

**4 August 2021**

## **Submission of Infrastructure New Zealand on the Inquiry on the Natural and Built Environments Bill: Parliamentary Paper**

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### Executive summary

- a. Infrastructure New Zealand welcomes the opportunity to make a submission on the *Inquiry on the Natural and Built Environments Bill: Parliamentary Paper*.
- b. Infrastructure New Zealand appreciates an exposure draft of the Natural and Built Environments Bill (**the Bill**) being made publicly available for comments and feedback. It is, however, an incomplete draft meaning submitters do not know how certain initiatives are proposed to work.
- c. We are disappointed by the short timeframe allowed for public submissions on a major piece of proposed legislation. The short timeframe has meant we have not been able to extensively engage with our members, which in turn means our submission is focussed on key strategic matters only.
- d. The resource management system plays a critical role in the wider urban planning system.
- e. The ensuing Natural and Built Environments Act (**the Act**) will be one of three acts to replace the RMA, the others being the Strategic Planning Act and the Climate Change Adaptation Act. The Environment Committee needs to satisfy itself that having three new Acts would not create complex interface issues between purposes, processes, roles and responsibilities within the system.
- f. The Bill's exposure draft does not integrate the natural and built environments as well as it needs to. As such, it is difficult to see how the government's objectives for the reform of the resource management system will be achieved based on the framework presented in the exposure draft; this is especially the case for enabling development, improving effectiveness and efficiency, and reducing the system's complexity.
- g. The Environment Committee needs to ascertain whether the Act would:
  - integrate well with the wider urban planning system
  - simplify, streamline and shorten the length of processes
  - reduce the number of instances a consent application is required
  - recognise the net benefits of a project instead of decisions being made on the support and objections received on an application, which are often localised
  - enable critical and/or significant infrastructure to be consented/approved faster compared to under the RMA
  - negate the need for a statute like the COVID-19 Recovery (Fast-track Consenting) Act 2020 or the Housing Accords and Special Housing Areas Act 2013 to progress significant infrastructure projects or enable urban development

- enable urban development to occur without vexatious objections.
- h. The Act will need to adequately account for net benefits in addition to cumulative effects. Failure to do so will likely result in development being stifled. The Act would need to enable objective, transparent and reliable mechanisms to measure and quantify cumulative effects and net benefits.
- i. Infrastructure New Zealand submits that the purpose of the Bill needs to be broadened.
- j. The Bill's exposure draft puts forward 16 different (and often competing) outcomes. Strong provisions will therefore be required to address how conflicts will be resolved and the benefits of trade-offs recognised.
- k. Infrastructure New Zealand submits that infrastructure and infrastructure services both need to be defined, and that the Bill needs to enable both. A definition needs to be broad enough to be flexible and remain applicable in future without the Act requiring an amendment.
- l. Infrastructure New Zealand supports the concept of a national planning framework in principle, though we have reservations.
- m. There are a number of matters regarding natural and built environment plans and planning committees that the Environment Committee needs to consider as part of its inquiry.
- n. We would welcome the opportunity to engage with the Environment Committee further in finalising its inquiry.

## 1. Introduction

- 1.1 Infrastructure New Zealand welcomes this opportunity to make a submission to Parliament's Environment Committee (**the Committee**) on its *Inquiry on the Natural and Built Environments Bill: Parliamentary Paper*. This is Infrastructure New Zealand's submission on the inquiry.
- 1.2 Infrastructure New Zealand is New Zealand's peak industry body for the infrastructure sector. We promote best practice in national infrastructure development through research, advocacy and public and private sector collaboration. Our members come from diverse sectors across New Zealand and include infrastructure service providers, investors and operators.
- 1.3 We would like to appear before the Committee to speak to our submission.
- 1.4 Please direct enquiries to Claire Edmondson, General Manager, at [claire.edmondson@infrastructure.org.nz](mailto:claire.edmondson@infrastructure.org.nz).

### An incomplete exposure draft

- 1.5 Infrastructure New Zealand appreciates the government making public an exposure draft of the Natural Built and Environments Bill (**the Bill**) and setting up a Parliamentary inquiry process to receive feedback on the exposure draft.
- 1.6 This is however an incomplete draft meaning submitters do not know how certain initiatives are proposed to work, e.g. how the national planning framework would be prepared.

### Timelines

- 1.7 We are disappointed by the short timeframe allowed for public submissions to be made on the Committee's inquiry.
- 1.8 The inquiry is part of a once-in-a-generation reform of the resource management system and we would have liked to have undertaken significant engagements with our members on a major piece of proposed legislation. The short timeframe has meant we have not been able to extensively engage with our members, which in turn means our submission is focussed on key strategic matters only.
- 1.9 Infrastructure New Zealand notes that the government intends to pass the Bill into legislation in this Parliamentary term. We submit this timeline is too ambitious and appears rushed, potentially resulting in a legislation that may be suboptimal, leading to further delays while it is interpreted and appealed through the courts.

