

Property Council New Zealand

Submission to the Environment Committee on the Spatial Planning Bill

3 February 2023

For more information and further queries, please contact

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Submission to the Environment Committee on the Spatial Planning Bill

1. Summary

- 1.1. Property Council New Zealand (“Property Council”) welcomes the opportunity to submit to the Environment Committee on the *Spatial Planning Bill* (“the SP 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 SP Bill (and the Natural and Built Environment Bill).
- 1.3. There are, however, certain elements of the SP 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 and the lack of clarity of 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 SP 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. Explanatory note

- 4.1. Early engagement with those who will be implementing the plans, is critical if plans are to be successful. The explanatory note states that Regional Planning Committees are to develop a tailored engagement approach and encourage participation by “those who may be involved in implementing the Regional Spatial Strategy.”
- 4.2. The explanatory note has a clear intention to engage with those who will implement the plan. Unfortunately, the legislative wording throughout the SP Bill falls short. In particular, the engagement with infrastructure providers is explicit but engagement with development providers is non-existent. We must not forget that local development providers are responding to growth and contributing (by way of development contribution fees) towards local infrastructure to service growth.
- 4.3. Collaborating with local development providers is critical in ensuring that plans are workable, feasible and can be implemented. We have provided several recommendations within our submission that relate to collaborative engagement with those likely to implement the plan.

5. Part 1 – Purpose and related matters

- 5.1. The purpose statement is similar to the Natural and Built Environment Bill’s (“NBE Bill”) purpose statement which Property Council has made comment to in our submission on the NBE Bill.
- 5.2. The purpose incorporates promoting integration between the Natural and Built Environment Act 2022, the Land Transport Management Act 2000 and the Local Government Act 2002. We support the reference to promoting integration within the purpose of the SP Bill. For example, when a Minister reviews a government policy statement on land transport it would be important to consider Regional Spatial Strategies to ensure that policy statements and investment align with the regions plans and intended outcomes.

6. Part 2 – Regional Spatial Strategies

- 6.1. Property Council 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.

Scope and contents of Regional Spatial Strategies

- 6.2. We are pleased to see that clause 15(2) requires a Regional Spatial Strategy to support a “co-ordinated approach to infrastructure funding and investment by central government, local authorities and other infrastructure providers.” However, it is important to note that it is not solely infrastructure providers that fund and finance projects.
- 6.3. Currently, developers pay a contribution towards the cost of infrastructure to service growth, by way of development contributions. We only have to look at Auckland Council’s Drury proposal (which could see an average of \$60,687 added to the price of a house) to understand the challenges that can occur when infrastructure has not been appropriately calculated.
- 6.4. We recommend that the proposed coordinated approach to infrastructure funding needs to be extended to include local development providers who are likely to be servicing the growth by developing houses, commercial offices, industrial spaces or retail and hospitality precincts. By

including local developers, it will help ensure that proposed costs and outcomes in plans are feasible and there is proper integration and coordination of development occurring in the area.

Priority actions

- 6.5. We support clause 16 which states that a Regional Spatial Strategy must set out actions that must be taken as a matter of priority to achieve that vision and those objectives. In other words, prioritising actions within a Regional Spatial Strategy will help create certainty for regions and hold local government accountable. Under the Local Government Act a long-term plan must set out steps to implement the priority actions and the annual report must include a statement on the local authority's progress in implementing the priority actions.
- 6.6. Despite our support, the timing of Regional Spatial Strategies and long-term plans will determine the success of priority actions. For example, if a Regional Spatial Strategy is developed *after* the long-term plan is established, no funding will be dedicated towards priority actions (or any actions) in the Regional Spatial Strategy.
- 6.7. We recommend that the Local Government Act 2002 be amended to incorporate the ability to make an out-of-cycle amendment to the long-term plan (if required) to set out steps to implement the priority actions for which the local authority is responsible for.

Level of detailed required

- 6.8. Clause 19 looks to determine what level of detail and certainty the Regional Spatial Strategy will be. We support flexibility but also wish to see more detail as to the projects the plan wishes to see in areas that have current and expected growth. The more detail and funding arrangements that a Regional Spatial Strategy has, the more certainty the region will have in relation to delivery of projects. We recommend incorporating funding and financing arrangements within clause 19 to provide for more certainty where possible.
- 6.9. Furthermore, we are uncertain who "those persons" are within clause 19(c). If this is referring to the persons who have a role in implementing the strategy, we recommend amending this so that the legislation reflects this.
- 6.10. Clause 24(2)(a) states that the Regional Planning Committee "must have particular regard" to the Government policy statements listed in Schedule 3. We are concerned that currently, the national policy statements conflict with one another and is unclear as to what would take precedent when developing the Regional Spatial Strategies. For example, difficulty would arise when trying to avoid highly productive soils (anything Class I, II or III), wetlands and any other relevant new biodiversity NPS. The Select Committee should consider what the words "must have particular regard" mean in terms of a hierarchy in creating the Regional Spatial Strategy.

