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Infrastructure New Zealand Submission to the Environment Committee – Natural and Built Environment Bill

1. About Infrastructure New Zealand

- 1.1 Infrastructure New Zealand (INZ) welcomes this opportunity to submit to the Environment Committee on the Natural and Built Environment Bill.
- 1.2 INZ is New Zealand's membership organisation 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 While INZ has submitted as the peak infrastructure sector organisation, we have also encouraged our members to make their own submissions raising those issues specific to their areas of interest or expertise.
- 1.4 INZ requests the opportunity to appear before the Select Committee in due course to present our submission.

2. General Remarks

We recognise that the Bills present a significant milestone

- 2.1 INZ firstly wants to acknowledge the significance of the introduction of both the Natural and Built Environment Bill and the Spatial Planning Bill. INZ on behalf of its members (along with the Property Council, Business New Zealand, the Employers and Manufactures Association and the Environmental Defence Society) has long advocated for a change to the current overly complicated, expensive and time-consuming planning system.
- 2.2 It is well recognised that New Zealand faces urgent challenges that require, among other things, a paradigm shift in terms of how the planning system provides for infrastructure. As a country we have a significant infrastructure deficit of \$210 billion.
- 2.3 It is well known that our current planning framework has exacerbated these challenges. Te Waihanga / The New Zealand Infrastructure Commission found that projects valued under \$1 million are spending between 13% and 16% of their project budgets on resource consenting. These consenting costs are primarily incurred by applicants having to seek external expert advice, with nearly 70% of consent-related expenditure going to external experts and legal costs.

However, our concerns remain on the approach taken to reform

- 2.4 While we continue to support the Government as it delivers on these significant reform programmes and Bills, we still consider that the overarching approach being taken does not get to the heart of the issues that need to be addressed in the planning system – primarily around incentives and integration.

Misalignment of incentives remain a problem

- 2.5 Our system has a significant problem with institutional incentives being misaligned fiscally, financially, and structurally.
- 2.6 Central and local government both face different (and often competing) motivations. Local government's primary source of revenue – rates – is detached from council performance and instead linked to perceptions of need and affordability. They face not incentive for growth – rather they only see the costs of growth in the communities. This puts them at odds with central government who gets direct benefits from improved economic performance.
- 2.7 Unless this challenge is addressed, we do not believe the reforms will reach their full potential.

We continue to lack a new and integrated resource management system

- 2.8 We still remain concerned that under the proposed new system there are still a lack of integration across legislation. The overall complexity of our system remains.
- 2.9 The new resource management system will cut across more pieces of legislation and create further convoluted in the system (the new system will include the Built Environment Act, Spatial Planning Act, The Local Government Act, the Land Transport Management Act, and Climate Change Adaptation Act).
- 2.10 INZ continues to believe that we need to better integrate the environmental protection and development system. As we outlined in our 2019 report – *Building Regions: A vision for local government, planning law and funding reform* – stepping back from the current reforms, we would recommend that the Resource Management Act, Local Government Act and Land Transport Management Act be merged into two main pieces of legislation:
- 2.10.1 The **Environment Act** would put the environment first. A national environmental regulator replaces existing regional council functions. National bottom lines identified, and regions given scope to strengthen bottom lines depending on local aspirations.
- 2.10.2 The **Development Act** would consolidate the planning functions of the Resource Management Act with the Local Government Act and the Land Transport Management Act. It would provide opportunities for, and processes to establish, regional government, subject to a local referendum.
- 2.11 We believe that this approach would provide greater integration and alignment in the resource management system.
- 2.12 The size and complexity of the Natural and Built Environment Bill is also concerning. There is a risk that the Bill is ‘more of the same’ and just ‘another version’ of the status quo which will not be sufficient to meet the challenges faced across Aotearoa. In the 2020 report of the Resource Management Review Panel, it was stated that:
- 2.12.1 *The RMA is one of New Zealand’s most complex pieces of legislation to administer. The frameworks contained in its more than 750 pages attempt to manage an ever-increasing array of complicated environmental issues, as well as competing needs and interests.*
- 2.13 We are worried that this statement could also hold true for the current drafting of the Bill.
- 2.14 Due to the approach being taken, we also question whether the same behaviours and incentives will just transfer over to the new system. As mentioned above, we have long noted that local

and central government do not have the right incentives. If the legislation does not provide an avenue for change, then these behaviours will hinder its success.

Implementation is a key risk

2.15 We also want to note caution with implementation. The success of this Bill will not be down to how it is drafted, but rather, its implementation and how well the system and its actors are supported to deliver on it. It is well known that the Resource Management Act (RMA)1991 particularly lacked strong direction from central government and implementation support.

2.16 While we support the focus on implementation and transition pathway, we still know that it will be a long road that will require ongoing (and bipartisan) support to be successful.

The timeframe for engagement is not sufficient

2.17 Finally, and like with many stakeholders, we are disappointed by the short timeframe allowed for public submissions to be made on this Bill. Given the significant changes proposed to the system, we consider that the public consultation timeframe is inadequate. This is further coupled with the range of other reforms that the Government is seeking feedback on, including Three Waters reform and the Future for Local Government review.

