

Submission by



to the

Environment Committee

on the

Natural and Built Environment Bill

February 2023

NATURAL AND BUILT ENVIRONMENT BILL SUBMISSION BY BUSINESSNZ¹

1.0 INTRODUCTION

- 1.1 BusinessNZ welcomes the opportunity to comment on the Natural and Built Environment Bill (“the Bill”), the first of 3 Bills proposed in respect to the reform of resource management. BusinessNZ notes that a separate Bill has been introduced on Spatial Planning (SP) and it is intended that a further Bill on Climate Change will be introduced at a later stage. This submission focuses solely on the Natural and Built Environment Bill.
- 1.2 BusinessNZ, along with many other organisations across the political spectrum, has raised concerns about the Resource Management Act (RMA) for many years. Some organisations consider the Act has not provided for adequate environmental protection while many businesses testify to their inability to develop infrastructure and undertake business development given the slow and cumbersome nature of the processes involved.
- 1.3 BusinessNZ therefore congratulates the government on attempting to move towards a more user-friendly and fit-for-purpose resource management system. But in doing so it will be essential to acknowledge the clash of values that underlies many environmental disputes. Such disputes will not go away; the expectation should be rather that their number will reduce.
- 1.4 BusinessNZ notes the Bill’s Explanatory Note states that the resource management system these Bills will create has been designed to achieve five objectives:
- *protect and, where necessary, restore the natural environment, including its capacity to provide for the well-being of present and future generations:*
 - *better enable development within environment biophysical limits, including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure:*
 - *give effect to the principles of te Tiriti o Waitangi and provide greater recognition of te ao Māori, including matauranga Māori:*
 - *better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change:*
 - *improve system efficiency and effectiveness and reduce complexity, while retaining local democratic input. (Explanatory note – pages 1 -2)*

¹ Background information on BusinessNZ is attached as Appendix 1.

- 1.5 The Bill is a complex piece of legislation and while BusinessNZ is supportive of the intent of many of the changes proposed, we are concerned about how these will be implemented in practice, particularly in respect to individual sector and industry requirements.
- 1.6 Given the diversity of our membership, some members and sectors will have specific issues they wish to comment on in more detail, while others might not agree with all our recommendations. We have therefore encouraged individual members and sector representatives to make their own submissions raising those issues specific to their areas of interest.
- 1.7 For example, national direction and consistency in standards are particularly important for telecommunications providers as they operate on a national basis in a fast-changing market, continually adding to, upgrading and replacing their networks. The ability to deploy new fibre networks and mobile cell sites in a timely manner directly impacts the experience of end-users of digital connectivity across the country. Telecommunications infrastructure further provides services across regional boundaries and has national effects, i.e. mobile tower coverage extends across regional boundaries and fibre in one area also serves another area. Accordingly, the benefits and implications of deploying infrastructure are national in scope and providers rely on national standards to ensure services can be provided and to minimise costs. In the case of telecommunications, bespoke regional approaches drive significant costs into infrastructure and make the provision of national telecommunications services difficult.
- 1.8 On the other hand, a number of land-based sectors, particularly agriculture and mining, have specific concerns with moving towards greater centralisation of decision-making and national standards. Greater centralisation and national standards could lessen the ability to take account of local circumstances and necessary trade-offs e.g. in respect to land use and important resource inputs such as freshwater.
- 1.9 Notwithstanding the above, BusinessNZ has some broad concerns with aspects of the Bill as it currently stands and these are set out below for consideration by the Select Committee.
- 1.10 First, from the purpose statement, when read in combination with some of the Bill's other proposals (e.g. outcomes and principles), it is difficult to see how decision-making will be any easier. By definition, protection of the environment appears to trump anything else, irrespective of the economic implications. The situation is likely to be further exacerbated by the inclusion of new terms likely to make decision-making increasingly uncertain.

