Property Council New Zealand

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Submission to the Environment Committee on the
Natural and Built Environment Bill

3 February 2023

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1. Summary

1.1. Property Council New Zealand ("Property Council") welcomes the opportunity to submit to the Environment Committee on the *Natural and Built Environment Bill* ("the NBE Bill").

1.2. Property Council has long championed the need for resource reform and supports the action taken by Government to reduce the number of plans from 100 to 15 and introduce Regional Spatial Strategies which seek to plan for 30+ years. We commend the Government and officials for producing the NBE Bill (and Spatial Planning Bill).

1.3. There are, however, certain elements of the NBE Bill that are of concern to Property Council. In particular, the lack of detail for the Governance Structure of Regional Spatial Strategies, the lack of local voices and sector expertise within the planning and decision-making process, as well as how local councils intend to implement the new planning regime and finance or fund infrastructure in future plans.

1.4. We foresee the need for greater clarification or legislative amendment throughout the NBE Bill. To that end, we have prepared a list of key recommendations to influence better, fairer outcomes for all. Comments and recommendations are provided on issues relevant to Property Council's members.

2. Recommendations

2.1. Recommendations are listed at the end of each section with a full list of our recommendations in Appendix 1.

3. Introduction

3.1. Property Council is the leading not-for-profit advocate for New Zealand's most significant industry, property. Our organisational purpose is, "Together, shaping cities where communities thrive".

3.2. The property sector shapes New Zealand's social, economic and environmental fabric. Property Council advocates for the creation and retention of a well-designed, functional and sustainable built environment. We aim to unlock opportunities for growth and urban development that meets New Zealand's social, economic and environmental needs.

3.3. Property is New Zealand's largest industry and fastest growing source of employment. There are nearly $1.6 trillion in property assets nationwide, with property providing a direct contribution to GDP of $41.2 billion (15 percent) and employment for around 200,000 New Zealanders every year.

3.4. Property Council is the collective voice of the property industry. We connect over 10,000 property professionals and represent the interests of over 540 member organisations across the private, public and charitable sectors.

4. Part 1 – Purpose and related matters

4.1. The purpose of the NBE is to enable the use, development, and protection of the environment and recognise and uphold te Oranga o te Taiao. We are pleased to see the incorporation of the word 'development', as this was missing within the Inquiry into the Natural and Built Environment Bill in August 2021. In saying that, we continue to have concerns that the purpose overly favours the natural environment.

4.2. For example, clauses 6(2)(a)-(b) of the NBE Bill creates an obligation on all decision-makers to favour caution and proportionate protection of the environment if information is 'uncertain' or 'inadequate'. In practice, the words 'uncertain' and 'inadequate' are subjective and may result in decision-makers using clauses 6(2)(a)-(b) as a tool to reject an application for development. Local authorities wishing to reject development could use clauses 6(2)(a)-(b) as a 'get out of jail free' card, by trying to eliminate risk and thus halting development. This creates a lot of uncertainty for those wishing to apply for and implement future development. We recommend the deletion of the clause 6(2).

Legal uncertainty

4.3. New legislation and terminology will likely require expensive litigation and the development of case law to define and clarify the legislative intent. This will likely extend to the purpose statement of upholding te Oranga o te Taiao which relates to the health of the natural environment and the interconnectedness of "all parts of the environment" – meaning the built environment also. Given the purpose of the NBE Bill will affect how use and development is undertaken, in the short term this could create uncertainty for the development sector and could slow down or halt development pipelines. It also runs the risk of undermining the efficiency gains sought through the consenting process by incentivising councils to request further information.

4.4. We recommend the Government focus on education throughout the transition period to help clarify the purpose of the NBE Bill with concrete examples of what the purpose statement means in practice. Education is critical in providing certainty on how the purpose statement is intended to impact future use and development.

4.5. Property Council supports clause 5(c)(i)-(iv) and (i). We note that a minor amendment is required to have correct numbering of clauses 5(c)(iii)-(iv).

4.6. Looking at the outcomes in more detail, we have questions as to what happens if the National Planning Framework and/or plans do not provide for one of the system outcomes. For example, what if a Natural and Built Environment Plan ("NBE Plan") does not include provisions for the removal of greenhouse gases from the atmosphere or omits to incorporate ample supply of land for development? The legislation is unclear as to what the repercussions are if the National Planning Framework or Natural and Built Environment Plans omit to incorporate even one of the mandatory 18 outcomes.

4.7. Furthermore, there is no hierarchy within the 18 outcomes or provisions in terms of trade-offs between competing or conflicting system outcomes. Despite this being of a concern within the exposure draft, it appears as if this will be decided within the National Planning Framework – creating uncertainty in the short-term. We recommend that the Government consider moving

subclauses 804(1) and (2) into section 6 – 'decision making principles' to strengthen the importance of timely performance of duty and function.

Recommendations – Part 1 – Purpose and related matters

- Delete clause 6(2).
- The Government focus on education throughout the transition period to help clarify the purpose of the NBE Bill and to provide the necessary sector confidence for the development pipeline to continue.
- The legislation corrects the duplicate numbering errors of clause 5(c) as the screenshot below shows:

> (c) well functioning urban and rural areas that are responsive to the diverse and changing needs of people and communities in a way that promotes—
>
> (i) the use and development of land for a variety of activities, including for housing, business use, and primary production; and
>
> (ii) the ample supply of land for development, to avoid inflated urban land prices; and
>
> (ii) housing choice and affordability; and
>
> (ii) an adaptable and resilient urban form with good accessibility for people and communities to social, economic, and cultural opportunities; and

- The Select Committee move clauses 804(1) and (2) into section 6 'decision-making principles' to strengthen the importance of timely performance of duty and function.