2.18 The timeframe provided does not allow for those impacted to truly digest the Bill and provide meaningful input. We are concerned that a lack of reasonable time and the ability for a wide range of stakeholders to fully stress test the provisions, may result in bad policy making or unintended consequences.

That said, the Bills do present a way forward

2.0 The new planning system needs to recognise the benefits of infrastructure and provide guidance for managing its effects. The provision of infrastructure generates substantial societal benefits, and we need to move away from the opposing discord – environment versus development.

2.1 We are generally supportive of the Bill as a move forward towards this reality – noting that our integrated vision outlined above is not the path that has been taken. We know that the reform programme is well needed. In particular, INZ are supportive of:

2.1.1 the shift to an outcomes-based approach that recognises the benefits of development and change in the built environment

2.1.2 the approach to the National Planning Framework (NPF), including the infrastructure chapter

2.1.3 the introduction on regional spatial planning

2.1.4 the consolidation of plans.

2.2 Overall, INZ supports the objectives of the reforms to create a planning system that is more enabling of infrastructure and establishes a fit-for-purpose infrastructure consenting process. The NBE Bill goes a long way to enabling infrastructure by specifically recognising the importance of infrastructure and retaining existing national directions through the proposed National Planning Framework (NPF), streamlined NBE and regional spatial strategy (RSS) processes.

Specific comments and recommendations

2.3 The remainder of this submission outlines the provisions we support, as well as some specific concerns and recommendations on clauses in the Bill. We address these from a broader INZ perspective on where the Bill could be improved before it is passed into law. A full list of our recommendations is included in Appendix 1.

3. Purpose and outcomes (Part 1)

General comments

3.1 Part 1 sets out the purpose, outcomes, and principles of the Bill. As mentioned above, we are generally supportive of the move towards an outcomes approach, and also the greater recognition of infrastructure provision and development in resource management.

Purpose of the Natural and Built Environment Bill (Clause 3)

3.2 The purpose of the Bill is to enable the use, development, and protection of the environment and recognise and uphold te Oranga o te Taiao. To enable the use, development and protection of the environment, the purpose states that it must do this in a way that: supports the well-being of present generations without compromising the well-being of future generations; promotes outcomes for the benefit of the environment; complies with environmental limits and their associated targets; and manages adverse effects.

3.3 Previously, INZ submitted that the purpose of the legislation should better reflect the enablement of infrastructure in the built environment. We were concerned that the purpose leaned too heavily towards the natural environment and did not do much for the built environment or to enable development to occur. We recommended that the purpose be reframed to be:

3.3.1 urban development to occur

- 3.3.2 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
 - 3.3.3 the net benefits of infrastructure projects and urban development in promoting social, economic, environmental, and/or cultural well-being to be the primary consideration.
- 3.4 We note that the current drafting of the purpose has changed since the exposure draft and welcome the recognition of enabling the 'use' and 'development' of the environment. This is an important move for the Bill as a way to be clear about its dual roles, and we are very supportive.
- 3.5 However, as with other submitters, we consider that there will need to be caution so that two limbs of the purpose do not conflict and add complexity.

Outcomes (Clause 5)

- 3.6 The Bill outlines 18 outcomes (clause 5), including that the NPF and all plans must provide for well-functioning urban and rural areas that are responsive to the diverse and changing needs of people and communities in a way that promotes:
- 3.6.1 the use and development of land for a variety of activities, including for housing, business use, and primary production
 - 3.6.2 the ample supply of land for development, to avoid inflated urban land prices
 - 3.6.3 housing choice and affordability
 - 3.6.4 an adaptable and resilient urban form with good accessibility for people and communities to social, economic, and cultural opportunities.
- 3.7 It also outlines that the NPF, and all plans, must provide ongoing and timely provision of infrastructure services to support the well-being of people and communities. We support the shift in focus from managing adverse effects to promoting positive outcomes under the NBE Bill, and in particular the inclusion of an infrastructure system outcome under clause 5(i).
- 3.8 INZ are generally supportive of these outcomes, particularly 5(c) and (i). We do note that most outcomes focus on environmental matters. Although there is no hierarchy between outcomes specified in the NBE Bill and there should be a balancing of these outcomes with differing weightings dependent on the particular location and circumstance.
- 3.9 However, we consider that the more directive language of the environmental outcomes means that these outcomes will inevitably prevail if in conflict with the infrastructure or urban

environment outcomes. We expect there will be litigation to test the outcomes and targets which will eventually lead to clarity as to the hierarchy between outcomes.