- 1.11 Second, while the Bill includes a list of objectives (system outcomes, including protecting the environment, providing for infrastructure etc), there is no hierarchy, tending to suggest the environment will be protected at the expense of economic development. There appears to be little ability to make cost/benefit decisions in terms of trade-offs between potentially competing, or in some cases even conflicting, system outcomes.
- 1.12 Third, the proposed national planning framework might provide for greater certainty but its success or otherwise will depend on the quality of the planning input. Planning involves foreseeability which in turn involves uncertainty. The test of a regime of this kind will be its ability to respond both to changing circumstances and to errors arising from the planning process, although whether such errors can be corrected via an essentially unsupervised regulation-making system remains to be seen.
- 1.13 Fourth, while 15 regional spatial plans will replace 100 current district plans and regional plans under the RMA – a seemingly reasonable change - there could be less ability to take account of local circumstances (i.e. trade-offs which can be made at the local level). This seems likely given the proposed introduction of hard environmental limits and targets (with strictly limited exemptions). As mentioned above, for some sectors greater national direction and consistency will be fundamental (e.g. for network industries), while other sectors, e.g. agriculture, may require more localised solutions in the use of resources e.g. freshwater.
- 1.14 Fifth, the impact on existing rights to use resources could be problematic given that Regional Planning Committees (RPCs), made up only of members from local government, iwi and hapū, could erode existing property rights to some resources (e.g. freshwater) over time, with an obvious impact on investment certainty. However, it is noted that the National Planning Framework (NPF) may provide direction that gives further detail on the meaning of the resource allocation principles (sustainability, equity, and efficiency) and on allocation methods that must be given effect to through National and Built Environment (NBE) plans to allocate specified resources.
- 1.15 Sixth, the Minister for Environment has significant functions and powers, as outlined in clause 630 of the Bill. These include setting out different resource allocation frameworks with strictly limited appeal rights. There must be concern, given such widespread powers, whether sufficient checks and balances have also been provided since, potentially, the exercise of the ministerial powers will affect the use and development of natural resources.

- 1.16 Seventh, because the Bill is only the first of the three proposed, it is difficult to predict how, or whether, these three will fit or work together as one coherent package.

- 1.17 The remainder of this submission outlines specific concerns with some key Parts of the Bill and where appropriate, with individual clauses, addressing these from a broader BusinessNZ view of where and how the Bill could be improved before it passes into law.

- 1.18 BusinessNZ requests the opportunity to appear before the Select Committee in due course to present our submission.

RECOMMENDATIONS

BusinessNZ **recommends** that:

Clause 3 be fundamentally rethought given that, combined with some other clauses (e.g. clause 5), it will place an overarching emphasis on environmental outcomes to the potential detriment of economic development. Moreover, the proposed definitions of some terms used in clause 3 (the Purpose clause) are clearly so broad and apparently all-encompassing they will potentially generate great uncertainty as to what will or will not be legal.

BusinessNZ **recommends** that:

Clause 5 be recognised as containing potentially conflicting system outcomes making it, to some extent, an unrealistic counsel of perfection. The length and nature of the clause testify to the impossibility of avoiding future conflict between environment and development.

BusinessNZ **recommends** that:

Clause 6(2) be deleted.

BusinessNZ **recommends** that:

Greater input be provided for business interests allowing for business representation both in the development of the NPF and on RPCs. This is particularly necessary given the wide powers the Bill bestows on both the NPF and on RPCs to affect natural resource use, with currently strictly limited appeal rights for affected parties.

BusinessNZ **recommends** that:

Clauses 37 - 46 be amended to allow, where appropriate, for greater consideration of the making of trade-offs at a local level in respect to hard environmental limits, recognising that a one-size approach may not be satisfactory in all circumstances.

Local trade-offs will still be needed for some industries and sectors, the existence of a national planning framework notwithstanding.

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 affecting 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 plan changes (e.g. an enhanced section 32 of the RMA).**

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

- 2.1 The purpose of this section is to outline specific concerns with some key clauses in the Bill, addressing these from a broader BusinessNZ perspective of how the Bill could be improved before it passes into law.

Part 1: Purpose and preliminary matters **Subpart 1 - Purpose and related matters**

Clause 3: Purpose of this Act

- 2.2 The current clause 3 would appear to place an almost overriding emphasis on environmental outcomes to the potential detriment of wider economic development. This is likely to result in more, rather than less, litigation given clause 5's requirement to promote a long list of system outcomes.

Clause 3 states:

The purpose of this Act is to —

(a) enable the use, development, and protection of the environment in a way that –

(i) supports the well-being of present generations without compromising the well-being of future generations; and

(ii) promotes outcomes for the benefit of the environment; and

(iii) complies with environmental limits and their associated targets; and

(iv) manages adverse effects; and

(b) recognise and uphold Te Oranga o te Taiao.

- 2.3 Clause 7 defines environment "*as the context requires*" as "*(a) the natural environment; (b) people and communities and the built environment that they create; (c) the social, economic, and cultural conditions that affect the matters stated in paragraphs (a) and (b) or that are affected by those matters*".