## 2. Infrastructure New Zealand's advocacy

- 2.1 Infrastructure New Zealand welcomes this further step in replacing the Resource Management Act 1991 (**the RMA**).
- 2.2 Infrastructure New Zealand has been a lead advocate for the overhaul of the resource management system with the Employers & Manufacturers Association, Property Council New Zealand and the Environmental Defence Society.
- 2.3 The Resource Management Review Panel's report has been the latest of various national inquiries and publications over the years scrutinising the RMA, its misapplication over the years to serve particular interests – e.g. locals using character provisions to prevent housing intensification from occurring in their neighbourhood – and what needs to change.

- 2.4 The case for change has already been well made and this submission does not seek to relitigate those.
- 2.5 Nonetheless, it is worth noting that the RMA has long been a frustration in terms of delivering:
  - homes that meet New Zealanders' needs and aspirations
  - infrastructure that meets communities' expectations.
- 2.6 The chair of the New Zealand Infrastructure Commission: Te Waihanganga Dr Allan Bollard noted in an article in May 2021 that anecdotally consent costs spend on councils, planners, lawyers and landscape architects often dwarf the fees and margins paid to the engineers, architects and contractors who actually build infrastructure projects. The challenge now is to move to a system that is cost effective and efficient.

### 3. The reform of the resource management system

- 3.1 The ensuing Natural and Built Environments Act (**the Act**) will be one of three new Acts to replace the RMA, the others being the Strategic Planning Act and the Climate Change Adaptation Act.
- 3.2 The addition of another two Acts to the wider urban planning system will increase the number of statutes that need to be navigated which includes statutes such as the:
  - Local Government Act 2002
  - Local Government (Rating) Act 2002
  - Land Transport Management Act 2003
  - Local Government (Auckland Council) Act 2009 specifically for Auckland, particularly in regards to the requirement for spatial planning
  - Conservation Act 1987
  - Building Act 2004
  - Reserves Act 1977
  - Public Works Act 1981
  - Property Law Act 2007
  - Unit Titles Act 2010.
- 3.3 The Bill's exposure draft does not propose separation of the natural environment from the built environment (land-use planning/urban planning/development), including within the Bill.
- 3.4 One of the reasons the Resource Management Review Panel recommended the retention of an integrated approach for land use planning and environmental protection, encompassing both the built and the natural environments, was to avoid complex interface issues between purposes, processes, roles and responsibilities within the system as a result of different statutes.
- 3.5 The Committee needs to satisfy itself that having three new Acts would not create complex interface issues between purposes, processes, roles and responsibilities within the system.
- 3.6 Similarly, the Bill's exposure draft does not integrate the natural and built environments as well as it needs to. As such, it is difficult to see how the government's objectives for the reform of the resource management system will be achieved based on the framework presented in the exposure draft; this is especially the case for enabling development, improving effectiveness and efficiency, and reducing the system's complexity.
- 3.7 We are concerned that while the Act may deliver improved outcomes for the natural environment and tangata whenua, it will likely continue to deliver poor outcomes for housing, infrastructure and urban development.
- 3.8 The Committee needs to ascertain whether the Act would:

- integrate well with the wider urban planning system
- simplify, streamline and shorten the length of processes
- reduce the number of instances a consent application is required
- recognise the net benefits of a project instead of decisions being made on the support and objections received on an application, which are often localised
- enable critical and/or significant infrastructure to be consented/approved faster compared to under the RMA
- negate the need for a statute like the COVID-19 Recovery (Fast-track Consenting) Act 2020 or the Housing Accords and Special Housing Areas Act 2013 to progress significant infrastructure projects or enable urban development
- enable urban development to occur without vexatious objections.

## 4. The Natural and Built Environments Bill's exposure draft

- 4.1 The Bill's exposure draft is a significant departure from the RMA.
- 4.2 Its proposed purpose is broader than the RMA's, emphasises protecting and enhancing the natural environment (instead of just managing it) and considers future generations' well-being.
- 4.3 We also note the draft's proposal to taking a precautionary approach and having particular regard to cumulative effects.
- 4.4 As alluded to above, the resource management system plays a critical role in the wider urban planning system.
- 4.5 Infrastructure New Zealand is encouraged by the focus on cumulative effects, meaning focus will be beyond just individual consent applications. We strongly submit that the same must apply to infrastructure and development proposals that will have net benefits. It would be counterintuitive to only recognise cumulative effects but fail to recognise net benefits of projects.
- 4.6 Failure to adequately account for net benefits of projects (in addition to cumulative effects) will likely result in development being stifled.
- 4.7 The Act would thus need to enable objective, transparent and reliable mechanisms to measure and quantify cumulative effects and net benefits.
- 4.8 Cost-benefit analyses have long been used as a primary tool though we note guidance would be needed in terms of the choice of discount rate. [In our submission to the Infrastructure Commission: Te Waihanga on its consultation document, *He Tūāpapa ki te Ora – Infrastructure for a Better Future*, we submitted that the commission should publish discount rates and review them periodically in the interests of enhancing transparency and providing guidance for councils and infrastructure providers that use a net present value approach to modelling development contributions/infrastructure-related charges.]