- 3.10 The NPF is expected to contain an "interpretation" national direction chapter to assist in reconciling conflicts between outcomes. The contents of this chapter of the NPF, as well as any infrastructure pathways through limits/targets, are critical if infrastructure is going to be able to deliver the outcome under 5(i).
- 3.11 However, we question why (i) uses the term 'infrastructure services' as opposed to just 'infrastructure'. The term infrastructure is defined later in the Bill and provides the clarity needed, rather than having two separate terms. 'Infrastructure services' is also not defined in the Bill.
- 3.12 The current infrastructure outcome also does not appropriately recognise the critical role of infrastructure in providing for well-functioning urban environments. Given the importance of the infrastructure outcome to the NBA framework, this needs to be strengthened. We recommend that clause 5(i) to a more detailed outcome of *the protection, and enablement in a timely and efficient manner, of infrastructure to support the well-being of people and communities.*
- 3.13 We also consider that clause 5(c) should be amended to recognise that the Bill should not only promote the list above, but also enable. Therefore, we suggest that clause 5(c) be revised to the following: well-functioning urban and rural areas that are responsive to the diverse and changing needs of people and communities in a way that enables and promotes.
- 3.14 Further, and as with many other stakeholders, we remain concerned about the lack of guidance around how the 18 outcomes should be considered and how to trade-off across them. We have previously expressed that there needs to be clear direction on prioritising and resolving the inevitable conflicts between (and within) the environmental limits and environmental outcomes.
- 3.15 We understand that the NPF will include strategic direction on the resolution of conflicts about environmental matters, including those between or among the environmental limits. We are supportive of this and will look forward to engaging on the first draft of the NPF when it is available.
- 3.16 That said, we consider that the NPF will need to clearly articulate a method to reconcile different outcomes where they conflict in a pragmatic manner that recognises the important role infrastructure plays in the wellbeing of society.
- 3.17 We also are cautious about the ability of the Minister to determine how trade-offs are made in secondary legislation without checks and balances. Further down in this submission we recommend that bipartisan support should be required for the first NPF.

Recommendation 1 and 2

3.18 Infrastructure New Zealand recommend that clause 5(i) be amended to *the protection, and enablement in a timely and efficient manner, of infrastructure to support the well-being of people and communities.*

3.19 Infrastructure New Zealand recommend that clause 5(c) be revised to the following: *well-functioning urban and rural areas that are responsive to the diverse and changing needs of people and communities in a way that enables and promotes –.*

Decision-making principles (Clause 6)

3.20 We welcome the addition of the decision-making principles, and in particular 6(1)(c) which states that the Minister and every regional planning committee must recognise the positive effects of using and developing the environment to achieve the outcomes. We consider that the inevitable conflicts between different land-uses should be called out and that management of these be included in the decision-making principles with a new clause 6(1)(f).

3.21 We do however note caution with clause 6(2), which states that when the information available is uncertain or inadequate, all persons exercising functions, duties, and powers under the Act must favour caution and a level of environmental protection that is proportionate to the risks and effects involved.

3.22 We are concerned that this clause is subjective and can be used against infrastructure provision and development and create undue hurdles. This clause also risks entrenching a favour towards the environment – a problem we need to continue to move past with this legislation.

Recommendation 3

3.23 Infrastructure New Zealand recommends that clause 6(1) is amended to add the following:

(f) manage conflicts between incompatible land uses.

And clause 6(2) is removed.

Definition of Infrastructure (Clause 7)

3.24 The Bill defines infrastructure across three definitions – development infrastructure, eligible infrastructure, and infrastructure.

3.25 We are pleased to see these explicit definitions and support their wording, particularly the extensive definition of ‘infrastructure’.

3.26 However, we would like to the recognition of supply chain and construction materials in the definition of infrastructure.

Recommendation 4

3.27 Infrastructure New Zealand recommends that the definition of infrastructure be amended to include 'the supply of construction materials'.

4. National Planning Framework (Part 3 and Schedules 1 and 6)

General comments

- 4.1 Under the new system, the NPF will play an equivalent role to that of national direction under the RMA. The NPF will have mandatory content, including strategic direction on certain areas, direction for the resolution of conflicts and environmental limits and targets. We fully support the inclusion of new national direction for infrastructure, and the inclusion of the existing national direction instruments under the RMA.
- 4.2 We have previously recommended that the NPF should include, or address, the following:
 - 4.2.1 an enhanced and expanded set of national planning standards
 - 4.2.2 a consolidated and streamlined set of national policy statements
 - 4.2.3 alignment with the Building Code, especially regarding the management of natural hazards and minimum standards to achieve to enable built development to proceed.
- 4.3 As such, INZ strongly supports a rationalisation across national direction, noting that it will carry through, into a single integrated framework, the existing national direction in National Policy Statements (NPS), National Environmental Standards, the National Planning Standards and some section 360 regulations under the RMA.
- 4.4 However, this is a significant task and requires good engagement and testing with sector stakeholders. It is vital that sufficient time allowed for this process. The proposed notification of the first NPF 6 months after Royal Assent is considered too condense to allow for meaningful stakeholder engagement and production of an NPF which reflects the final legislative requirements. Notification within a 12-month period is more realistic and would result in a better product.
- 4.5 However, we have previously noted concern that 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. We continue to have these concerns and are of the view that bipartisan support is essential.

- 4.6 With this approach, we still have concerns about the workability of the NPF given that it will shift the existing national direction without consideration of comprehensively bringing it all together, including managing inconsistencies. We are concerned that if the opportunity is not taken now to streamline and consolidate national direction, that it will likely never happen.
- 4.7 As mentioned above, how well the framework resolves conflicts will determine the effectiveness and efficiency of much of the resource management system reform programme.