- 2.4 Clause 7 defines Te Oranga o te Taiao as incorporating "*the health of the natural environment, the essential relationship between the health of the natural environment and its capacity to sustain life, the interconnectedness of all parts of the environment, and the intrinsic relationship between iwi and hapū and te Taiao*".

- 2.5 The proposed definitions cited above (as examples) are so broad and apparently all-encompassing they will potentially generate great uncertainty as to what will or will not be legal. Business NZ believes that such uncertainty about the scope and reach of what is proposed is unacceptable if people's well-being is to be a relevant consideration.

BusinessNZ **recommends** that:

Clause 3 be fundamentally rethought given that, combined with some other clauses (e.g. clause 5), it will place an overarching emphasis on environmental outcomes to the potential detriment of economic development. Moreover, the proposed definitions of some terms used in clause 3 (the Purpose clause) are clearly so broad and apparently all-encompassing they will potentially generate great uncertainty as to what will or will not be legal.

Clause 5: System outcomes

- 2.6 Under clause 5, the NPF and all plans must promote system outcomes ranging from *(a) the protection or, if degraded, restoration, of – the ecological integrity, mana and mauri of - (A) air, water, and soils;* and through to 5(i) *“the ongoing and timely provision of infrastructure services to support the well-being of people and communities”*.
- 2.7 The outcomes to be promoted also include recognition of promoting the use and development of land for a variety of activities, including for housing, business use and primary production (clause 5(c)). At the same time, there are requirements for achieving reductions in greenhouse gas emissions etc. (clause 5(b)(i)(ii) and (iii)).
- 2.8 However, the enabling outcomes for development of land and infrastructure are stated in less directive terms than the environmental outcomes. The concern is that this may result in the prioritisation of environmental outcomes over those for built or developed environments at the risk of limiting the ability to obtain consents for economic development, particularly where trade-offs with some of the other system outcomes could be in potential conflict.
- 2.9 Given that some of the system outcomes promoted under clause 5 are likely in many situations to conflict with each other, the question then becomes, which takes precedence. The current list reads almost like a wish list but with no indication or understanding of how any particular outcome will be achieved.

There is no activity that can achieve every outcome in section 5. The essential question is, what process will manage the unavoidable trade-offs?

- 2.10 It is noted that Clause 57 (National planning framework must provide direction on system outcomes) requires the Minister, via the National Planning Framework, to provide direction:
- For each system outcome, and
 - For the resolution of conflicts about environmental matters, including those between or among the system outcomes.
- 2.11 Some may argue that at least the above may go some way towards allaying concerns that there is not a mechanism for relieving such conflicts as arise. However, it is not an ideal way to resolve conflict, creating huge uncertainty within the system as the Minister can turn up or turn down each objective without going back through Parliament. The Minister also has the power to place some outcomes above others under the second aspect.
- 2.12 Some members of BusinessNZ have suggested it may be appropriate for the Bill to state that none of the proposed systems outcomes should take precedence over any other, making clear that all are equally important in their own right.
- 2.13 Moreover, there are concerns with the nature of some of clause 5's environmental outcomes as currently worded. For example (c), re land use and development. This will likely at times conflict with (a) and (b) as it is inevitable that the protection provided for will at times clash with the need to develop land for rural-based activities, particularly primary production.
- 2.14 In BusinessNZ's view, provided greenhouse gas emissions are adequately covered by the ETS, authorities should be agnostic as to which specific projects should be supported.
- 2.15 Therefore, when it comes to meeting domestic and international obligations to reach net-zero carbon emissions by 2050, we consider the focus should be on:
1. Net emissions and not gross emissions,
 2. The ETS as the sole tool except where it can be clearly demonstrated that further interventions will have net benefits,
 3. Any supporting policies being outcome-focused and technology agnostic,
 4. Avoiding bans and interventions as typically these increase cost for no gain, given the ETS cap,

5. The importance of lowest-cost abatement, as cost matters to the wellbeing and livelihood of New Zealand families and businesses.

- 2.16 If we take the Bill's purpose statement at face value - that the Act's purpose is, amongst other things, to protect the environment (widely defined) - this could see economic well-being relegated to a much lower pecking order than is currently the case. And 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? Obviously, these questions will be the subject of future debate and potential litigation.
- 2.17 The promotion of outcomes will be ineffectual or subject to litigation unless the purpose statement provides for economic development as a matter of course. On the current wording, economic development is severely restricted.
- 2.18 BusinessNZ considers that provided the costs and benefits of an activity are largely internalised, then individuals, households, and companies should be relatively free to make investment decisions on their merits based on normal commercial imperatives.

