as seamless as possible, as well as provide support to continue to consent new developments will be critical to the success of the new system.
- 3.6 It concerns Property Council that the Regulatory Impact Statement suggests “the estimated costings appear understated, especially in relation to the costs of transitioning existing consents and allocation rights into the new planning system with new outcomes, environmental limits and national and regional priorities.”
- 3.7 One of Property Council’s key concerns is the lack of mention of development in the purpose section of the Natural and Built Environment Bill. This seems an obvious omission given the Bill’s requirement to support sustainable development.

4. Omissions and gaps in the existing NBEB Framework

- 4.1 Like other industry bodies and organisations, Property Council is concerned with the lack of detail around processes which will have significant implications for our sector and development generally. For instance, processes around consenting and how existing rights are used, and the allocation of natural resources.
- 4.2 Property Council is therefore making commentary as to some of these issues so the Environment Committee is aware of our specific concerns in advance of the proper introduction of the NBEB following this inquiry.
- 4.3 The Randerson Report contains some potentially concerning proposals - how to deal with over-allocation and how to transfer allocations from existing to new users – but provides no clear guidelines on the need for adequate compensation. Freshwater consents are often capitalised into land values so there is no such thing as “existing users” having windfall gains. With no clear direction on future allocation, investment

in infrastructure requiring freshwater could be jeopardised or suppliers could want a greater return on their investment to deal with natural resource use uncertainty.

- 4.4 The Randerson Report suggests the current RMA is in favour of the status quo: i.e. because it is “effects based”, it can prevent development. Decision-makers need to be very careful when it comes to taking away or unnecessarily interfering with people’s property rights, since without adequate compensation, the effect on investment decision-making will be chilling. It is already concerning under the present regime, and there is uncertainty that the proposed new framework will be more beneficial. It is often not recognised that not only are current rights owners affected by a loss of property rights, but the communities in which they operate suffer as well.
- 4.5 Too often the wider effects of resource use decisions are not properly understood, a particular danger with centralised decision-making and decision-makers too remote from the communities affected. There is a danger planners will pick winners without properly recognising the impact on existing businesses, a situation not helped by the Randerson Report suggesting that in general, the (current) maximum consent period of 35 years for water is too long. The issue of property rights is scarcely mentioned, if at all, in the Report, let alone the need for compensation if private property rights are taken or reduced in the public interest.
- 4.6 Property Council therefore recommends the following, agreeing with a recommendation made by BusinessNZ:

to encourage efficient investment in natural resource and infrastructure development for the economic, social, environmental and cultural well-being of current and future generations of New Zealanders, the Select Committee insert clauses into the Bill:

- (a) *recognising the importance of upholding property rights to encourage efficient investment and resolving how existing use rights will be treated,*
- (b) *grandparenting current rights to resource use where practical and providing for the trading and transfer of rights within a specified framework,*
- (c) *introducing a compensation regime for regulatory takings to encourage better decision-making from regulators when affecting on private property in the public interest, and*
- (d) *providing for merit appeals/review rights where regulatory decisions impact on existing property rights.*

5. Key clause analysis

- 5.1 Given the gaps in the initial draft exposure materials, Property Council has decided it is a better approach to provide feedback clause-by-clause with some overarching commentary at the end based on the overall framework.

Clause 5 – Purpose

- 5.2 In Property Council’s opinion, Clause 5 provides an unnecessary emphasis on environmental outcomes to the potential detriment of wider economic development. Development is not even mentioned in the purpose clause which seems a glaring omission given the environmental outcomes necessitate development goes hand-in-hand with environmental protection.

- 5.3 We believe this is likely to result in more burdensome court processes and litigation. There is arguably much greater focus than in the RMA on ‘protecting and enhancing’ the natural environment.
- 5.4 Property Council also believes there needs to be a clear decision making process for who will decide whether the natural environment needs to be protected and, where necessary, restored and subsequently, who will making such decisions involve overriding individual property rights. We also think there should be a clear procedure regarding any right of appeal instead of leaving it up to another body.