Contradiction between SP and NBE Bills

- 6.11. We strongly support clause 32 which states that the Regional Planning Committee must adopt a process which is designed to encourage participation by both the public and all interested parties, particularly those who may be involved in implementing the Regional Spatial Strategy. However, "encouraging participation" could be as simple as notifying the proposed plan and encouraging written feedback.
- 6.12. Furthermore, clause 32 of the SP Bill is directly contradicted by clause 15 of Schedule 7 of the NBE Bill which removes 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.

- 6.13. To avoid contradiction between the NBE and SP Bills, we recommend that clause 15(3) in Schedule 7 of the NBE Bill be amended to incorporate engagement with infrastructure and development providers who may be involved in implementing the Regional Spatial Strategy. This will better align the NBE will clear engagement intentions of the SP Bill.

Cross-regional planning committee

- 6.14. We support clause 42 which seeks to establish a cross-regional planning committee for issues that are common to two or more regions. This will come into use for largescale infrastructure projects that may cross over two regional planning committees and require funding from the different regions.

Implementation plans

- 6.15. A Regional Planning Committee must prepare and adopt an implementation plan for its Regional Spatial Strategy. The implementation plan must set out a summary of the key steps taken to deliver the priority action, who is responsible for it, how progress will be monitored, and the interdependencies (if any) between the priority action and other priority actions. It must also set out the “relative priority of the priority actions” and their sequencing.
- 6.16. Clause 53 requires consultation on implementation plans and agreement of responsible persons. This aligns with the SP Bill’s intention to ensure that those who are responsible for delivering all or part of a priority action are consulted. We support these provisions as it is critical that meaningful consultation occurs with those who will likely be delivering the implementation plans.

Implementation agreements

- 6.17. Clause 57 establishes an option for implementation agreements between two or more persons who have a role in the delivery or regulation of a priority action established in a Regional Spatial Strategy. The implementation agreements set out a programme of activities and identifies sources of funding.
- 6.18. Clause 57(3) states that an implementation agreement is not enforceable. This is a concern when core decisions relating to infrastructure in New Zealand can be relitigated or overturned with incoming local or central government politicians. Furthermore, if implementation agreements are acted on, and subsequently appealed, it will result in lost costs (i.e. planning and/or labour costs).
- 6.19. In practice, implementation agreements will only be successful if all parties involved come with good faith and best intentions to deliver the priority action established in the Regional Spatial Strategy.

Recommendations – Part 2 – Regional spatial strategies

- A. Clause 15(2) be amended to include development providers, as they also contribute towards the infrastructure funding and investment.

Clause 15 Scope of regional spatial strategies

*(2)... a regional spatial strategy must support a co-ordinated approach to infrastructure funding and investment by central government, local authorities and other infrastructure **and development** providers.*

- B. The Local Government Act 2002 be amended to incorporate the ability to make an out-of-cycle amendment to the long-term plan to set out steps to implement the priority actions for which the local authority is responsible for in the Regional Spatial Strategy.
- C. Clause 19 be amended to include funding and financing arrangements to provide for more certainty of the delivery of projects within Regional Spatial Strategies. (See wording under recommendation D).
- D. We are uncertain who “those persons” are within clause 19(c). If this is referring to the persons who have a role in implementing the strategy, we recommend the below amendments reflect this.

Clause 19 Level of detail in regional spatial strategies

A regional spatial strategy must be at a level of detail that –

- (a) Reflects the level of certainty provided by the evidence and other information available, including the extent of work or planning already undertaken on a relevant activity or proposal **and any funding and financing proposals or agreements**; and*
- (b) Gives sufficient flexibility to enable the persons who have a role in implementing the strategy to implement the strategy in the most appropriate and efficient way; and*
- (c) Subject to paragraphs (a) and (b), is sufficient to give reasonable certainty to ~~these~~ **the persons who have a role in implementing the strategy** about the matters provided for in the strategy.*

- E. The select committee should consider under Clause 24(2)(a) what the words ‘must have particular regard’ mean in terms of a hierarchy in creating the Regional Spatial Strategy.

- F. To avoid contradiction between the SP and NBE Bills, we recommend that clause 15(3) in Schedule 7 of the NBE Bill be amended to incorporate engagement with infrastructure and development providers who may be involved in implementing the Regional Spatial Strategy.

Clause 15 Engagement register

(1) *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) *developer and infrastructure provider organisations and groups.*

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

7. Part 3 – General powers, duties and other matters

- 7.1. Regional Planning Committees are responsible for developing the Regional Spatial Strategies for each region. However, Part 3 (clauses 58-63) provides the Minister with powers to intervene and assist under certain circumstances.
- 7.2. Given the significant powers the Minister has under the NBE Bill, we are concerned that there will not be adequate checks and balances put in place to balance ministerial decision-making with local/regional views. Limiting Ministerial powers to intervene if the plan is inconsistent with the National Planning Framework or Government priorities is more appropriate. Having said that, early engagement with Central Government while establishing Regional Spatial Strategies is crucial to ensure that Ministerial powers are not required at this late stage in the planning process.
- 7.3. Clause 67 relates to system performance and states that a Regional Planning Committees 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 Regional Spatial Strategies.
- 7.4. Our continued question remains around what consequences will result when local authorities cannot deliver or meet required outcomes set out in Regional Spatial Strategies? We recommend that the Select Committee consider this question and seek to resolve it within the draft legislation.