BusinessNZ **recommends** that:

Clause 5 be recognised as containing potentially conflicting system outcomes making it, to some extent, an unrealistic counsel of perfection. The length and nature of the clause testify to the impossibility of avoiding future conflict between environment and development.

Clause 6: Decision-making Principles

- 2.19 Environmental limits must be set in accordance with a precautionary approach – clause 6(2)(a). This requirement runs the risk of encouraging an overly conservative framework favouring the protection of the natural environment and further constraining the ability to gain consents for essential infrastructure in sensitive environments. This is likely notwithstanding the Minister's ability to allow for some activities which temporarily breach environmental limits.
- 2.20 The use of the precautionary approach must have its limitations. Adopting a precautionary approach to determining environmental limits will inevitably hinder or prevent otherwise beneficial development (particularly as some

decision-makers are more risk averse than others). Risk is an element of life; trying to eliminate risk can do more harm than good.

BusinessNZ **recommends** that:

Clause 6(2) be deleted.

Part 3: National Planning Framework (NPF)

- 2.21 A NPF might be seen as desirable in many cases but will not always be appropriate given the necessary trade-offs between competing desirable outcomes.
- 2.22 For example, national direction and consistency in standards are particularly important for telecommunications providers as they operate on a national basis in a fast-changing market, continually adding to, upgrading and replacing their networks. The ability to deploy new fibre networks and mobile cell sites in a timely manner directly affects the experience of end-users of digital connectivity across the country. Telecommunications infrastructure further provides services across regional boundaries and has national impacts, i.e., mobile tower coverage extends across regional boundaries and fibre in one area serves another areas well. Accordingly, the benefits and implications of deploying infrastructure are national in scope and providers rely on national standards to ensure services and minimise costs. In the case of telecommunications, bespoke regional approaches drive significant costs into infrastructure and make provision of national telecommunications services difficult.
- 2.23 On the other hand, a number of land-based sectors, particularly agriculture and mining, have specific concerns with moving towards greater centralisation of decision-making and national standards. Greater centralisation of decision-making and national standards could lessen the ability to take account of local circumstances and necessary trade-offs e.g. in respect to land use and important resource inputs such as freshwater.
- 2.24 The NPF will be required to include (amongst other things):
- direction on each system outcome,
 - direction to help resolve conflicts between outcomes,
 - strategic direction (for example, on the key long-term environmental issues and priorities),
 - content specifying how the effectiveness and implementation of the NPF will be monitored.

(See Explanatory Note – p.5)

Subpart 1 – Requirement for national planning framework

Clause 34: National planning framework to be made as regulations

- 2.25 Making the NPF by regulations could have the effect of excluding from the decision-making process those who will be affected by whatever decisions are made. If mistakes are to be limited and arbitrary decision-making avoided, the legislation must make provision for effective consultation and discussion with whoever it is likely to affect.
- 2.26 The areas where the NPF must provide direction are formidable and will inevitably be subject to challenge, particularly as it cannot be expected that whatever rules are specified under the specific system outcome will always and necessarily be the right rules, or even sensible.
- 2.27 What is provided for here very much suggests that RPCs will be subject to central oversight, possibly sometimes to the detriment of the local community.
- 2.28 It also appears that business has no place in the NPF or in respect to an RPC, although without business the legislation's aims cannot be achieved.

BusinessNZ **recommends** that:

Greater input be provided for business interests allowing for business representation both in the development of the NPF and on RPCs. This is particularly necessary given the wide powers the Bill bestows on both the NPF and RPCs to affect natural resource use, with currently strictly limited appeal rights for affected parties.

Clause 36: Resource Allocation Principles

- 2.29 Clause 36 lists the resource allocation principles that must be considered (sustainability, efficiency, and equity) but provides no definitions.
- 2.30 For example, even with efficiency, the economic literature refers broadly to three key types: allocative, productive, and dynamic efficiency, although there are others as well, e.g. administrative efficiency, - each important in its own right.

- (1) *Allocative efficiency*: the regulatory/tax/expenditure system should not unduly interfere with the efficient allocation of resources by favouring one sector over another.
- (2) *Productive efficiency* (sometimes called technical efficiency): given output for lowest input cost.
- (3) *Dynamic efficiency*: resource use should respond to changed economic circumstances, so, depending on economic circumstances, water or other resources should be able to flow reasonably easily to higher-valued uses.