Recommendation 5 and 6

- 4.8 Infrastructure New Zealand recommends that bipartisan support is established when approving the NPF. Infrastructure New Zealand also continues to recommend that the NPF should include content on the alignment with the Building Code, especially regarding the management of natural hazards and minimum standards to enable built development to proceed.
- 4.9 We also recommend that Schedule 1 Clause Subpart 2 clause 5 (1) is amended to require the first NPF to be notified within 12 months of royal assent (rather than 6 months as currently proposed).

Resource allocation principles (clause 36)

- 4.10 The Bill includes an enabling framework for allocating resources, with specific provisions for freshwater, in natural and built environment plans (NBE plans). Three principles of sustainability, equity, and efficiency are outlined in clause 36 and will guide the development of allocation methods in NBE plans for freshwater resources. The explanatory note also states that these principles may be applied to other resources or be required through the National Planning Framework.
- 4.11 While we note that the NPF may give directions that provide further detail on the meaning of the resource allocation principles and on allocation methods that must be given effect to through NBE plans to allocate specified resources, not having clarity on these principles is insufficient.
- 4.12 While we are generally supportive of the principles, we are concerned that they are not defined and could be applied to the built environment, and infrastructure, without knowing what this would look like. These terms are extremely broad and can mean many different things.

Recommendation 7

- 4.13 Infrastructure New Zealand recommends that the three resource allocation principles outlined in clause 36 be defined in the Bill.

Environmental limits and targets (Clause 37-49)

- 4.14 We support the inclusion of environmental limits and targets within the NPF – either set nationally in the NPF or through the NPF providing for them to be set locally in plans. This will help avoid limits being the focus for expert debate at the consenting level, and rather ensure these are translated into the higher order planning documents.
- 4.15 We also support clause 44 that ensures that exemptions can be granted. We see this a way of stopping circumstances occurring where an unrealistic limit is prescribed. Particularly if a one-size-fits all approach does not suit a localised approach to planning.
- 4.16 However, we do have concerns about the potential politicisation of how limits and targets are set – as outlined above in recommendation 3 – where we recommend bipartisan support is established when approving the NPF.
- 4.17 We also note that greater flexibility is required. Creating more flexibility within clauses 37-46 to allow for trade-offs (including the use of environmental offsetting) at a local level for environmental limits will ensure that the exemption clause does not have to be used on a recurring basis, as anticipated by some local authorities.

Recommendation 8

- 4.18 Infrastructure New Zealand recommends that more flexibility is created within clauses 37-46 to allow for trade-offs at a local level for environmental limits.

Enabling infrastructure and development corridors (clause 58)

- 4.19 Clause 58 states that the NPF must include content that provides direction on:

- 4.19.1 non-commercial housing on Māori land
- 4.19.2 papakāinga on Māori land
- 4.19.3 enabling development capacity well ahead of expected demand
- 4.19.4 enabling infrastructure and development corridors
- 4.19.5 enabling renewable electricity generation and its transmission.

- 4.20 While we are supportive of the inclusion of ‘enabling infrastructure and development corridors’, we note that ‘enabling infrastructure’ is a broad term, and that this should be clarified to mean ‘infrastructure’ as defined earlier in the Bill.

4.21 Further, we note that there is no mention of how the infrastructure is funded and financed. The lack of funding and financing of infrastructure has been one of the biggest challenges local governments have faced across New Zealand – with our current deficit sitting at \$210 billion.

Recommendation 9

4.22 Infrastructure New Zealand recommend that the term ‘enabling infrastructure’ is clarified to mean ‘infrastructure’ as defined earlier in the Bill.

Board of inquiry (Clause 9, schedule 6)

4.23 Clause 9 states that the board of inquiry for the NPF will be appointed by the Minister for the Environment who must be satisfied that the board collectively has the knowledge and expertise in relation to

4.23.1 resource management issues and processes

4.23.2 te Tiriti o Waitangi and its principles

4.23.3 tikanga Māori and mātauranga Māori.

4.24 INZ consider that this does not fully take into account all the necessary expertise needed, and that clarity is needed around expertise relating to infrastructure and development.

Recommendation 10

4.25 Infrastructure New Zealand recommend that clause 9 of schedule 6 be expanded to include knowledge and expertise in relation to infrastructure and development.

Review of the national planning framework (Clause 27 and 28, schedule 6)

4.26 Clause 27 states that the NPF must be reviewed at least every 9 years, with clause 28 stating that the Minister must consider whether it is necessary to review the NPF each time an emissions reduction plan or a national adaptation plan is issued or amended.

4.27 We support this review period and the need to consider reviews each time an emissions reduction plan or a national adaptation plan is issued or amended.

4.28 However, we consider that there should be another mechanism for consideration of an earlier review in other circumstances, such as when sufficient concerns are raised about the NPF playing out in practice.

Recommendation 11

4.29 Infrastructure New Zealand recommends that clause 27 and 28 of schedule 6 are amended to include another mechanism for early review if sufficient concerns are raised about the NPF in practice.

5. Natural and Built Environment Plans

(Part 4, schedule 7 and schedule 8)

General comments

5.1 As INZ have said previously, we support the consolidation from over 100 RMA policy statements and regional and district plans into 14 regional plans that will provide a framework for managing the natural and built environment for each region. We agree that this will simplify and improve the integration of the system and bring significant efficiencies into the system.

