



Registered Master Builders Association of New Zealand Incorporated

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

February 2023

The Registered Master Builders Association submission on the Natural and Built Environment Bill

The Registered Master Builders Association (RMBA) welcomes the opportunity to submit to the Environment Committee on the *Natural and Built Environment Bill* (“the NBE Bill”).

About RMBA

The RMBA represents over 3,000 commercial and residential builders and are the leading sector advocates on the built environment. Our sector is a key contributor to the New Zealand economy, with every \$1 million spent on house building supporting \$2.6 million across the wider economy. We are working hard to lead the change our sector needs. We want to ensure we have the regulatory systems and processes which will enable us to build faster and better. We are supporting our members to grow their capability and business acumen to ensure a strong and healthy sector; to innovate and make the most of new technologies so we meet the climate change challenge; and to attract, train and retain skilled talent. We are proud to be New Zealand’s best builders.

At Master Builders we are committed to transforming the sector and rebuilding our economy. We are focused on building better homes, communities and workplaces, and ultimately better lives for all New Zealanders. We want to ensure that the houses that we build now are accessible, affordable, and appropriate to the needs of our ever-changing society. We are building a better New Zealand.

1. Overarching view

- 1.1. RMBA, along with many other organisations across the political spectrum, has raised concerns about the Resource Management Act (RMA) on various occasions. The Act has not provided for appropriate environmental protection and many businesses testify to their inability to develop infrastructure and undertake business and construction development due to the slow and complex nature of the processes involved.
- 1.2. RMBA welcomes the need for resource reform and supports the action taken by Government to reduce the number of plans from 100 to 15, and introduce Spatial Plans which seek to plan for 30+ years. We support the Government and officials for producing the NBE Bill and the Spatial Planning Bill (SP Bill).
- 1.3. There are, however, certain sections of the NBE Bill that are of concern to RMBA and our members. These include the lack of detail on how the Bill will be implemented in practice, the lack of local voices and sector expertise within the planning and decision-making processes, and how local councils intend to implement the new planning regime and finance or fund infrastructure in future plans.
- 1.4. We expect the Select Committee to identify the concerns presented in our submissions as part of the NBE Bill’s progress through Parliament rather than addressing them once the NBE Bill has already passed. This will help the sector adjust to the new changes and will reduce delays and misunderstandings due to uncertainty and misinformation.

1.5. We recommend greater clarification and legislative amendment throughout the NBE Bill. This submission presents a list of key recommendations to influence more efficient outcomes, outlining issues relevant to RMBA's members.

2. Recommendations

1. We would like assurance that central government agencies will be sufficiently resourced to carry out their functions under the NBE Bill.
2. We recommend the Government provide more detail throughout the transition period to help clarify the purpose and actions of the NBE Bill, and to provide the necessary education to the sector for the construction pipeline to continue to run smoothly.
3. We recommend local views from the public and private sector to be incorporated within the National Planning Framework (NPF) to ensure that realistic and appropriate outcomes are set and are met.
4. We recommend for plans to focus on being practical and implementable.
5. We recommend providing further clarity on how regional plans will be financed, including funding and financing arrangements, to provide for more certainty of the delivery of projects within regional spatial strategies.
6. We recommend providing further clarity on the roles and responsibilities within government agencies and ministries.
7. We recommend developing provisions to encourage local authorities to make greater use of the permitted activity status, contributing to streamlining the consent process in practice.

3. Part 1 - Central government's role and deliverables

- 3.1. One of the major shortcomings of the current RMA environment has been the failure at central government level to produce National Policy Statements in a timely manner. These were intended as an integral part of the legislative framework, and the failure to give effect to this in a timely manner has had cascading impacts that have undermined the effective implementation of the RMA.
- 3.2. We want assurance that central government will effectively fulfil the role it has and has both the capability and capacity to deliver outcomes and functions of the new Bills.

4. Part 2 – More detail required

- 4.1. The NBE Bill is a complex piece of legislation and while RMBA is supportive of the intent of many of the changes proposed, we are concerned about how these will be implemented in practice. It is possible some of the changes introduced will simply replace one form of complexity and uncertainty with another, leading to little substantive change achieved. Moreover, the proposed definitions of some terms used in the NBE Bill are so broad they will potentially generate great uncertainty as to what will or will not be legal.
- 4.2. We recommend the NBE Bill include specific direction on each system outcome, direction to help resolve conflicts between outcomes, and content specifying how the effectiveness and implementation

of the NPF will be monitored. These amendments to the NBE Bill will allow for more practical outcomes and reduced errors due to uncertainty. Establishing clarity and detail throughout the NBE Bill will reduce the possibility of individuals' views taking over and unfairly influencing outcomes.