Clause 7 – Environmental Limits

- 5.5 We are concerned that the proposed environmental limits – whatever is decided – will not have the flexibility to be agile enough to meet local/regional challenges. To the extent these limits will vary from island to island and region to region, we feel there needs to be more flexibility within the drafting to take into account regional difference. For instance, the recent concern and push back regarding the National Environmental Standards for Freshwater Regulations definition of ‘natural wetlands’ prohibiting development is a prime example of the problem of making national specific definitions to the detriment of quarrying and building within existing developments, taking no account of the unique circumstances facing individual regions or communities or the impact on broader economic development.
- 5.6 Property Council therefore recommends that the Environment Committee consider ways to, at a more granular level, allow local/regional authorities to agree to trade-offs in respect to hard environmental limits, recognising that a one-size approach may not achieve the best outcomes for either the environment or development.

Clause 8 – Environmental Outcomes

- 5.7 We are concerned that there are too many environmental limits that, without a clear hierarchy or purpose, will make the system more bureaucratic and harder to navigate. For instance, there needs to be a clear way of clarifying how conflicts will be adjudicated. Many of the proposed outcomes will come into conflict with one another and without a clear framework for dealing with that conflict, it is our view that again the system will become more bureaucratic and will lead to more litigation.
- 5.8 This is further exacerbated, in our mind, by the Bill’s purpose statement suggesting that economic development/well-being will be reduced much further down the hierarchy than is currently the case. As Business NZ has said, *“Who decides whether the natural environment needs to be protected and, where necessary, restored and who will be making decisions that involve overriding individual property rights? Obviously, this will be the subject of some debate and potential litigation.”* We think this can be extended across many of the outcomes as drafted. Some clarity around hierarchy would provide developers at least certainty about the framework’s proposed approach and how it could be managed.
- 5.9 We also believe that the Emissions Trading Scheme (ETS) is the best vehicle for dealing with and allocating emissions. So long as projects and developments are covered by the ETS, our view is that emissions considerations should not form the basis of an outcome insofar as they meet other environmental outcomes. It is Property Council’s view that the ETS is the most appropriate avenue to reduce and deal with emissions profiles.

- 5.10 Property Council therefore recommends that a clear framework for adjudicating hierarchy conflicts be included in the legislation when it is introduced.

Clause 11 - National planning framework to be made as regulations

- 5.11 Property Council supports the National planning framework (NPF) being promulgated as regulations rather than in primary legislation. In our view, however, it is important that there is some clear accountability and defining lines drawn so as to protect local and regional input. We believe, to promote effective consultation and discussion, the regulation development process should have some regional or district input.

Clause 13 - Topics that national planning framework must include

- 5.12 As with the environmental outcomes mentioned in paras 5.7-5.10, we are concerned with the depth and breadth of these topics as listed in the exposure draft. Once again, it is very heavily weighted towards specific environmental outcomes and rarely mentions economic outcomes.
- 5.13 We are also concerned that the dispute resolution framework will be set by regulation rather than by primary legislation. We think this should be as clear and as certain as possible, and our view is that it should be contained within the NBEB alongside any conflict resolution with environmental outcomes.

Clause 14 - Strategic directions to be included

- 5.14 We support strategic directions within the NPF. However, we are concerned that as expressed in the NBEB currently, there is no mention of economic or developmental well-being. We are also concerned that the draft does not make it clear who or how these strategic directions are set – including what stakeholders and communities need to be engaged with to agree to them and set them.

Clauses 17 & 18 – Placeholders

- 5.15 Property Council is very concerned some of the most important provisions within the NBEB are still to come. While there will be an opportunity to submit again on the NBEB once it is introduced later this year, much of our feedback is premised on understanding the processes and frameworks within the draft.
- 5.16 As it stands, Clause 17 as a provision is entirely insufficient from a practical perspective. As it reads currently, there is no clarity around the role of the Minister of Conservation in relation to the national planning framework, and the links between the NBEB and the Climate Change Response Act 2002. These two issues are pertinent to the overall efficacy and effectiveness of the new framework.
- 5.17 We hope there will be enough time once the Bill is introduced to properly understand how these important relationships will work.
- 5.18 Equally we considered the placeholder provisions regarding implementation entirely insufficient to understand how this regime will be implemented. From a purely logical perspective, conflict will be inevitable and any consenting process correspondingly slow.