### The draft purpose

- 4.9 The draft purpose is leaned heavily towards the natural environment and does not do much for the built environment or for development to occur.
- 4.10 The same can be said for the provision of essential infrastructure that promotes social, economic, environmental, and cultural well-being.
- 4.11 The purpose must also recognise the importance of enabling urban development within the built environment.
- 4.12 Infrastructure New Zealand submits that the Bill's purpose should be expanded to reflect the above.

4.13 We propose that the Bill's purpose – clause 5(1) – should be expanded as follows as follows:

**5 Purpose of this Act**

(1) The purpose of this Act is to enable-

(c) urban development to occur

(d) infrastructure to be provided without undue delay, ensuring the delivery of critical and/or significant public infrastructure that promotes social, economic, environmental, and/or cultural well-being is not inhibited

(e) the net benefits of infrastructure projects and urban development in promoting social, economic, environmental, and/or cultural well-being to be the primary consideration.

**An outcomes-based approach**

4.14 The draft Bill puts forward 16 different (and often competing) outcomes.

4.15 Strong provisions will be required to address how conflicts will be resolved and the benefits of trade-offs recognised. The approach to resolving (inevitable) conflicts between these outcomes will be critical to the Act's success.

4.16 Infrastructure New Zealand notes that clause 8 of the draft Bill states that a national planning framework and all plans must promote the environmental outcomes. We interpret this as meaning that when assessing consent or designation applications, a consenting authority would not need to refer back to section 8 of the Act or try to balance and reconcile competing outcomes.

4.17 A significant challenge for councils under the RMA is the re-zoning of new greenfield areas for urban development, even where these are identified in a spatial plan as suitable for urban development. To do this more efficiently under the Act, councils would need clear direction on prioritising and resolving the inevitable conflicts between (and within) the environmental limits and environmental outcomes.

## 5. Infrastructure

5.1 The Act – and indeed the resource management system as a whole – will need to enable urban development to occur.

5.2 Key to this would be facilitating a holistic approach where the provision of key infrastructure (including social infrastructure) that meets community expectations is a priority and not considered an after-thought as is currently the practice in many greenfield developments.

5.3 The RMA and the various plans made under it failed to adequately take into account infrastructure needs (including those around funding issues) in determining land-use planning resulting in suboptimal outcomes for New Zealanders.

**Snapshot: The current approach to greenfield urban development**

Greenfield developments are currently mostly focussed on the supply of residential dwellings and do not have much to offer in terms of employment. There is a need to ensure greenfield developments provide meaningful employment to residents whether that be office, commercial and/or industrial activities. The most that usually gets delivered at the moment is limited opportunities in the retail sector. The same can be said for the provision of schools within walkable catchments in new greenfield areas.

Greenfield developments also usually lack key infrastructure services such as adequate, reliable and rapid/frequent transport links. The current approach to greenfield developments often creates a reliance on private vehicles from the outset since public transport is only provided much later on. When public transport eventually does get provided, it is not as attractive an option because:

- most residents are no longer able to easily switch to public transport, especially where they are travelling much longer distances and where public transport options would require transfers (and waiting times between those transfers)
- buses then become caught up in traffic congestion and where passengers require to transfer to another bus or train, they get significantly delayed.

If the status quo is not rectified, New Zealanders living in greenfield areas will continue to have to travel long distances for school and work purposes which would worsen congestion and emission levels. In such an instance, the purpose and outcomes of the Act would not be achieved.

## Defining infrastructure

- 5.4 The Bill's exposure draft does not include a definition for infrastructure.
- 5.5 Infrastructure New Zealand submits that infrastructure and infrastructure services both need to be defined, and that the Bill needs to enable both.
- 5.6 A definition needs to be broad enough to be flexible and remain applicable in future without the Act requiring an amendment. There is also a possibility of having the option of secondary legislation – being a national planning framework – providing clarification and/or listing out specific infrastructure or particular assets that are excluded.
- 5.7 A definition needs to also reflect community and bulk infrastructure that is provided by local government pursuant to the Local Government Act 2002.
- 5.8 In defining infrastructure, the bill should note the public good infrastructure and infrastructure services provide; this also includes privately funded/owned infrastructure where public accessibility is enabled through payment, e.g. privately provided tolled roads, consumption of electricity generated from a windfarm or telecommunications services that are facilitated by cell towers.