- 4.3. The NBE Bill should include detail on how quality standards for built environment will be monitored. The new framework will need to provide clarification on quality assessment, responsibility, and monitoring to ensure that the quality of built environment is assessed properly and fairly.
- 4.4. We are concerned that the lack of detail in the NBE Bill will create conflict between addressing local views from those affected and ensuring that outcomes can be achieved in an effective and timely manner.
- 4.5. We recommend the NBE Bill to include more detail on how public views and perspectives will be addressed without impacting expected outcomes and slowing down processes.

5. Part 3 - Need for early engagement with affected parties

- 5.1. We recommend greater input to be provided for business interests allowing for business representation both in the development of the NPF and the Regional Planning Committees (RPC). This is particularly necessary given the wide powers the NBE Bill provides to both the NPF and the RPC to affect natural resource use.
- 5.2. We recommend the Government to focus on educating the sector throughout the transition period to help clarify the purpose of the NBE Bill and to provide the necessary sector confidence for the development pipeline to continue.
- 5.3. We are pleased to see that the first NPF will also incorporate new content on infrastructure. National rules on infrastructure are critical in developing infrastructure services for current and future generations.
- 5.4. However, we are concerned that other aspects of the urban environment may have been neglected. There are a lot of other activities such as the development of housing, commercial buildings, retail spaces, and industrial buildings that fit outside of infrastructure. We recommend that urban development is clearly established within the NPF.
- 5.5. Moreover, the NBE Bill does not include views from those who are best placed to provide input into what is practical for the local area. There are many planners, architects, engineers, project managers, and developers that work for national, regional, and local organisations who are best placed to provide input into the NPF and regional plans to help determine feasibility and implementation of plans.
- 5.6. We recommend the NPF include views from experts to ensure that practical and appropriate outcomes of plans are set and can be met.

6. Part 4 – Need for plans to be practical and implementable

- 6.1. Some of the purpose and system outcomes in the NBE Bill are likely to conflict with each other in many situations. The current list presents no indication or understanding of how any particular outcome will be achieved. Given the purpose of the NBE Bill will affect how use and development is undertaken, in the short term this could create uncertainty for the sector and could slow down or halt construction pipelines.
- 6.2. We are also aware that the new Bills will take around 10 years to be implemented. This time could be longer depending on regions' preparedness and resourcing systems. We consider these timeframes to be significantly long and wish to see systems in place that will allow regions to swiftly and proactively develop and implement changes in a timely manner.
- 6.3. We recommend the Government focus on education throughout the transition period to help clarify the purpose of the NBE Bill with concrete examples of what the purpose statement means in practice. Education is critical in providing certainty on how the purpose statement is intended to impact future use and construction development.
- 6.4. RMBA is also concerned that the precautionary approach presented in the Bill may result in developing an overly conservative framework in favour of protecting the natural environment. This is likely to further constrain the ability to gain consents for essential infrastructure in sensitive environments, notwithstanding the ability of the Minister to allow for some activities which temporarily breach environmental limits.
- 6.5. We support the NBE Bill's focus on protecting the natural environment, however, it presents no incentive to improve the currently deteriorating and limited infrastructure that is posing major risks to the environment. The NBE Bill should include opportunities for development contributions for projects using hydroelectricity or wind energy. This approach could increase the use of renewable energy while affordably decarbonising the economy.
- 6.6. The NBE Bill presents a lack of clarity surrounding possible trade-offs between different outcomes. We recommend greater consideration be given to the making of trade-offs at a local level in respect to hard environmental limits, recognising that a one-size approach may not necessarily suit each locality/region. Creating more flexibility for trade-offs at a local level for environmental limits will ensure that the exemption clause does not have to be used on a reoccurring basis, as anticipated by some local authorities.
- 6.7. The NBE Bill will reduce plans from 100 down to 15 regionally based plans aiming to provide for greater consistency. Currently, many problems arising from the RMA are the consequence of varying council interpretations, a high degree of risk-averseness and sometimes a lack of necessary expertise, all of which have delaying consequences.
- 6.8. However, consistency might not always be the answer as what is appropriate for one region may not be appropriate for others. Our members can work across multiple Building Consent Authorities (BCA)

and struggle with navigating different processes, paperwork requirements, and standards for the projects they are involved in. Authorities' rationale can be frustrating and hard to reconcile, especially for builders who have completed similar projects in other areas without issue.