5. Part 3 – National Planning Framework

5.1. The National Planning Framework will initially focus on existing RMA national direction and incorporate the Medium Density Residential Standards enabled through legislation in 2021. We are pleased to see that the first National Planning Framework will also incorporate new content on infrastructure. National rules on infrastructure are critical in futureproofing infrastructure services for current and future generations.

5.2. Despite our support for infrastructure being a key outcome, we are concerned that other aspects of the urban environment may be neglected. There are a lot of other activities such as the development of housing, commercial buildings, retail spaces and industrial buildings that fit outside of infrastructure. We recommend that urban development is clearly defined within the National Planning Framework.

Maintaining consistency with the National Planning Framework

5.3. The national planning framework will be required to provide direction on; matters of national significance, resolving conflicts, and strategic direction. Earlier in our submission we discussed concerns around NBE Plans that may not develop expectations set within the National Planning Framework. However, what happens if these plans are created in guidance with the National Planning Framework but cannot be implemented or delivered?

5.4. For example, if an NBE Plan instructed 500 houses to be built within three years in areas that were not feasible for developers, development would not occur and thus fail to meet the plans objective.

5.5. Local authorities that do not want to see new development, could look to stifle agreed future development areas by making internal plan changes such as widening heritage overlays or policy updates to increase development contribution fees to an unaffordable amount. These examples of plan and policy changes to stifle development are not unique and have occurred throughout New Zealand in response to the National Policy Statement on Urban Development and the Medium Density Residential Rules.

5.6. We recommend that the legislation require local authorities to be accountable should they fail to achieve development outcomes within the NBE Plans. This could occur through Ministerial direction.

5.7. Despite our above recommendation, the implementation of these plans will depend on the quality of planning input and both the public and private sectors resources, capability and feasibility to deliver. The legislation does not make provision for local views from the public and private sectors, who are best placed to provide input into what is practical for the local area. There are a significant number of planners, architects, engineers, project managers and developers that work for national, regional and local organisations who are best placed to provide input into the National Planning Framework and regional plans to help determine feasibility and implementation of plans.

5.8. We recommend the National Planning Framework incorporate local views from the public and private sectors to ensure that realistic and appropriate outcomes of NBE Plans are set and can be met.

5.9.

Ministerial direction within the National Planning Framework

5.10. Clause 39 states that the Minister responsible may, within the National Planning Framework, set environmental limits or prescribe the environmental limits to be set in plans. We have some concerns that Ministerial direction within the National Planning Framework may result in the National Planning Framework becoming a political football when Government's change hands. We urge the Government to establish cross-partisan support when setting or prescribing environmental limits and approving the National Planning Framework.

5.11. We support clause 44 that ensures exemptions can be granted to avoid circumstances where an unrealistic limit is prescribed, particularly where a one-size-fits all approach would not suit a localised approach to planning. However, flexibility is required. Creating more flexibility within clauses 37-46 to allow for trade-offs at a local level for environmental limits will ensure that the exemption clause does not have to be used on a reoccurring basis, as anticipated by some local authorities.

Development capacity, infrastructure and development corridors

5.12. Clause 58 states that the National Planning Framework must provide direction on development capacity. Interestingly, not much detail is provided on how the NBE Bill will interplay with the Government's urban growth agenda or existing local authority growth strategies. For example, question remains as to how the inconsistency with the NPS-HPL, NZ Coastal Policy Statement and NPS-Freshwater will be dealt with. We recommend Government guidance is provided on how the National Planning Framework will incorporate and/or update current growth agendas and strategies.

5.13. Clause 58 also states that the National Planning Framework must provide direction on infrastructure and development corridors. It is interesting to note that 'development corridors' is not defined within the NBE Bill. The National Planning Framework providing direction on "enabling infrastructure" is a broad term which could relate to anything from general infrastructure to public good infrastructure. We recommend clause 58(d) is extended to incorporate general infrastructure, development infrastructure (three waters and transport), and public good infrastructure. Extending the definition to include a wider range of infrastructure will provide for better joined-up regional planning.

Funding and financing of infrastructure

5.14. Clause 58 states that the National Planning Framework must provide direction on enabling infrastructure, but it does not specify how infrastructure will be paid for. The funding and financing of infrastructure has been one of the biggest challenges local governments have faced across New Zealand.

5.15. For years, Property Council has encouraged local government to investigate alternative funding and financing mechanisms to better balance council books, whilst also ensuring that not all of the rating burden lands onto new development, resulting in continued increases in house prices and greater unaffordability.

5.16. The Government has provided the Infrastructure Funding and Financing Act ("IFFA") to fund major infrastructure investments, which Property Council supports. The establishment of Special Purpose Vehicles within the IFFA makes the cost of new infrastructure more

transparent, improves intergenerational equity by spreading the cost over a sustained time and also unlocks additional investment in much needed infrastructure.

5.17. Despite the Government's best intentions, many local authorities continue to not use alternative funding and financing tools and seek to use existing tools such as increasing development contribution fees. We recommend the legislation mandate discussions on the funding and financing of infrastructure within the National Planning Framework with core decisions made within Regional Spatial Strategies.

Recommendations – Part 3 – National Planning Framework

- Urban development is clearly established within the National Planning Framework (similar to how infrastructure currently is).
- Local views from the public and private sector are incorporated within the National Planning Framework to ensure that realistic and appropriate outcomes are set and are met.
- We urge the Government to establish cross-partisan support when the Minister sets or prescribes environmental limits and approving the National Planning Framework. This is to reduce the likelihood of the National Planning Framework becoming a political football.
- Create more flexibility within clauses 37-46 to allow for trade-offs at a local level for environmental limits will ensure that the exemption (clause 44) does not have to be used on a reoccurring basis, as anticipated.
- Provide guidance on how the National Planning Framework will incorporate and/or update current growth agendas and strategies.
- Clause 58(d) is widened to include not only infrastructure but development infrastructure and public good infrastructure too. This will provide for better joined-up regional planning by incorporating all types of infrastructure.
- Mandate discussions on the funding and financing of infrastructure within the National Planning Framework with core decisions made within Regional Spatial Strategies.