Integration of infrastructure

5.2 Clause 102(2)(i) states that a plan must ensure the integration of infrastructure. We are very supportive of this clause and recognition of the need for infrastructure integration.

Engagement register (clause 15, schedule 7)

5.3 While we note that while NBE plans are intended to have a strong local voice and that early engagement will be encouraged, we are concerned that parties who wish to contribute to the plan development process can only register to engage in the process. There is no certainty that these parties will be engaged with.

5.4 Clause 15 states that 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. It then goes on to state that the planning committee is not obliged to consult the persons identified in the register (clause 15(2) and 15(4)) but must act in good faith when considering matters known to be of interest to particular person.

5.5 Given how important and significant these plans will be, and in particular how much weight this new legislation gives to upfront planning, we see this as a significant risk. These clauses imply that regional planning committees have no requirement to engage with those affected and whose voices should be heard to ensure the effectiveness of the plans, including the private sector and infrastructure providers.

Recommendation 12

- 5.6 Infrastructure New Zealand recommends that clause 15 be amended to include a mandatory obligation to engage with infrastructure providers.

Plan preparation and changes (clause 22, schedule 7)

- 5.7 Clause 22 states that a regional planning committee must consult with particular parties during the preparation of a plan. This includes the Minister for the Environment, the Minister of Conservation and other Ministers of the Crown who may be affected by the plan.
- 5.8 INZ are concerned that other Ministers, if not specified, will not be consulted on when needed. Particularly on plans or plan changes that relate to growth and development.

Recommendation 13

- 5.9 Infrastructure New Zealand recommends clause 22(2) is amended to include the Ministers for Infrastructure, Housing and Transport for plan or plan changes that relate to growth and development.

Notification of proposed plans (clause 31, schedule 7)

- 5.10 Linked to our comment above, INZ notes that this clause states that the regional planning committee must provide a copy of the proposed plan and the associated evaluation report to the Minister for the Environment, Minister of Conservation, affected local authorities, regional councils adjacent to the affected region and iwi authorities in the region.
- 5.11 As with our recommendation above, we are concerned that other Ministers (such as the Minister for Infrastructure, Minister for Housing and Minister of Transport) are not included.

Recommendation 14

- 5.12 Infrastructure New Zealand recommends clause 31 is amended to include the Ministers for Infrastructure, Housing and Transport.

Independent hearings panels (clause 93, schedule 7)

- 5.13 Part 3, subpart 1 outlines the establishment of Independent Hearings Panels. It states that the Chief Environment Court Judge must appoint members who collectively have skills, knowledge, and experience of relevant legislation, planning, te Tiriti o Waitangi and its principles, local kawa and tikanga, and the mātauranga of the iwi and hapū in the region, Māori in the region, the local community, freshwater quality, quantity, and ecology and relevant legal processes.

5.14 INZ notes that there is no consideration of infrastructure provision and development expertise in this set of skills, knowledge and experience.

Recommendation 15

5.15 Infrastructure New Zealand recommends clause 93(2) is amended to include the skills, knowledge, and experience of infrastructure provision.

Size of Regional Planning Committees (Clause 2 and 3, Schedule 8)

5.16 While there will be some minimum composition requirements (clause 3), we note that there is no maximum number of members. Local authorities and the iwi and hapū in the region of a regional planning committee must reach agreement on the composition arrangement, including the total number, how many members will be appointed by local authorities and how many members will be appointed by Māori appointing bodies. There is therefore a risk that these committees become quite large and unable to drive efficient decision-making. We suggest that there needs to be greater consideration of a maximum number, while taking into account how this would work in larger regions.

5.17 That said, we do support the intent behind clause 3(2) which outlines that the composition arrangements must ensure that the size of the committee supports effective decision making and efficient functioning, that regional, district, urban, rural, and Māori interests are effectively represented and that the local authority membership of the committees has been agreed with consideration of the different populations of the individual local authorities and the desirability of applying some weighting in respect of that.

5.18 We also support clause 3(3) which notes consideration should be given to any existing arrangements between those groups and local authorities in the region. As part of this clause, we would want to see the current Urban Growth Partnerships forming the basis/platform for these Regional Planning Committees.

Recommendation 16

5.19 Infrastructure New Zealand recommends that clause 2 of schedule 8 be amended to include a maximum number of members on regional planning committees. This maximum should adequately reflect fair representation for the larger regions.

Composition of regional planning committees (clause 3, schedule 8)

5.20 Regional Planning Committees are made up of central government, local government and iwi representatives. We note concerns by other submitters about the lack of private sector involvement in these committees. We understand the reasoning behind this in that the RPCs effectively have regulation making powers. However, we recognise the need to ensure that the

wider infrastructure and development sectors and other key stakeholders are fully engaged in the RSS development process, and that the development of best practice for ensuring this input is a component of the NPF content.

Funding for committees (clause 36, schedule 8)

- 5.21 INZ has also previously raised concerns about how the Regional Planning Committees would be funded. The Bill states that local authorities in the region of a regional planning committee must jointly fund and provide resources sufficient to enable the committee and the secretariat to perform or exercise their functions, duties, and powers.
- 5.22 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.
- 5.23 While we note that clause 37 provides for a disputes process, we consider this insufficient. We suggest that there is a 'back-stop' or step in power available to force funding arrangements if they cannot be agreed.