- 5.19 We recommend the Government provide clarity around these placeholder provisions prior to the introduction of the NBEB later this year, so as to give stakeholders certainty these provisions are not going to make the system more difficult to navigate.

Clause 19 – Natural and built environments plans

- 5.20 Property Council is supportive of reducing the number of district plans from 100 to around 14. We believe this provides greater consistency across the country. We also think developments and industries which work across multiple jurisdictions and territorial authorities will see the benefit of fewer, more regional plans.
- 5.21 However, the schedules are blank regarding the natural and built environment plans. This is – along with other gaps – insufficient for us to provide feedback regarding their effectiveness. We further recommend these schedules be populated before the NBEB is introduced into the House.

Clauses 21 & 22 – plans

- 5.22 Much more detail will need to be provided in the [placeholder] sections. However, we note Business NZ's concerns about the potential conflict between national planning requirements and what a particular planning committee might want to implement. We believe the NBEB should provide some certainty around how this conflict might be resolved. Our position is that regional plans should take precedence when there are regional variations to specific environmental outcomes.

Schedule 3- make up of planning committees

- 5.23 Property Council has some general concerns about Schedule 3 as it relates to the make up of planning committees. In particular, appointing the Minister of Conservation – or representative – to committees and having no other central government agency represented seems at odds with many of the outcomes in the Bill.
- 5.24 For instance, while some of the environmental outcomes relate to the responsibilities of the Minister of Conservation, many of them relate more appropriately to the Minister for the Environment. Some relate more definitively to the Minister for Climate Change, and others relate to issues more associated with the Minister for Housing and Urban Development or Transport.
- 5.25 The rest of the Bill is not as prescriptive as this Schedule. As such, we would recommend either removing the reference to the Minister of Conservation specifically and replacing it with an appropriate representative appointed by the Crown through Cabinet or via an Order in Council, or more agencies being represented.
- 5.26 We further recommend the Government provide prior to the introduction of the NBEB more clarity around how these appointments will happen. Once again, placeholder provisions do not provide the necessary certainty.

6. Overarching feedback regarding the NBEB

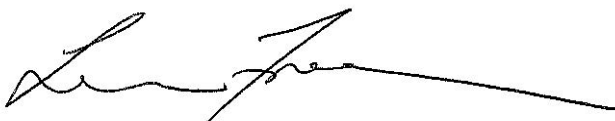
- 6.1 Property Council's view is that there are some aspects of the NBEB as it is drafted which will provide a better framework than the current regime. However, we are concerned at the position the exposure draft materials are in currently.

- 6.2 To provide a better picture of how the regime will work when it comes to processes and conflict resolutions, there needs to be much more clarity around the placeholder provisions. Without knowing the processes, it is hard to understand how the frameworks will work in practice.
- 6.3 While we appreciated there was time constraints in writing and releasing the NBEB, for proper feedback and consultation to be meaningful then the Bill should be in a much better drafting state than it is right now.
- 6.4 We are also concerned at the lack of balance between the environment and development. While the NBEB is focussed on environmental outcomes, one important aspect of the whole regime is ensuring development can occur and more houses get built. We would recommend there be a clear indication given in the NBEB to the importance of development and the balancing act that will be required.

7. Conclusion

- 7.1 Property Council is grateful for the opportunity to provide feedback on the Environment Committee's Inquiry into the Natural and Built Environment Bill.
- 7.2 Our recommendations are as follows:
- Recognition of development in the purpose clause;
 - Recognition of private property rights and existing rights across property;
 - More granular consideration of environmental limits at local/regional levels;
 - Simplification of environmental outcomes, or, some hierarchy/conflict resolution mechanism to deal with tensions in environmental outcomes;
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 - Disclose drafting of placeholder provisions prior to the introduction of the Natural and Built Environments Bill so we can more fulsomely provide advice to the Government on their reforms.
- 7.3 For any further queries contact Liam Kernaghan via email: liam@propertynz.co.nz or cell: 021 715 108.

Yours sincerely,



Leonie Freeman
Chief Executive, Property Council New Zealand