6. Part 4 – Natural and Built Environment Plans

6.1. Property Council New Zealand strongly supports moving from 100 plans to 15. Reducing the number of plans will see greater consistency between local authorities and allow for less architectural re-do of development designs to suit a particular local authority plan.

Governance of NBE Plans

6.2. Despite our support for NBE Plans, we have major concerns around the appointment and proposed representation within the legislation. Clause 100(1) states that a regional planning committee must be appointed for each region and clause 100(3) states that the person appointed must act independently of the host local authority and other local authorities. This could cause an issue for political appointments on the Regional Planning Committee.

6.3. For example, a Mayor and Councillor are a political roles, voted for by the people within the region. If the Mayor and/or Councillor was appointed onto the Regional Planning Committee, there will be trade-offs that have to be made in an independent capacity. This could potentially harm their political career and create the difficulty of acting independently on Regional Planning Committees. We recommend that the legislation requires non-political appointments with appropriate skill sets to develop the NBE Plans. Checks and balances would also be required to incorporate into the planning process via way of public and local authority consultation.

6.4. Another concern we have is that the legislation does not set a maximum number of representatives. This could mean that local authorities appoint massive numbers of representatives to try and slow down the decision-making process or obtain a majority of votes. For an efficient and effective decision-making process, a maximum number of representatives should be required within legislation. This would not exclude the decision-makers to request reports or information from experts but would mean that the final decision would remain with the core group of representatives.

6.5. We recommend the Select Committee incorporate a maximum number of local authority and iwi representatives across each Regional Planning Committee, taking into consideration the size, scale and number of regional councils, relevant council-controlled organisations (in terms of Auckland Council) and iwi groups. Additional thinking from the Select Committee is required to establish workable and operational guidelines to Councils.

Integrating infrastructure and land use within NBE Plans

6.6. Clause 102(2) mandates NBE Plans to incorporate a list of 10 core requirements. Clause 102(2)(i) states that an NBE Plan must ensure the integration of infrastructure with land use. However, the integration of infrastructure with land use requires consultation and collaboration between the sectors. Currently in practice, development is a close follower to infrastructure due to infrastructure decisions being mostly a central or local government decision which has seen infrastructure decisions be relitigated or bumped down the priority list with successive politicians or governments. Allowing for collaboration and providing for certainty through funding and financing of infrastructure is critical to ensure that the integration of infrastructure with land use occurs.

Development capacity within NBE Plans

6.7. Clause 102(j) states that an NBE Plan must ensure there is sufficient development capacity of land for housing and business to meet the expected demands of the region and its district. As stated earlier in our submission, we are cautious as to whether sufficient development capacity of land goes far enough. In particular, land may be ready and available but local authorities could unintentionally or intentionally stifle development through other zoning rules, plan changes that reduce yield size (and in turn feasibility of development) and/or policy changes such as increased development contributions to an unaffordable level.

6.8. We recommend that the legislation require public and private sector consultation ensure that proposed development capacity of land for housing and businesses is ***likely to be taken up and/or developed*** in order to meet the demands of a region ***within the specified timeframe within the plan***. This will ensure that when the development capacity of land is being considered for a plan, they can sense check that land can be developed both from a quality and feasibility perspective.

6.9. We further recommend that the legislation add an additional requirement to ***ensure that the plan provisions do no unduly restrict development capacity being utilised.*** This will help ensure that plan rules, policies and objectives will not undermine necessary development from occurring in practice.

Funding and financing of NBE Plans

6.10. Clause 105 states that NBE Plans may include non-regulatory methods for achieving plan outcomes, as long as the relevant local authority has agreed to the funding necessary to implement a method within its annual or long-term plan or by any other funding mechanism. This clause may be seen as a 'chicken and egg' situation of what comes first. Although it stipulates that plans may reference funding set out within local authorities long term plan, a local authority may not necessarily know what they should be funding or prioritising until the completion of the draft plan. At this point, the annual or long term plan timeframe may not align with the overall process. Additionally, without funding and financing of NBE Plans being mandatory to incorporate within the plans, the proposed outcomes and targets will likely fail. We recommend mandatory discussions and decisions on how to fund and finance particular infrastructure and development outcomes of plans.

6.11. One of the questions we believe the Select Committee are required to determine is whether the spatial plan should be detailed across the entire region or focus on areas that have current and expected growth. Property Council prefers the latter, as a detailed spatial strategy across an entire region is not practical nor will be able to be implemented. For example, Waka Kotahi cannot fund every single transport project within the 14 Regional Spatial Strategies. This, priorities must be decided around the provision of funding. Focusing on current and future growth areas that align with Central and Local Government funding will help better implement a plan.

Engagement strategy and enduring submissions

6.12. Each Regional Planning Committee is to have an engagement strategy on enduring submissions, a new process to allow for submissions to be lodged before the notification of plans and throughout the plan hearing process. It is unclear what an enduring submission will look like

and whether they could be a place for submitters to provide early feedback on Regional Spatial Strategies. We believe that the intent of enduring submissions is to create greater efficiency within the system. However, in practice it may over complicate the process for submitters, especially if there are changes between a draft plan and proposed plan. We recommend that more work is undertaken to determine the intent of enduring submissions and better clarification of how the enduring submission process occurs within the current legislation.