Recommendation 17

- 5.24 Infrastructure New Zealand recommends that a 'back-stop' or step in power available to force funding arrangements if they cannot be agreed.

Resource consenting and proposals of national significance (Part 5)

- 5.25 We are extremely supportive of the intent of the new consent system to provide more certainty and be more efficient to help reduce costs for users and decision makers. We support the push towards enabling more activities without a resource consent and the focus on moving towards consent applications for activities with less certain outcomes and higher potential for adverse effects.

Resource consenting categories (Clause 153)

- 5.26 INZ supports the intent behind the consolidation of consenting categories – permitted, controlled, discretionary and prohibited. We appreciate the push towards streamlining the consenting process as much as possible.
- 5.27 However, like other stakeholders, we remained concerned about how this might play out in practice with councils. In theory, the NPF and NBE plans aim to enable more activities without a resource consent, where they are appropriate and within environmental limits. We are hopeful that local authorities will make more use of the permitted activity use to speed up the development process.

5.28 However, we note that there are no real incentives for councils to use the permitted activity status more frequently and there is still a risk that local authorities will defer to discretionary activities. This has the potential to result in notification and slow down the consenting process.

5.29 The expectation needs to be set for councils that permitted activities will become most common. We have previously submitted that the NPF should include permitted development standards specifying certain permitted activities and associated performance standards at a national level. We continue to recommend this, supporting the idea that the NPF should set 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.

Recommendation 18

5.30 Infrastructure New Zealand recommends that greater direction is provided to councils on the use of the categories and that the NPF sets out direction as to what type of development will fall under each consenting activity (clause 153).

Activities certified by qualified person (clause 156)

5.31 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 (Clause 156(3)(c)). While INZ are supportive of this, we note that 'qualified persons' is currently undefined 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.

Recommendation 19

5.32 Infrastructure New Zealand recommend that the term "qualified persons" is defined in the Bill.

Notification (Clause 205)

5.33 Further, we are concerned about clause 205(2)(c) which states that requires a decision maker (the Minister when developing the NPF 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 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.

Recommendation 20

5.34 Infrastructure New Zealand recommends that 'relevant concerns' are defined and that the threshold for a public notification must include 2 or more of the conditions specified within clause 205(2)(a)-(d).

Duration of certain resource consent activities (clause 275)

- 5.35 We are concerned about the restriction on consent duration for water permits – 10 years. Infrastructure requiring water permits often has a long asset life – up to 50 years – and require considerable capital expenditure.
- 5.36 Longer consents allow financiers to finance the assets over the life of the asset and enable owners to take a long-term investment view. If there is uncertainty around consent duration, financiers and investors may have to assume a shorter asset life and investment may cease to be viable.

Recommendation 21

- 5.37 Infrastructure New Zealand recommend adding an ability to provide exemptions to the 10-year duration, where warranted, to support investment in long term infrastructure assets.

Fast-track consenting (clause 315)

- 5.38 A fast-track pathway for specified housing and infrastructure is proposed as an alternative process to general consenting and the notice of requirement processes proposed under the NBE Bill. This replaces the fast-track consenting process under the COVID-19 Recovery (Fast-track Consenting) Act 2020. We have previously submitted that the Natural and Built Environment Bill should negate the need for a statute like the COVID-19 Recovery (Fast-track Consenting) Act 2020 to progress significant infrastructure projects or enable urban development.
- 5.39 However, we have seen the success of the Fast-track consenting legislation for particular projects, such as the Papakura to Pukekōhe rail electrification and Papakura to Drury South State Highway 1 improvements and support the inclusion of this provision in the Bill.
- 5.40 INZ considers that this will provide the infrastructure sector with continued certainty around opportunities to accelerate a number of projects. However, we do have some concerns with how this has been brought over into the Bill.
- 5.41 Firstly, it is important to note that one of the limitations with the current fast-track legislation is the uncertainty around the Ministerial decision. We know of many projects where the Ministerial decision has taken months and provided massive uncertainty to the sector, especially when ultimately denied. This ministerial decision and ambiguity remain. This needs to be improved if this process becomes part of a long-term solution.
- 5.42 We also note that the requirement for the Minister for consultation on this decision has also been removed. Under the COVID-19 Recovery (Fast-track Consenting) Act 2020 applications were copied to and invited comments from relevant local authorities and Ministers. This process ensured that other interests, such as infrastructure provision, were duly considered when an application was received.

5.43 We also note our support on the list of eligible activities.

5.44 We also note that the transition between the two pieces of legislation is unclear. With the fast-track legislation set to be repealed in July 2023, it is unclear when this part of the Natural and Built Environment Bill will come into effect.

5.45 We have an additional concern with the current provisions of the Public Works Act 1981 where compulsory acquisition is needed. Some of the Public Works Act provisions date back to early last century and are not fit for purpose. Unnecessary delays in the property acquisition processes are thwarting the fast-track process and it is timely to review this legislation to ensure it aligns and supports the new planning and resource management framework.

