

Submission by



to the

**Environment Committee**

on the

**Spatial Planning Bill**

February 2023

## **SPATIAL PLANNING BILL SUBMISSION BY BUSINESSNZ<sup>1</sup>**

### **1.0 INTRODUCTION**

- 1.1 BusinessNZ welcomes the opportunity to comment on the Spatial Planning Bill ("the Bill"), the second of 3 Bills proposed in respect to the reform of resource management. BusinessNZ notes that a separate Bill has been introduced on the Natural and Built Environment (NBE) Bill (on which BusinessNZ has submitted), and it is intended that a further Bill on Climate Change will be introduced at a later stage. This submission focuses solely on the Spatial Planning Bill.
- 1.2 BusinessNZ is generally supportive of the overall intent of the Bill which is to provide for the development and implementation of long-term strategic spatial planning across NZ through the development of regional spatial strategies (RSS).
- 1.3 Notwithstanding the above, BusinessNZ notes that the Bill, along with its companion the NBE Bill, has shared definitions, outcomes, functions and processes in relation to the operation of regional planning committees (RPCs). Given this overlap, some of the problems associated with the NBE Bill also spill into this Bill and are briefly touched on below.
- 1.4 First, the impact on existing-use rights to resources could be problematic since it appears an RPC that will develop an RSS for a region will be made up only of members from local and central government, iwi and hapū. The lack of input from landowners and others could mean the erosion of existing property rights to land over time, with obvious effects on investment certainty and economic growth, particularly given the wide-ranging matters RPCs can consider when making their plans.
- 1.5 BusinessNZ considers regulators should face incentives to ensure their imposed regulatory regimes are clearly based on sound cost/benefit analysis. BusinessNZ therefore strongly supports landowners being compensated for regulatory takings.
- 1.6 Second, that the Minister for Environment has significant functions and powers must raise concerns as to whether, correspondingly, there are adequate checks and balances. Checks and balances are needed as the widespread ministerial

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<sup>1</sup> Background information on BusinessNZ is attached as Appendix 1.

powers have the potential to affect the use and development of current and future resources. The severely constrained provision of appeal rights further exacerbates this concern.

- 1.7 Third, because the Bill is only the second of three proposed Bills, it is difficult to predict how, or whether, the three will fit or work together as one coherent package.
- 1.8 Given the diversity of our membership, some members and sectors will have specific issues they wish to comment on in more detail or might not agree with every recommendation in this submission. Therefore, we have encouraged individual members and sector representatives to make their own submissions raising those issues specific to their areas of interest.
- 1.9 BusinessNZ requests the opportunity to appear before the Select Committee in due course to present our submission.
- 1.10 The remainder of this submission outlines specific concerns with some key parts and clauses in the Bill, addressing these from a broader BusinessNZ perspective on where the Bill could be improved before it is passed into law.

## **RECOMMENDATIONS**

BusinessNZ **recommends** that:

**To encourage efficient investment in natural resource and infrastructure development for the economic, social, environmental and cultural well-being of current and future generations of New Zealanders, the Select Committee insert clauses into the Bill:**

- (a) recognising the importance of upholding property rights to encourage efficient investment and to determine how existing use rights will be treated,**
- (b) grandparenting current rights to resource use where practical and providing for the trading and transfer of rights within a specified framework,**
- (c) introducing a compensation regime for regulatory takings to encourage better decision-making from regulators when proposing to affect private property in the public interest,**
- (d) providing for merit appeals/review rights where regulatory decisions impact on existing property rights, and**
- (e) providing for a cost/benefit analysis of recommended RPC plan changes (e.g. an enhanced section 32 of the RMA).**

BusinessNZ **recommends:**

**That greater provision be made for business interests to be represented both in the development of the NPF and on RPCs, particularly given the wide powers bestowed by the Bill on both the NPF and RPCs enabling them to affect natural-resource use.**

### **2.0 COMMENTS ON KEY PARTS AND CLAUSES IN THE BILL**

- 2.1 The purpose of this section is to outline specific concerns with some key parts and clauses in the Bill.