6.13. There is also a risk that early submissions might be overlooked and/or become irrelevant to a later proposal. We recommend that enduring submissions are able to be updated, carried over, or replaced when required to resubmit.

Recommendations – Part 4 – Natural and Built Environment Plan

- A maximum number of local authority and iwi representatives across each Regional Planning Committee, taking into consideration the size, scale and number of regional councils, relevant council-controlled organisations (in terms of Auckland Council) and iwi groups.
- We recommend the clause 102(2)(j) is amended to require public and private sector consultation to ensure that the proposed development capacity of land for housing and businesses is *likely to be taken up* in order to meet the demands of a region as below:

> *Clause 102*
>
> *(2) A plan must –*
>
> *(j) ensure that there is sufficient development capacity of land for housing and business to meet the expected demands of the region and its district* ***and ensure that the proposed development capacity of land is likely to be taken up and/or developed within the specified timeframe within the plan.***
>
> ***(k) ensure that the plan provisions do not unduly restrict development capacity being utilised.***

- Mandatory discussions and decisions on how to fund and finance particular infrastructure and development outcomes of NBE Plans.
- Spatial strategies should focus on areas that have current and expected growth and provide additional detail around funding and financing and prioritising resource to ensure that plans have the necessary detail in growth areas and the ability to implement these decisions.
- Determine the intent of enduring submissions and better clarify the enduring submission process within the legislation. Amend the current process so that enduring submissions are able to be updated, carried over or replaced when required to resubmit.

7. Part 5 – Resource consenting and proposal of national significance

Resource Consenting

7.1. NBE Plans will categorise consent activities into four categories (reduced down from six). These categories are permitted, controlled, discretionary and prohibited. Property Council supports the Government's intention to better streamline the consenting process and alleviate some of the pressure off local authorities.

7.2. Although supportive, we do have concerns around whether these changes will streamline the consent process in practice. In theory, the National Planning Framework and NBE Plans aim to enable more activities without a resource consent, where they are appropriate and within environmental limits. Property Council hopes that local authorities will make more use of the permitted activity use to speed up the development process.

7.3. However, there are no provisions in the Bill to either encourage or require local authorities to do so. Without local authorities having better direction, there is risk they may be more inclined to use the discretionary activity status. This has the potential to result in notification and slow down the consenting process. It needs to be noted that a discretionary status that requires notification, largely falls onto the developer.

7.4. We have many examples of council officers opposing proposals because they have incorrectly interpreted the provisions of the RMA and/or the relevant plan, or are inappropriately applying their personal views and preferences, when assessing a resource consent application. This results in the applicant having to either abandon their proposal (and therefore lost development opportunities) or engage significant (and unwarranted) expert resources to counter the officer's approach, including via litigation. In past submissions, Property Council has recommended regionalisation or centralisation to help ease issues within the consenting system. This will not only make the process more streamlined and less time consuming but will shift the liability of larger projects off the local authorities' balance sheet.

7.5. We recommend that all decisions in relation to consents should be required to be published on a local authority's website. This will help improve transparency of council decisions.

7.6. Additionally, the notification tests are likely to create barriers in that it is no longer clear what the test for "affected persons" is. Consequently, the proposed legislation will open notification decisions up to significant legal risk.

7.7. Another concern we have is clause 205(2)(c) which requires a decision maker (the Minister when developing the National Planning Framework or the Regional Planning Committee) to mandate public notification of a resource application where "there are relevant concerns from the community." This decision will be entirely subjective, and 'the community' (however this is interpreted) often does not have a common or single view. Therefore, it could be possible to game the system by creating "community concern" about any topic so that there is a mandatory requirement to publicly notify. This will directly contradict the legislative intent of having a quicker and more efficient consenting system.

7.8. We recommend that clause 205(2)(c) is deleted or that the "relevant concerns" are defined, and that the threshold for a public notification have to include 2 or more of the list within clause 205(2)(a)-(d). Furthermore, there is no cross referencing to clause 5 regarding outcomes or

limits. It may be extremely easy to trigger public notification. Therefore we recommend that the National Planning Framework give direction as to what development will fall under each consenting activity category. This will help provide direction to local authorities and streamline the consenting process.

7.9. It is equally important to note that there needs to be the commitment to resourcing local authorities and consenting teams properly. Local authorities are currently stretched. Ensuring local authorities are resourced to make implementation as seamless as possible, as well as provide support to continue consenting new developments through the transition period, is critical to the success of the new system.

7.10. The scope of the permitted activity category has been broadened to enable NBE Plans to permit activities with written approval and certification by a qualified person. The Government intends to remove unnecessary consents such as those for activities with localised effects or requiring monitoring. Property Council is broadly supportive of this, however we are concerned that "qualified persons" is currently not defined and that this will be up to local authorities to decide who has the appropriate qualifications. In practice, local authorities may have a narrow list of potential candidates and/or apply their personal views and preferences in selecting the qualified persons. We recommend that "qualified persons" be defined at a Central Government level.

7.11. As a further point on the consenting process, an applicant should be able to require a hearing to be held (if they wish). Currently the legislation allows an applicant to apply for a hearing, but council may reject that request which seems at odds with the legislative intent.

Specified housing and infrastructure fast-track consenting process

7.12. Property Council strongly supported the COVID-19 Recovery (Fast-track Consenting) Act 2020 when it was first introduced and supports the Government's decision to incorporate Fast-track Consenting into the NBE Bill. The Bill will allow the fast-track process to continue for consents and designations relating to specific housing and infrastructure projects. This will provide the infrastructure and development sectors with greater certainty as to the process and timeframes of accelerating projects under the legislation.

7.13. It is also important to note that the current legislation will be repealed next year, and it is not clear in the Bill when the new provisions will come into effect. We recommend that the COVID-19 Recover Act not be repealed until the NBE Bill comes into effect and the fast track provisions have taken effect.