Recommendation 22

5.46 Infrastructure New Zealand recommends that criteria for assessment be made clearer in the legislation and that the requirement for the Minister to consult be reinstated and that a maximum timeframe is specified in the legislation. The Public Works Act 1981 should also be reviewed to ensure streamlining of all processes with the potential to delay public infrastructure development.

Proposal of national significance

5.47 Subpart 9 outlines the process for proposals of national significance. This is 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. This maintains the option for a streamlined pathway for the consenting of large-scale infrastructure which inevitably would have ended up being referred to the Environment Court anyway. Excellent stakeholder engagement processes and early involvement of relevant councils are now a feature of this approach and in the interests of time and costs, it is important that it remains as an option.

5.48 INZ are supportive of this being retained.

6. Water and contaminated land management (clause 424-427)

6.1 Clauses 424 – 427 focus on the costs of pollution. We are concerned about the drafting of this section and the clarity that is lacking. In particular, the clause is unclear about:

- 6.1.1 the processes for landowners to claim costs for remediating a contaminated site from the polluter

- 6.1.2 the liabilities for polluters (for example, the level a site should be remediated to is not clearly articulated, and there are likely to be protracted arguments about who has caused pollution in many cases)
- 6.2 We are also concerned about the definition of a polluter and consider that there should be an exclusion here should be an exclusion for lawfully placing contamination on a site (such as creating managed fills or encapsulating contaminated materials in accordance with a resource consent (common on many infrastructure projects). At the moment we interpret the section to mean that anyone undertaking these activities would be considered to be a “polluter”.

Recommendation 23

- 6.3 Infrastructure New Zealand recommends that clauses 424-427 be clarified in terms of process, liabilities and who classifies as a polluter.

7. Matters relevant to natural and built environment plans (part 8)

General comments

- 7.1 Designations are a critically important tool for authorising and protecting key infrastructure and will continue as the primary land-use tool for public infrastructure under the NBE Bill.
- 7.2 Under the Bill, designations will continue as the primary land-use tool for public infrastructure. The NPF and Regional Spatial Strategies (RSS) will establish the high-level policy and framework for infrastructure. An RSS will integrate land-use and infrastructure decisions, including identifying indicative areas or corridors for new infrastructure over a 30-plus-year timeframe. The expectation is that these decisions are not revisited at the NBA level. Instead, for infrastructure identified in the RSS, the designation process under the NBE plan will focus more on ‘how’ the infrastructure is built and operated and the management of any environmental effects associated with this.
- 7.3 While the requirement to lodge a notice of requirement is still in place, outline plans of work have been replaced by the requirement to lodge a primary “construction and implementation plan” (CIP) and, in some cases, a secondary CIP. Primary CIPs address the construction and operation activities of the work, the anticipated effects and how those effects will be managed. The secondary CIPs address the same kind of matters required for an outline plan.

Access to designations (clause 503)

- 7.4 INZ are pleased to see that designation powers will be available to a wider range of infrastructure providers, including port operators and fire and emergency services, as well as

other providers that are now able to apply to the Minister for “public good” infrastructure, including for a specific project or purpose.

Construction and implementation plans (clause 504)

7.5 We are supportive that the Bill is more explicit around what information is needed in the first step compared with the second step. This should help ensure that the appropriate amount of detail is provided at the early stages of a designation and then once investigations and detailed designs have been completed then more details on the construction process can be provided.

Notice of Requirement Hearings (Clause 509)

7.6 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. There is a risk that this could create a doubling up of the process and cause un-necessary time delays. It would be helpful for the NPF to provide some guidance as to when two hearings are considered appropriate.

Recommendation by regional planning committee (Clause 512)

7.7 We are very supportive of clause 512’s recognition of decisions made at the RSS level, in particular:

7.7.1 clause 512(3) which notes that if the infrastructure concerned has been spatially identified in a regional spatial strategy, the planning committee must not consider whether adequate consideration has been given to alternatives.

7.7.2 clause 512(4) which notes that if the infrastructure concerned has been identified in a regional spatial strategy, the planning committee must not consider whether the work and designation are reasonably necessary for achieving National Planning Framework outcomes or the regional spatial strategy’s vision and objectives for the region’s development or any change or strategic outcomes in plans.

8. Exercise of functions, powers and duties under this Act (part 10)

Role of the Minister for the Environment (clause 630)

8.1 We note that the Minister for the Environment has extensive powers under the Bill – with the specific functions outlined in clause 630.

- 8.2 While INZ supports the potential streamlining in the use of regulations and Ministerial approvals, we also are conscious about the extensive nature of these powers and the lack of input from other Ministerial portfolios, such as Infrastructure, Housing and Transport.
- 8.3 If this piece of legislation is truly going to recognise and strive towards better outcomes for the built environment, then we recommend that there is greater involvement and more joint approvals with other Ministerial portfolios, such as Infrastructure, Housing and Transport.
- 8.4 We also strongly recommend that the Bill is jointly administered by the Ministry for the Environment and the Ministry of Housing and Urban Development. This precedent has been set with other pieces of legislation, such as the Crown Entities Act 2004.