#### **Regional Planning Committee (RPC)**

- 2.2 The impact on existing-use rights to resources could be problematic since it seems RPCs that will develop an RSS for a region will comprise only members

from local government, central government, iwi and hapū. A lack of input from landowners and others could mean existing property rights to land being eroded over time, with an obvious effect on investment certainty and economic growth. This is particularly the case given the wide-ranging matters RPCs can consider when making their plans.

2.3 The matters RPCs need to consider (to the extent they consider them of importance) include (but are not limited to):

- areas that are appropriate for urban development and change and areas suitable for rural use,
- major existing, planned, or potential infrastructure or infrastructure corridors, networks or sites,
- areas that may require protection, restoration, or enhancement,
- areas that may be suitable for developing, extracting, or using natural resources, including generating power,
- areas of the coastal marine areas that are appropriate for development of significant change in use,
- areas of cultural heritage and areas with resources that are of significance to Māori,
- areas that are vulnerable to natural hazards or climate change and the need for protective infrastructure or change in land use,
- indicative locations of planned or potential business and residential activities.

2.4 It is noted that the Bill does not include a single prescribed process for public engagement on RSS development, but it is expected RPCs will develop consultative processes which will work best for their particular region.

2.5 While all this might seem to be sensible, the powers vested in RPCs combined with the powers of the Minister in respect to the NPF, mean it is likely that the property rights of current and existing landowners might well be seriously constrained and inhibited (without compensation in most cases) as, potentially, many of the above matters could impose even greater restrictions on land use than currently.

2.6 Regulatory takings should not be legislatively condoned. An acknowledgment of the right to compensation is at the core of the property rights issue, with a general presumption that property rights should not be diminished without compensation. This is a long-held view. BusinessNZ considers the presumption of compensation to be a vital check and balance on the economic system.

## **Clause 32 - Process must encourage participation**

- 2.7 Clause 32 of the Bill appears to be directly contradicted by clause 15 of Schedule 7 of the NBE Bill which removes all and any requirements on the Regional Planning Committee to consult with anyone outside of central government, local government, iwi and customary marine title groups. According to clause 15, whether any other interested persons are to be consulted is entirely at an RPC's discretion.

## **Part 3      **General powers, duties, and other matters****

### **Subpart 1 – Powers and duties**

Ministerial powers to intervene and assist.

## **Clauses 58 - 63**

- 2.8 While the RPC will have primary responsibility for developing the RSS, the Minister will have powers to intervene with most of the ministerial powers set out in the NBE Bill but some additional powers outlined in this Bill. For example, the Minister will be able to direct RPCs to make amendments the Minister considers necessary or desirable to ensure the RSS complies with certain provisions of the Bill. Combined with the significant powers of the Minister under the NBE Bill, there is concern whether enough checks and balances are provided given the widespread ministerial powers will potentially impact on the use and development of current and future resources. The severely constrained provision of appeal rights further exacerbates this concern.

### **Subpart 3 – Miscellaneous provisions**

## **Clause 66: Interests in land are not taken or injuriously affected by regional spatial strategies**

- 2.9 It could be argued that the meaning of this clause is reasonably obscure, and the explanatory note keeps it that way.
- 2.10 Taken at face value the clause seems to imply that if the Regional Planning Committee (RPC) decides to restrict the use of land through the development of an RSS then there is no compensation to be paid to affected parties.
- 2.11 If indeed this is the case, it reinforces the need for a sound cost/benefit analysis of any proposed RSS and the desirability of providing compensation for regulatory takings in the public interest, as BusinessNZ recommends below.

- 2.12 Without such requirements, an RPC (and potentially the Minister) will be able to ride roughshod over property rights, obviously affecting decisions to invest in and develop property.

### *Secondary legislation*

#### **Clause 68: Regulations**

- 2.13 Clause 68 empowers the making of regulations to do a range of tasks associated with the Bill. Given that regulations generally do not go through the same degree of scrutiny as primary legislation (including public input through the Select Committee process), BusinessNZ has concerns such regulations could potentially impose undue restrictions on businesses and landowners e.g. in relation to the amount of information needing to be provided, or perhaps more concerning, with the potential for restrictions on land use, without adequate consultation and compensation where appropriate.
- 2.14 While it is understandable there should be regulation-making powers to enable minor issues arising from time to time to be dealt with, it would be concerning were more fundamental issues to be addressed via regulations as the Minister already has a wide range of powers bestowed both by this Bill and the accompanying NBE Bill.
- 2.15 Also, the third proposed Bill (the proposed Climate Change Adaptation Bill) has yet to see the light of day and how this Bill will fit in with the framework currently envisaged (including its property right effects) is yet to be determined.