Proposal of national significance

7.14. Clauses 328 to 348 of the Bill provide an alternative consenting pathway for matters that are, or are part of, a proposal of national significance. In addition to this, the Minister may refer the matter to a board of inquiry of the Environment Court for decision. Property Council is pleased to see this has been retained as it ensures that appropriate checks and balances continue within our new system.

Recommendations – Part 5 – Resource consenting and proposal of national significance

R. Develop provisions to encourage local authorities to make greater use of the permitted activity status.

S. Investigate how New Zealand's consenting system can involve the private sector and be done at scale (i.e. regionalisation or centralisation).

T. All decisions in relation to consents be published on a local authority's website. This will help improve transparency of council decisions.

U. The term "relevant concerns" is deleted within the legislation and the threshold for a public notification be amended to include **2 or more** of the list in clause 205(2)(a)-(d).

> *Clause 205*
>
> *(2) A decision maker must require public notification of an application for a resource consent if satisfied that ~~1~~ **2** or more of the following apply:*
>
> *(a) there is sufficient uncertainty as to whether an activity could meet or contribute to outcomes, or the activity would breach a limit:*
>
> *(b) there are clear risks or impacts that cannot be mitigated by the proposal:*
>
> *~~(c) there are relevant concerns from the community:~~*
>
> *(d) the scale or significance (or both) of the proposed activity warrants it.*

V. The National Planning Framework to provide direction as to what type of development falls under each activity category.

W. Ensure consenting teams within local authorities are well resourced.

X. Develop a definition of "qualified person" at a central government level.

Y. Widen the range of activities captured under the COVID-19 Recovery (Fast-track Consenting) Act 2020.

Z. Ensure that there is a clear transition pathway for the COVID-19 Recovery (Fast-track Consenting) Act 2020 to continue within the NBE, given it is due to be repealed next year.

8. Part 8 – Matters relevant to natural and built environment plans

8.1. Property Council supports designations. Safeguarding infrastructure early on within the planning process will better ensure that the necessary infrastructure can be provided alongside urban development.

8.2. Clause 504 requires a primary construction and implementation plan to identify associated effects and how the requiring authority intends to manage those effects. A secondary construction and implementation plan must also show any other matters to avoid, remedy or mitigate any adverse effects on the environment.

8.3. Minister Parkers speech on 17 August 2022 said[1]:

> *"Getting the right balance between certainty and flexibility will always be challenging. I have a view that cumulative small adverse but widespread effects are a greater problem than the adverse effects of infrastructure, and that often infrastructure is necessary to avoid adverse effects."*

8.4. We believe that clause 504 requires amending to ensure that necessary infrastructure is not blocked due to adverse effects. If we are moving towards a more outcomes-based system, we are concerned that clause 504 may overly focus on effects within the NBE Bill. Prioritisation of infrastructure or making an exemption to this clause for infrastructure and public good infrastructure is required to ensure that the system is functional. We recommend that clause 504 be amended to incorporate an exemption when it comes to priority/critical infrastructure and public good infrastructure within the National Planning Framework.

8.5. It is important to note that the wording in its current form may need to adapt to the language and definitions used within the National Planning Framework on deciphering what is 'critical' infrastructure.

8.6. We also have questions as to whether committees are authorised to hold a hearing in relation to both the primary and secondary construction and implementation plan. This could be a doubling up of the process and clarification is required.

Recommendations – Part 8 – Matters relevant to natural and built environment plans

AA. Clause 504(5)(f) be amended to exempt local authorities having to "avoid, remedy or mitigate any adverse effects on the environment" when it comes to priority/critical infrastructure and public good infrastructure within the National Planning Framework.

BB. Streamline the construction and implementation plan process to clarify that only one hearing is required (not one hearing for the primary and another for the secondary construction and implementation plan).

[1] https://www.beehive.govt.nz/speech/how-future-rm-reform-system-will-better-protect-environment

9. Part 9 – Subdivision and reclamation

9.1. Subdivisions rules are critical to land supply which enables the housing that New Zealand needs. Good subdivision rules are the missing piece of the puzzle in ensuring we can do this. The introduction of the new legislation is a good opportunity for positive changes to be made in this space, but we are disappointed to see that much of the current subdivision provisions in the Resource Management Act 1991 have been transferred into the NBE Bill.

9.2. Current subdivision laws are restrictive due to the definition of a subdivision. For example, a subdivision is defined as strictly resulting in current problems of cross leases and encumbrances. Having a more inclusive definition would help resolve some of the current issues of today.

9.3. We recommend widening the definition of 'subdivision' to be inclusive (rather than restrictive) to better encompass activities that are not currently technically subdivision.

9.4. Another current issue is the presumption that in order to vest land as a road, various third parties' consents are needed. We have seen many examples of this since the RMA was created, particularly as the use of private covenants has grown. We recommend reversing this presumption as vesting roads is often essential to enabling development. There are no inherent environment effects that arise, and it will reduce unnecessary complexity to the process.

Recommendations – Part 9 – Subdivision and Reclamation

CC. 'Subdivision' should be defined purposely/inclusively and not restrictively by changing the definition at section 569 from 'means' to 'includes' in order to avoid quasi-subdivisions falling outside of the Act.

DD. Reverse the presumption that in order to vest land as a road, you need the consent of those with the benefit of a land covenant or easement.

10. Part 10 – Exercise of functions, powers and duties under this Act

10.1. Clause 642(1)(e) states that a Regional Planning Committee's function is to monitor how effectively the local authorities are implementing the Regional Spatial Strategy. Although this is an important step towards determining whether a plan is being implemented, the legislation falls short in relation to compliance and consequences for local authorities who fail to meet key aspects within Natural and Built Environment Plans.