Recommendation 24

- 8.5 Infrastructure New Zealand recommend that the Bill is jointly administered by the Ministry for the Environment and the Ministry of Housing and Urban Development.

9. Transitional, savings, and related provision (Schedule 1)

- 9.1 We consider the first NPF to be paramount in setting the scene for the new system. However, we have concerns about whether the 6-month timeframe is sufficient time.
- 9.2 If the first NPF will largely simply reflect existing RMA direction, then the first RSS and NBA Plans will be based off that direction, rather than the NPF which reflects the new direction under the NBE Bill. We also think this raises concerns about how the first NPF will direct elements of the new system that are not already part of RMA direction, such as notification, activity statuses (including providing for matters such as permitted activity notices) and to provide a pathway for infrastructure through environmental limits.

Recommendation 25

- 9.3 Infrastructure New Zealand recommend that the timeframe for developing the first NPF should be extended from 6 months to 12 months to allow for meaningful consultation with key stakeholders that will be impacted by the NPF.

10. Conclusion

- 10.1 As outlined earlier on in our submission, we firstly want to note the significant work that has gone into this reform programme. INZ generally supports both of these Bills as tremendous steps forward from the Resource Management Act 1991.

10.2 We thank the Environment Committee for the opportunity to submit on the Natural and Built Environment Bill and wish to appear before the Committee to present our submission.

Michelle McCormick
Policy Director
Infrastructure New Zealand

Annex 1: Full summary of recommendations

#	Reference	Recommendation
1	Clause 5	Amend Clause 5(i) to read: The protection, and enablement in a timely and efficient manner, of infrastructure to support the well-being of people and communities.
2	Clause 5	Clause 5(c) be revised to the following: well-functioning urban and rural areas that are responsive to the diverse and changing needs of people and communities in a way that enables and promotes –.
3	Clause 6	Clause 6(1) is amended to add the following: <i>(f) manage conflicts between incompatible land uses.</i> And Clause 6(2) is removed.
4	Clause 7	That the definition of infrastructure be amended to include ‘the supply of construction materials’.
5	n/a	Bipartisan support is established when approving the NPF. The NPF should include content on the alignment with the Building Code, especially regarding the management of natural hazards and minimum standards to achieve to enable built development to proceed.
6	Schedule 1 Subpart 2 clause 5(1)	Schedule 1 Clause Subpart 2 clause 5 (1) is amended to require the first NPF to be notified within 12 months of royal assent (rather than 6 months as currently proposed).
7	Clause 36	The three resource allocation principles outlined in clause 36 be defined in the Bill.
8	Clause 37-46	More flexibility is created within clauses 37-46 to allow for trade-offs at a local level for environmental limits.
9	Clause 58	The term ‘enabling infrastructure’ is clarified to mean ‘infrastructure’ as defined earlier in the Bill in clause 7.
10	Clause 9 (Schedule 6)	Clause 9 (of schedule 6) be expanded to include knowledge and expertise in relation to infrastructure and development.
11	Clause 27 and 28 (Schedule 6)	Clause 27 and 28 (of schedule 6) are amended to include another mechanism for early review if sufficient concerns are raised about the NPF in practice.
12	Clause 15 (Schedule 7)	Clause 15 (of schedule 7) be amended to include a mandatory obligation to engage with infrastructure providers.

13	Clause 22 (schedule 7)	Clause 22(2) (of schedule 7) be amended to include the Ministers for Infrastructure, Housing and Transport for plan or plan changes that relate to growth and development.
14	Clause 31 (Schedule 7)	Clause 31 (of schedule 7) is amended to include the Ministers for Infrastructure, Housing and Transport.
15	Clause 93 (Schedule 7)	Clause 93(2) (of schedule 7) be amended to include the skills, knowledge, and experience of infrastructure provision.
16	Clause 2 (Schedule 8)	Clause 2 of schedule 8 be amended to include a maximum number of members on regional planning committees. This maximum should adequately reflect fair representation for the larger regions.
17	Clause 36 (Schedule 8)	That a back-stop' or step in power available to force funding arrangements if they cannot be agreed
18	Clause 153	That greater direction is provided to councils on the use of the consenting categories and that the NPF set out direction as to what type of development will fall under each consenting activity.
19	Clause 156	The term "qualified persons" is defined in the Bill.
20	Clause 205	That 'relevant concerns' are defined and that the threshold for a public notification has to include 2 or more of the conditions specified in clause 205(2)(a)-(d).
21	Clause 275	Add an ability to provide exemptions to the 10-year duration, where warranted, to support investment in long term infrastructure assets.
22	Clause 315	That the criteria for assessment be made clearer in the legislation and that the requirement for the Minister to consult be reinstated and that a maximum timeframe is specified in the legislation. The Public Works Act 1981 should also be reviewed to ensure streamlining of all processes with the potential to delay public infrastructure development.
22	Clauses 424-427	That clauses 424-427 be clarified in terms of process, liabilities and who classifies as a polluter.
24	Clause 630	That the Bill is jointly administered by the Ministry for the Environment and the Ministry of Housing and Urban Development.
25	Clause 5	That the timeframe for developing the first NPF should be extended from 6 months to 12 months to allow for meaningful consultation with key stakeholders that will be impacted by the NPF.