Recommendations – Part 3 – General powers, duties and other matters

- Limit Ministerial powers to intervene if their decision/action is inconsistent with the National Planning Framework or Government priorities.

- Select Committee consider what consequences local authorities will face should they intentionally or unintentionally fail to meet the required outcomes set out in Regional Spatial Strategies.

8. Schedule 1 – Transitional, savings, and related provisions

- 8.1. We support clause 2 of Schedule 1 which allows for the incorporation of RMA planning documents (i.e. regional policy statement, regional plan or district plan) into Regional Spatial Strategies. We also support the process outlined in Schedule 1.

9. Schedule 4 – Preparation for Regional Spatial Strategies: key process steps

- 9.1. Schedule 4 sets out the key steps for the process that Regional Planning Committees must adopt for preparing Regional Spatial Strategies. It is important that this process is easy to understand and streamlined to ensure efficient implementation.
- 9.2. We are pleased to see that as part of this process, the Regional Planning Committee must provide an opportunity for interested parties and the public to participate in determining the matters to be included in the draft strategy and their relative importance. This is critical in making sure Regional Spatial Strategies do not omit the challenges and opportunities that face the region over the next 30 years.
- 9.3. We are also pleased to see that step 3 of the process gives an opportunity for interested parties and the public to provide written submissions on the draft strategy. In particular, interested parties include relevant non-government organisations that represent the interests of relevant industry sectors. Engagement with sector expertise will help ensure that draft Regional Spatial Strategies are accurate and able to be implemented.

10. Questions for the Select Committee to consider

- 10.1 What are the repercussions for local authorities if they intentionally or unintentionally fail to achieve or implement outcomes within Regional Spatial Strategies?

11. Conclusion

- 11.1 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 SP and NBE Bills.
- 11.2 There are many aspects of the current drafting that we support such as establishing long-term Regional Spatial Planning and intentions to increase certainty for future urban development and infrastructure projects. 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.
- 11.3 We are conscious that the SP and NBE Bills contradict one another when it comes to engagement and recommend that "development and infrastructure provider organisations and groups" are incorporated into the NBE legislation to better reflect intentions within the SP Bill of engaging those who will be implementing the plans.

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

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

Yours Sincerely,



Leonie Freeman

CEO Property Council New Zealand

Appendix 1

Full list of recommendations

Property Council recommends that:

Part 2 – Regional spatial strategies

- A. Clause 15(2) be amended to include development providers, as they also contribute towards the infrastructure funding and investment.

Clause 15 Scope of regional spatial strategies
*(2)... a regional spatial strategy must support a co-ordinated approach to infrastructure funding and investment by central government, local authorities and other infrastructure **and development** providers.*

- B. The Local Government Act 2002 be amended to incorporate the ability to make an out-of-cycle amendment to the long-term plan to set out steps to implement the priority actions for which the local authority is responsible for in the Regional Spatial Strategy.
- C. Clause 19 be amended to include funding and financing arrangements. This will provide for more certainty of the delivery of projects within Regional Spatial Strategies.
- D. We are uncertain who “those persons” are within clause 19(c). If this is referring to the persons who have a role in implementing the strategy, we recommend the below amendments reflects this.

Clause 19 Level of detail in regional spatial strategies
A regional spatial strategy must be at a level of detail that –

- (d) Reflects the level of certainty provided by the evidence and other information available, including the extent of work or planning already undertaken on a relevant activity or proposal **and any funding and financing proposals or agreements**; and*
- (e) Gives sufficient flexibility to enable the persons who have a role in implementing the strategy to implement the strategy in the most appropriate and efficient way; and*
- (f) Subject to paragraphs (a) and (b), is sufficient to give reasonable certainty to ~~those~~ **the persons who have a role in implementing the strategy** about the matters provided for in the strategy.*

- E. The select committee should consider under Clause 24(2)(a) what the words ‘must have particular regard’ means in terms of a hierarchy in creating the Regional Spatial Strategy.

- F. To avoid contradiction between the SP and NBE Bills, we recommend that clause 15(3) in Schedule 7 of the NBE Bill be amended to incorporate engagement with infrastructure and development providers who may be involved in implementing the Regional Spatial Strategy.

Clause 15 Engagement register

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

(f) government departments and ministries; and

(g) local authorities in the region; and

(h) requiring authorities; and

(i) customary marine title groups; and

(j) 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.

Part 3 – General powers, duties and other matters

- G. Limit ministerial powers to intervene if their decision/action is inconsistent with the national planning framework or Government priorities.
- H. Select Committee consider what consequences local authorities will face should they intentionally or unintentionally fail to meet the required outcomes set out in Regional Spatial Strategies.