10.2. Clause 649 places the onus on local authorities to prepare a compliance and enforcement strategy. In practice, local authorities will be responsible for addressing issues of non-compliance and will have to self-monitor and self-enforce. Therefore, if a local authority falls short of achieving the outcomes within the Natural and Built Environment plans, there appears to be lack of consequences.

10.3. Our continued question remains around what consequences will result when local authorities try to game the system and not meet required outcomes set out in NBE plans? We recommend that the Select Committee consider this question and seek to resolve it within the draft legislation.

National Māori Entity

10.4. The Bill establishes the National Māori Entity which is to provide independent monitoring of decisions taken under the Act or the Spatial Planning Act 2022, in order to inform and support

positive progress at the national, regional or local level, as relevant, in managing the environment. Clause 660 also extends this to independent monitoring of decisions taken under the Spatial Planning Act.

10.5. In developing plans under the Bill, Property Council recommends that proactive monitoring take place early in the process to avoid any unintended consequences. For example, if independent monitoring occurred once a plan has been decided on or towards the end of completion, this could create a range of issues and complexities within the decision-making process. We recommend the legislation incorporate timeframes of when independent monitoring is to be completed. If independent monitoring fails to meet the established timeframes, we recommend that the principles of natural justice be applied and if a decision needs to be reviewed, that due process is followed.

Recommendations – Part 10 – Exercise of functions, powers and duties under this Act

EE. The Select Committee give thought towards what legislative consequences should result when local authorities try to game the system and/or not meet required outcomes set out in NBE plans.

FF. The legislation establishes timeframes of when the National Māori Entity is required to complete independent monitoring by. If independent monitoring fails to meet the established timeframes, we recommend that the principles of natural justice be applied and if a decision needs to be reviewed, that due process is followed.

11. Part 12 – Miscellaneous provisions

11.1. We have been clear throughout our submission that in order to create a well-functioning resource management system, we need to ensure that the legislative framework works cohesively together and can be effectively implemented. We support procedural principles which promotes collaboration on resource management issues. It is critical that this collaboration is done with those who have the appropriate expertise and be done at the right stage of the process.

11.2. Clause 805 requires the use of the "best information available at the time". Having market sector involvement is crucial in marking sure that we can deliver outcomes and ensure that implementation is done correctly. For example, without early market participation in the development of Regional Spatial Strategies, we will likely see adverse effects at a planning level in which plans will be unworkable on an implementation level, resulting in renegotiations having to occur.

Recommendations – Part 12 – Miscellaneous

GG. Early collaboration with the private sector to help aid information collection.

12. Schedule 6 – Preparation, change, and review of National Planning Framework

12.1. Clause 27 states that a review of the National Planning Framework shall occur every nine years, and clause 28 allows for an earlier review under special circumstances. Clause 51 also allows for a three-yearly reporting cycle. Property Council supports the timeframe and flexibility that the legislation provides.

13. Schedule 7 – Preparation, change and review of natural and built environment plans

13.1. Clause 2 of Schedule 7 stipulates that the first plan in each region must be prepared within four years (notified within two years with submissions, hearings and recommendations occurring in the following two years). We support the proposal but note the need for flexibility as some councils may not have the resources.

No requirement to engage with those who will likely be expected to implement the plan

13.2. Clause 15 of Schedule 7 establishes rules around requiring a Regional Planning Committee to establish and maintain an engagement register. However, clause 15(2) states that the "planning committee is not obliged to consult the persons identified in the register." This clause is explicitly removing all and any requirements of the Regional Planning Committee to consult with local views.

13.3. Property Council strongly opposes clause 15(2) and (4) of Schedule 7. These clauses specifically reject any notion of the Regional Planning Committee's requirement to consult with individuals and organisations who will likely implement the plan or have an interest in planning. A good plan will require collaboration between the public and private sector to ensure that things such as unintended consequences do not occur.

13.4. For example, early engagement with developers and infrastructure providers will ensure that development can occur in the suggested areas as it passes land use tests, availability of resources, feasibility, etc.

13.5. Furthermore, clause 32 of the Spatial Planning Bill seeks to encourage participation by the public and all interested parties, "particularly those who may be involved in implementing the Regional Spatial Strategy." **Clause 15 is directly contradictory to clause 32 in the Spatial Planning Bill** as it tries to exclude public participation by removing all and any requirements of the Regional Planning Committee to consult with anyone outside of central government, local government, iwi and customary marine title groups.

13.6. To avoid contradiction between the NBE and Spatial Planning Bills, we recommend that clause 15(3) is amended to incorporate mandatory engagement with local developers and infrastructure providers who are likely to be required to implement the plan. This would better enable the clear intent of engagement with those who may be involved in implementing the Regional Spatial Strategy within clause 32 in the Spatial Planning Bill.

Consultation during preparation of a plan

13.7. Clause 22 lists the Ministers who the must consult with during the preparation of a plan. The list of organisations includes the Ministers of the Environment and Conservation but do not explicitly state the Minister of Housing, Transport or Infrastructure.

13.8. We recommend amended clause 22 to state that if a plan or plan change relates to current or future growth and development, the Regional Planning Committee must consult with the Minister of Housing, Minister of Transport, Minister for Infrastructure, Minister for Economic and Regional Development and local developers and infrastructure providers in the area.

Notification of proposed plans

13.9. Clause 31 states that the Regional Planning Committee must provide a copy of the proposed plan and evaluation report to the Minister for the Environment and the Minister of Conservation (among other local authorities and iwi). Again, we have concerns that the intention of Regional Planning Committees is to have a joined-up approach, but the legislative implications exclude the development and infrastructure arms of central government – namely the Minister of Transport, Minister of Housing, Minister for Infrastructure and Minister for Economic and Regional Development. We recommend the incorporation of these Ministers into clause 31 to ensure that a whole-of-government approach is taken.