- 6.9. We recommend set objectives for consistency and flexibility of decision making within and across BCAs. The sector should be able to flag inconsistent outcomes by BCA with the Ministry of Business, Innovation and Employment (MBIE). BCAs should have strict and stronger incentives and penalties in their procurement processes for contractors to improve this.

6. Part 5 - Clarity on how regional plans will be financed

- 7.1. The NBE Bill states that the NPF must provide direction on enabling infrastructure, but it does not specify how infrastructure will be financed. The funding and financing of infrastructure has been one of the biggest challenges local governments have faced across New Zealand.
- 7.2. We recommend that the legislation mandate discussions on the funding and financing of infrastructure within the NPF with core decisions made within regional spatial strategies. Varying ability of funds and inconsistencies in funding plans have created overlapping strategies between BCAs and conflicting plans in regions such as Masterton, South Wairarapa, and Carterton, contributing to delaying consenting processes.
- 7.3. Additionally, without funding and financing of plans being mandatory to incorporate, the proposed outcomes and targets are likely to fail. We recommend mandatory discussions and decisions on how to fund and finance particular infrastructure, and development outcomes of plans.
- 7.4. We would like to see the Crown balance sheet being used to fund more infrastructure like the Crown Investment Partnership Scheme (CIP). The scheme was used in Milldale (North Auckland) to fund infrastructure at today's costs, charging a covenanted premium on rates to first and future owners for 21 years.
- 7.5. This process has made subdivisions and other projects more affordable and accessible to initial purchasers. With H1 Energy efficiency and Building for Climate Change (MBIE) changes currently creating cost impacts, the sector cannot afford to see additional investment required under controlled consenting loading costs to projects.

7. Part 6 - Clarity on roles and responsibilities

- 7.1. We recommend the Government provide more clarity on roles and responsibilities within government agencies and ministries in relation to both the NBE and the SP Bills.
- 7.2. The Minister for Environment has significant functions and powers, as outlined in the NBE Bill. There must be concern, given these widespread powers, as to whether enough checks and balances have also been provided for since, potentially, the Minister's powers will affect the use and development of resources. This will include setting out different resource allocation frameworks with strictly limited appeal rights.

- 7.3. Regional Planning Committees are responsible for developing the regional spatial strategies for each region. However, the SP Bill provides the Minister with powers to intervene and assist under certain circumstances.
- 7.4. 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.
- 7.5. We recommend limiting Ministerial powers to intervene if the plan is inconsistent with the NPF or Government priorities. Early engagement with central government in establishing regional spatial strategies is crucial to ensuring that Ministerial powers are not required at this late stage in the planning process.
- 7.6. We have also heard of instances where councils had approved resource consents for dwellings but the titles could not be issued as Land Information NZ (LINZ) had uncertainties with its own legislation. We recommend further clarity and communication between the government agencies involved in consenting processes.
- 7.7. The NBE Bill states that the Minister responsible may within the NPF set environmental limits or prescribe the environmental limits to be set in plans. We have some concerns that Ministerial direction within the NPF may result in the NPF Framework turning into a political game when Government changes hands. We recommend the Government establish cross-partisan support when setting or prescribing environmental limits and approving the NPF.
- 7.8. We are concerned that the NBE Bill may focus on the prioritisation of environmental outcomes over those for built or developed environments, at the risk of limiting the ability to obtain consents for construction development.
- 7.9. Furthermore, the NBE Bill does not specify who decides whether the natural environment needs to be protected and, where necessary, restored and who will be making decisions that involve overriding individual property rights. This is expected to become the subject of some debate and potential litigation. Further detail should be included on which agency will lead education and communication with the sector on the new changes, whether it will fall under Ministry for the Environment (MfE) or MBIE.
- 7.10. We also raise concerns on the structure of RPCs. Members of the committees may not agree or communicate with each other on different plans. This may negatively affect the streamlining and efficiency of consenting processes. Will there be repercussions for regional committees if the NBE Plans do not align with the NPF and who will be monitoring the performance and timeframes of committees' decision-making?
- 7.11. There will need to be systems in place to monitor the performance of RPCs to ensure they act as a proactive group and improve their levels of engagement and communication internally and with the sector.