#### **Schedule 4**

##### **Preparation of regional spatial strategies: key process steps**

- 2.16 It is noted that Schedule 4 outlines the process that must be followed in developing an RSS, including the requirement for the RPC to provide an opportunity for interested parties and the public to participate in determining the matters to be included in the draft strategy and their relative importance.
- 2.17 While this could be considered a bare minimum requirement for public input, there is nothing to suggest parties potentially adversely affected by outcomes associated with the development of an RSS will have any opportunity to put their case since it seems RPC membership will be confined to representatives from local and central government, iwi and hapū who will develop a region's RSS.

- 2.18 There is a strong argument for greater representation directly at the table to ensure RSS outcomes fairly represent business interests and business and community concerns have been adequately addressed. Greater and better representation is particularly needed given the almost complete absence from the Bill of any clause upholding property rights.
- 2.19 A fundamental principle on which a market economy (such as New Zealand) is based is that property owners (including businesses) have relative security in their property rights with the right to use their property in the manner they choose (while respecting the rights of other property owners).
- 2.20 In this respect, it is important that, at minimum, all proposed changes are underpinned by sound cost/benefit analysis and provide for the upholding of property rights as the central pillar of any RSS.

BusinessNZ **recommends** that:

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## **Appendix One - Background information on BusinessNZ**

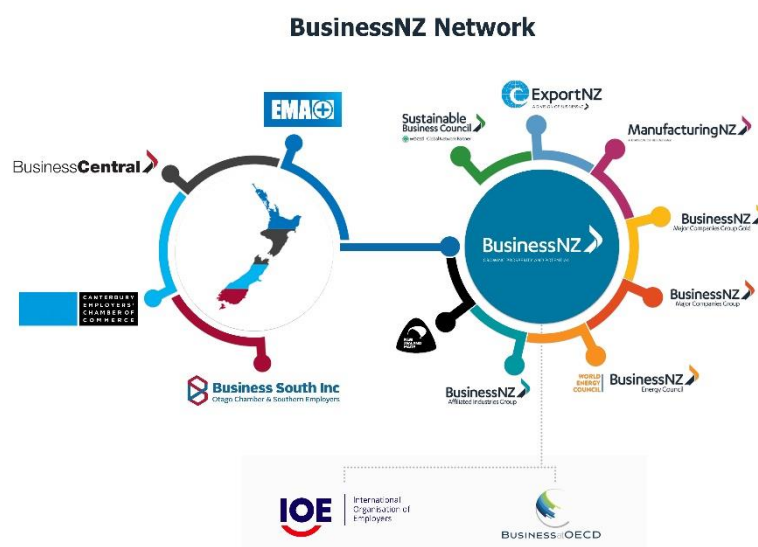


The BusinessNZ Network is New Zealand's largest business organisation, representing:

- Business groups [EMA](#), [Business Central](#), [Canterbury Employers' Chamber of Commerce](#), and [Business South](#)
- [BusinessNZ](#) policy and advocacy services
- [Major Companies Group](#) of New Zealand's largest businesses
- [Gold Group](#) of medium-sized businesses
- [Affiliated Industries Group](#) of national industry associations
- [ExportNZ](#) representing New Zealand exporting enterprises
- [ManufacturingNZ](#) representing New Zealand manufacturing enterprises
- [Sustainable Business Council](#) of enterprises leading sustainable business practice
- [BusinessNZ Energy Council](#) of enterprises leading sustainable energy production and use
- [Buy NZ Made](#) representing producers, retailers and consumers of New Zealand-made goods

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation ([ILO](#)), the International Organisation of Employers ([IOE](#)) and Business at OECD ([BIAC](#)).



Suncorp New Zealand does not agree with BusinessNZ's Submission on this Bill.