Recommendations – Schedule 7 – Preparation, change and review of natural and built environment plans

HH. Amend clause 15 to extend engagement to developers and infrastructure providers who are likely to be required to implement the plan. This will ensure consistency with the Spatial Planning Bill and is as outlined in red below:

Clause 15 Engagement register

(1) A regional planning committee must establish and maintain an engagement register for the purpose of identifying any person who is interested in being consulted by the regional planning committee in the plan development process.

~~*(2) The planning committee is not obliged to consult the persons identified in the register but must act in good faith when considering matters known to be of interest to particular persons.*~~

(3) The following groups, however, do not need to register but are included as having a right to be consulted under this clause:

(a) government departments and ministries; and

(b) local authorities in the region; and

(c) requiring authorities; and

(d) customary marine title groups; ***and***

(e) development and infrastructure provider organisations and groups.

~~*(4) Except as provided in subclause (3), a regional planning committee is not obliged to consult persons who are not registered under this clause.*~~

II. Amend clause 22 to state that if a plan or plan change relates to current or future growth and development, the Regional Planning Committee must consult with the Minister of Housing, Minister of Transport, Minister for Infrastructure and Minister for Economic and Regional Development. Consultation should also extend to local developers and infrastructure providers in the area. This is outlined in ***bold italics*** below:

Clause 22 Consultation during preparation of plan

(1) A regional planning committee must consult the following parties during the preparation of a plan:

(a) The Minister for the Environment; and
(b) The Minister of Conservation; and
(c) The relevant regional conservator for the Department of Conservation; and
(d) The Minister of Housing; and
(e) The Minister of Transport; and
(f) The Minister for Infrastructure; and
(g) The Minister for Economic and Regional Development; and
(h) Other Ministers of the Crown who may be affected by the plan; and
(i) The constituent local authorities of the region; and
(j) Any adjacent local authorities; and
(k) Requiring authorities; and
(l) Iwi authorities of the region. Clause 22 Consultation during preparation of plan

(2) If a proposed plan or plan change relates to the coastal marine area, the regional planning committee –

(a) Must consult with –
(i) The Minister responsible for aquaculture in relation to the management of aquaculture activities; and
(ii) The Minister of Oceans and Fisheries in relation to fisheries management; but
(b) Does not have to consult either Minister in relation to minor plan changes; and
(c) Must consult with customary marine title groups in the area.

(3) If a proposed plan or plan change relates to current or future growth areas for development or infrastructure, the regional planning committee –

(d) Must consult with –
(iii) The Minister responsible for Housing; and
(iv) The Minister responsible for Transport; and
(v) The Minister responsible for Infrastructure; and
(vi) The Minister responsible for Economic and Regional Development; but
(e) Does not have to consult either Minister in relation to minor plan changes; and
(f) Must consult with local developers and infrastructure provider organisations and groups who are identified as potential delivery agencies or partners.

14. Questions for the Select Committee to consider

14.1 We continue to have several questions that appear to be left unanswered within the legislation. These include:

- What are the repercussions for Regional Planning Committees if the NBE plans do not align with the National Planning Framework (or other requirements)?
- What are the repercussions for local authorities if they fail to achieve or implement the required outcomes within NBE plans?
- What happens if Regional Spatial Strategies created in guidance with the National Planning Framework but cannot be practically implemented or achieved?
- Whether committees are authorised to hold a hearing in relation to both the primary and secondary construction and implementation plan?

15. Conclusion

14.2 Property Council alongside Business New Zealand, Infrastructure New Zealand, Employers' and Manufactures Association and the Environmental Defence Society played an integral part in establishing that the Resource Management Act in its current form was failing both the environment and the built environment. Our collective efforts resulted in the Government undertaking a review of the system and we congratulate the Government and officials for getting to where we are today with a first draft of the NBE and Spatial Planning Bills.

14.3 There are many aspects of the current drafting that we support and believe that the best of intentions have been set to establish a streamlined and faster consenting process, long-term regional spatial planning and certainty for current and future urban development and infrastructure. However, we have some concerns on how this will work in practice and have made several recommendations and legislative tweaks to help remedy our concerns. It is important that good development is not just upheld as an outcome, but supported in realistic and efficient processes.

14.4 We continue to strongly oppose the legislative intent to only have central government, local government and iwi representatives on regional planning committees. For great regional spatial planning, agreement and 'buy-in' from the private sector is critical to their success. After all, the private sector will be expected to implement future development and infrastructure to support the growth. Put simply, development that creates houses, jobs, factories and infrastructure often starts with the private sector and this voice is critical.

14.5 Additionally, we are concerned that the legislation falls short of its intention to have a joined-up approach from central government and local government. Namely, that only the Ministers of the Environment and of Conservation is required to be notified of proposed plans. For a true whole-of-government approach this should be extended to include the Minister of Transport, Minister of Housing, Minister for Infrastructure and Minister for Economic and Regional Development.

14.6 Similarly, the NBE Bill allows for participation of non-elected representatives and particular groups (iwi, hapu and customary marine title groups) but does not include other groups who will be expected to deliver the plans developed by Regional Planning Committees and

representative groups. By not involving the relevant sectors early within the planning process, the greater the likelihood of unintended consequences such as the inability to meet targets and outcomes or more simply put, plans will sit on the shelf as they are unable to be implemented. Early engagement is critical to ensure that we develop 30-year plans that can be used.

14.7 Property Council members invest, own and develop property across New Zealand. We thank the Environment Committee for the opportunity to submit on the Natural and Built Environment Bill and **wish to appear before the Environment Committee**.