8. Part 7 - Streamlining resource consenting

- 8.1. NBE Plans will categorise consent activities into four categories (reduced from six). These categories are *permitted, controlled, discretionary, and prohibited*. RMBA supports the Government's intention to better streamline the consenting process and alleviate some of the pressure off local authorities.
- 8.2. Although supportive, we do have concerns around whether these changes will streamline the consent process in practice. In theory, the NPF and NBE plans aim to enable more activities without a resource consent, where they are appropriate, and within environmental limits. RMBA hopes that local authorities will make more use of the permitted activity use to speed up the development process.
- 8.3. However, there are no provisions in the NBE Bill to either encourage or require local authorities to do so. Without local authorities having better direction, there is a risk that they may be more inclined to use the discretionary activity status. This has the potential to further slow down the consenting process.
- 8.4. We have many examples of council officers opposing proposals because they have incorrectly interpreted the provisions of the RMA and/or the relevant plan or are inappropriately applying their personal views and preferences when assessing a resource consent application.
- 8.5. This results in the applicant having to either abandon their proposal or engage significant expert resources to counter the officer's approach, including via litigation. We recommend developing provisions to encourage local authorities to make greater use of the permitted activity status, contributing to streamlining the consent process in practice.
- 8.6. Our members have also mentioned examples of four different BCAs working on consents within the same region, using different systems and methods of assessment. BCAs need to be instructed to use the same methods to produce more consistent outcomes, and should be required to communicate with each other and share resources at a central level. Establishing defined roles and responsibilities within BCAs will reduce uncertainty and inconsistencies in the consenting process.
- 8.7. We also recommend regionalisation or centralisation to help ease issues within the consenting system. This will not only make the process more streamlined and less time consuming but will shift the liability of larger projects off the local authorities' balance sheet.
- 8.8. Another concern we have is clause 205(2)(c) in the NBE Bill which 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."
- 8.9. 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. This will directly contradict the legislative intent of having a quicker and more efficient consenting system. We recommend that "relevant concerns" are appropriately defined.
- 8.10. We also recommend that the NPF give direction as to what development will fall under each consenting activity category. This will help provide direction to local authorities and streamline the consenting process.

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

8.12. The scope of the permitted activity category has been broadened to enable NBE Plans to permit activities with written approval and certification by a qualified person. The Government intends to remove unnecessary consents such as those for activities with localised effects or requiring monitoring.

8.13. RMBA is supportive of this, however we are concerned 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. We recommend that “qualified persons” be defined at a central government level.

8.14. RMBA strongly supported the COVID-19 Recovery (Fast-track Consenting) Act 2020 when it was first introduced and supports the Government’s decision to incorporate Fast-track Consenting into the NBE Bill. The NBE Bill will allow the fast-track process to continue for consents and designations relating to specific housing and infrastructure projects.

8.15. This will provide the infrastructure and development sectors with greater certainty as to the process and timeframes of accelerating projects under the legislation. Although supportive, we do recommend that the COVID-19 Recovery provisions in the Bill be applied to a wider range of activities.

9. Questions for the Select Committee

9.1. We have several questions that we would like the Select Committee to consider and respond to. These include:

- What are the repercussions, if any, for regional committees if the NBE Plans do not align with the NPF (or other requirements)?
- Who or what agency will be monitoring the performance and timeframes of committees’ decision-making processes?
- What are the repercussions, if any, for local authorities if they fail to achieve or implement the required outcomes within NBE Plans?
- Who will be responsible for actions and monitoring of performance in relation to both the NBE and SP Bills?
- We would like clarification on whether the NPF will be replacing the functions of National Policy Statements currently providing direction in the RMA.

10. Conclusion

10.1. The Registered Master Builders Association is committed to reform the Resource Management Act to transform the sector and rebuild our economy. We are focused on building more and better homes,

communities, and workplaces, swiftly and efficiently, contributing to building better lives for all New Zealanders.

10.2. We congratulate the Government and officials for producing and presenting a first draft of the National and Built Environment and Spatial Planning Bills.

10.3. There are many aspects of the current drafting that we support, such as establishing long-term regional spatial planning, intentions to establish a streamlined and faster consenting process, and to increase certainty for future urban development and infrastructure projects.

10.4. However, we have some concerns on the level of detail provided and how the actions presented will work in practice. We also recommend extending engagement to development, construction, and infrastructure provider organisations and groups when implementing spatial plans.

We thank you for the opportunity to make this submission.

David Kelly
CEO RMBA

Isabel Funari
Advocacy and Policy Advisor