## 6. A national planning framework

- 6.1 The Bill's exposure draft proposes a national planning framework that will set directions, environmental limits, policies, goals, rules, or methods, and/or provide criteria, targets, or definitions.
- 6.2 We note the framework would have the effect of regulations, i.e. the government will be able to prepare, update or review the framework without going through the Parliamentary process as is the case when passing a Bill or amending an Act.
- 6.3 One of the criticisms of the RMA has been that it has been too slow to react to new challenges like the housing crisis adequately. A national planning framework could serve as a key mechanism for the government to directly influence how well outcomes – like housing supply and infrastructure – will be achieved.
- 6.4 Infrastructure New Zealand supports the concept of a national planning framework in principle, though we have reservations. Our primary concern is that while an integrated approach could well work with further national direction via a national planning framework, the shape and form of the framework would be very dependent on the government of the day, thus affecting the level of certainty and clarity the resource management system provides.
- 6.5 We also note that a framework will not be developed until after the Bill has been enacted. A national planning framework is central to the success of the resource management system reform and should thus be developed alongside the Bill so that the whole system can be understood and assessed.
- 6.6 The content and structure of the framework will be central to assessing whether or not the proposed reforms will achieve their objectives. In particular, how well the framework resolves conflicts (which it is required to do under the draft clause 13(3)) will determine

the effectiveness and efficiency of much of the resource management system reform programme.

- 6.7 We submit a national planning framework should include or address the following:
- an enhanced and expanded set of national planning standards (i.e. a complete toolbox and rule framework for plan-making)
  - a consolidated and streamlined set of national policy statements (assumed to be covered by clause 14 of the Bill's exposure draft)
  - permitted development standards specifying certain permitted activities and associated performance standards at a national level
  - alignment with the Building Code, especially regarding the management of natural hazards and minimum standards to achieve to enable built development to proceed.
- 6.8 A framework would also need to identify situations or circumstances which should be excluded (i.e. carve-outs) from environmental limits or environmental outcomes. These could include, for example, urban growth areas identified in a regional spatial strategy, or regionally significant infrastructure, which once identified should be able to proceed at pace to meet built environment outcomes.
- 6.9 In the case of urban growth areas identified in a regional spatial strategy, this could be achieved by a similar approach to that provided for under clause 15(2)(c) of the Bill's exposure draft. This would allow a regional spatial strategy to direct relevant plans under the Act to include and zone new growth areas without resorting to a public plan change process (i.e. essentially a regional spatial strategy establishes the spatial and zoned extents within environmental limits, while the corresponding natural and built environment plan enables implementation of that zone. [The effectiveness of a regional spatial strategy will rely on it having enough "teeth" to direct inclusion of matters in natural and built environment plans. The regional spatial strategy process will still have to demonstrate that development within environmental limits is achieved, and that the relevant environmental outcomes have been considered and balanced.]

## 7. Plan-making: Natural and built environment plans

- 7.1 The Bill's exposure draft proposes the establishment of planning committees in each region to prepare natural and built environments plans which will eventually seek to consolidate over 100 RMA policy statements and regional and district plans into about 14 plans. The government considers this vital to simplifying and improving the system's integration.
- 7.2 There are a number of matters regarding natural and built environment plans and planning committees that the Committee needs to consider as part of its inquiry.
- 7.3 The first is the question of how these planning committees would be funded. Councils already have significant funding pressures and ratepayers may not take kindly to further rates increases and/or council funds being used to fund planning committees that will, in effect, erode local democracy.
- 7.4 The proposed representation on the planning committees could result in tier one local authorities being outnumbered by smaller rurally focussed authorities and regional councils. This could result in a greater focus on wider regional issues with less focus on urban growth management, inevitably resulting in further issues in terms of provision of housing and resolving growth issues.
- 7.5 The Committee also needs to satisfy itself that planning committees would be more efficient (including in terms of cost) and effective as compared to current plan-making processes.
- 7.6 The Committee will also need to consider how efficiently plan changes would be managed by planning committees.



## 8. Other matters

- 8.1 We understand that established jurisprudence will not be maintained under the Act. This presents significant risks to the success of the resource management system reform programme and means that the Act and the Spatial Planning Act will need to provide absolute clarity and certainty from the outset. The mismatch between intention, interpretation and application has been a key failure of the RMA and we cannot afford to let that happen again.
- 8.2 The Committee needs to give consideration to transitional matters, e.g. whether existing infrastructure-related consents, existing use rights and designations would roll over or whether they would need to be 'reconsented'.

## 9. Conclusion

- 9.1 Infrastructure New Zealand thanks the Committee for the opportunity to make a submission on its *Inquiry on the Natural and Built Environments Bill: Parliamentary Paper*.
- 9.2 We would welcome the opportunity to engage with the Committee further in finalising its inquiry.

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