14.8 Should you wish to discuss further, please contact Sandamali Gunawardena and/or Katherine Wilson.

Yours Sincerely,

Leonie Freeman

CEO Property Council New Zealand

Property Council New Zealand

Appendix 1

Full list of recommendations

Property Council recommends that:

Part 1 - Purpose:

A. Clause 6(2) be deleted to ensure that local authorities cannot use subjective matters to reject development.

B. The Government focus on education throughout the transition period to help clarify the purpose of the NBE Bill and to provide the necessary sector confidence for the development pipeline to continue.

C. The Select Committee correct the minor numbering errors within clause 5(c).

D. The Select Committee move clauses 804(1) and (2) into section 6 'decision-making principles' to strengthen the importance of timely performance of duty and function.

Part 3 - National Planning Framework:

E. Urban development is clearly established within the National Planning Framework (similar to how infrastructure currently is within the legislation).

F. Local views from the public and private sector are incorporated within the National Planning Framework to ensure that realistic and appropriate outcomes are set and can be met.

G. We urge the Government to establish cross-partisan support when the Minister sets or prescribes environmental limits and approving the National Planning Framework. This is to reduce the likelihood of the National Planning Framework becoming a political football.

H. Create more flexibility within clauses 37-46 to allow for trade-offs at a local level for environmental limits will ensure that the exemption (clause 44) does not have to be used on a reoccurring basis, as anticipated.

I. Provides guidance on how the National Planning Framework will incorporate and/or update current growth agendas and strategies.

J. Clause 58(d) is widened to include not only infrastructure, but development infrastructure and public good infrastructure too. This will provide for better joined-up regional planning by incorporating all types of infrastructure.

K. Mandate discussions on the funding and financing of infrastructure within the National Planning Framework with decisions made within Regional Spatial Strategies.

Part 4 - Natural and Built Environment Plans

L. A maximum number of local authority and iwi representatives across each Regional Planning Committee, taking into consideration the size, scale and number of regional councils, relevant council-controlled organisations (in terms of Auckland Council) and iwi groups.

M. We recommend the Clause 102(2)(j) is amended to require public and private sector consultation to ensure that the proposed development capacity of land for housing and businesses is likely to be taken up in order to meet the demands of a region as below:

> *Clause 102*
>
> *(2) A plan must –*
>
> *(j) ensure that there is sufficient development capacity of land for housing and business to meet the expected demands of the region and its district* ***and ensure that the proposed development capacity of land is likely to be taken up and/or developed within the specified timeframe within the plan.***
>
> ***(k) ensure that the plan provisions do not unduly restrict development capacity being utilised.***

N. Mandatory discussions and decisions on how to fund and finance particular infrastructure and development outcomes of plans.

O. Spatial strategies should focus on areas that have current and expected growth and provide additional detail around funding and financing and prioritising resource to ensure that plans have the necessary detail in growth areas and the ability to implement these decisions.

P. Determine the intent of enduring submissions and better clarify the enduring submission process within the legislation. Amend the current process so that enduring submissions are able to be updated, carried over or replaced when required to resubmit.

Part 5 - Resource consenting and proposal of national significance

Q. Develop provisions to encourage local authorities to make use of the permitted activity status

R. Investigate how New Zealand's consenting system can involve the private sector and be done at scale (i.e. regionalisation or centralisation)

S. All decisions in relation to consents be published on a local authority's website. This will help improve transparency of council decisions.

T. The term "relevant concerns" is removed or defined within the legislation and the threshold for a public notification be amended to include **2 or more** of the list in clause 205(2)(a)-(d).

> *Clause 205*
>
> *(2) A decision maker must require public notification of an application for a resource consent if satisfied that ~~1~~* ***2*** *or more of the following apply:*
>
> *(a) there is sufficient uncertainty as to whether an activity could meet or contribute to outcomes, or the activity would breach a limit:*
>
> *(b) there are clear risks or impacts that cannot be mitigated by the proposal:*
>
> *~~(c) there are relevant concerns from the community:~~*
>
> *(d) the scale or significance (or both) of the proposed activity warrants it.*

U. The National Planning Framework to provide direction as to what type of development falls under each activity category

V. Ensure consenting teams within local authorities are well resourced

W. Develop a definition of "qualified person" at a central government level

X. Widen the range of activities captured under the COVID-19 Recovery (Fast-track Consenting) Act 2020

Y. Ensure that there is a clear transition pathway for the COVID-19 Recovery (Fast-track Consenting) Act 2020 to continue within the NBE, given it is due to be repealed next year.

Part 8 - Matters relevant to natural and built environment plans

Z. Clause 504(5)(f) be amended to exempt local authorities having to "avoid, remedy or mitigate any adverse effects on the environment" when it comes to priority/critical infrastructure and public good infrastructure within the National Planning Framework.

AA. Streamline the construction and implementation plan process to clarify that only one hearing is required (not one hearing for the primary and another for the secondary construction and implementation plan).

Part 9 – Subdivision and Reclamation

BB. 'Subdivision' should be defined purposely/inclusively and not restrictively by changing the definition at section 569 from 'means' to 'includes' in order to avoid quasi-subdivisions falling outside of the Act.

CC. Reverse the presumption that in order to vest land as road, you need the consent of those with the benefit of a land covenant or easement.

Part 10 – Exercise of functions, powers and duties under this Act

DD. The Select Committee give thought towards what legislative consequences should result when local authorities try to game the system and not meet required outcomes set out in NBE plans.

EE. The legislation establishes timeframes of when the National Māori Entity is required to complete independent monitoring by. If independent monitoring fails to meet the established timeframes, we recommend that the principles of natural justice be applied and if a decision needs to be reviewed, that due process is followed.

Part 12 – Miscellaneous

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