- 2.31 It is noted that the NPF may give direction that provides further detail on the meaning of the resource allocation principles (sustainability, equity, and efficiency) and on allocation methods that must be given effect through NBE plans to allocate specified resources. How such principles are defined, and which principle takes precedence, could have significant implications for current and potentially future users of natural resources.
- 2.32 Furthermore, issues associated with the other principles i.e. sustainability and equity, are likely to be the subject of significant debate, unless clearly defined in context.

Subpart 2 – Environment limits and targets

Clauses 37 - 46: Environmental limits

- 2.33 Under clauses 37 - 46, there will be requirements to introduce hard environmental limits, with such limits prescribed in the NPF (see comments below) or the Minister may prescribe the requirements for environmental limits to be set in NBE Plans (see clause 39). While it can be argued that the allocation of natural resources requires environmental limits to be clearly understood, there also needs to be flexibility to meet the unique trade-offs local communities might be prepared to make. For example, it might be sensible to set a common national standard for maximum microwave discharge, since this is essentially a health issue and the risks of electro-magnetic radiation do not vary across the country. But a common national standard makes little sense in considering e.g. water allocation: should all rivers be subject to the same decreed minimum flows? The benefits of mandatory national direction might come at the expense of flexibility (desirable economic outcomes) at the local level.
- 2.34 It is acknowledged that clause 44 does allow for an exception to be granted if an unrealistic limit is prescribed so it could be argued there is a check/balance here. However, given the lack of clarity regarding possible trade-offs between

different outcomes, there needs to be greater flexibility since a one-size-fits all approach may not necessarily suit every locality/region.

- 2.35 Specifically clause 37 outlines the purpose of setting environmental limits including preventing "*the ecological integrity of the natural environment from degrading....*".
- 2.36 Meanwhile, **ecological integrity** is defined in clause 7 to include, amongst other things, supporting the ecological and physical functions of **ecosystems** (*emphasis added*).
- 2.37 Ecosystem is defined in clause 7 to mean "*any system of organisms interacting with their physical environment and with each other, at any scale.*"
- 2.38 The combination of the above, could be logically interpreted to mean that environmental limits will be set at a very high level, unless other factors can be taken into consideration.
- 2.39 Under provisions in the Bill, environmental limits are to be established within "management units" but how those are to be identified for different domains is unclear.
- 2.40 It is difficult to see how environmental limits can be set with any lasting certainty and to that extent the limits set will always be open to question. Therefore, it is unlikely the provision of environmental limits will prevent conflicts from arising.

BusinessNZ **recommends** that:

Clauses 37 - 46 be amended to allow, where appropriate, for greater consideration of the making of trade-offs at a local level in respect to hard environmental limits, recognising that a one-size approach may not be satisfactory in all circumstances. Local trade-offs will still be needed for some industries and sectors, the existence of a national planning framework notwithstanding.

**Part 4: Natural and built environment plans
Subpart 1 -Preliminary matters**

Purpose and scope of plans

- 2.41 Potentially moving from around 100 plans down to 15 regionally based plans could provide for greater consistency. Currently, many problems arising from the RMA are the consequence of varying council interpretations, plus a high degree of risk-averseness and sometimes a lack of necessary expertise, all of which have delaying consequences. However, consistency might not be the answer if what is appropriate for one region is not appropriate for others.
- 2.42 It is noted that the NBE plans will have to (a) give effect to the NPF; (b) apply environmental limits and targets set in the NPF; and (c) set environmental limits and targets for the region if directed by the NPF. This gives the Minister significant powers in setting the NPF with limited input from those most likely to be affected by the decisions made. Greater checks and balances are required than the Bill currently proposes.
- 2.43 There would appear to be two major issues with the proposed 15 regional plans which need further consideration. First, how far will the ability to make trade-offs at a local level be provided for? Second, given the number of relevant views from a broad cross-section of society, it is difficult to see how coherent plans can be developed in a timely manner, the more so in view of the very wide range of environmental outcomes promoted.

Clause 100: Regional Planning committees to be appointed

- 2.44 Clause 100(6) states that provisions on the membership etc. of an RPC are set out in Schedule 8.
- 2.45 The impact on existing use rights to resources could be problematic given that RPCs comprised only of members from local government and Māori, could see existing property rights to some resources (e.g. freshwater) eroded over time, with obvious impacts on investment certainty. This is particularly likely in respect to, for example, freshwater allocation and potentially, re-allocation.

Part 5: Resource consenting and proposals of national significance

- 2.46 NBE Plans will categorise consent activities into four categories (reduced down from six). These categories are permitted, controlled, discretionary and prohibited. BusinessNZ broadly supports the Government's intention to streamline the consenting process.
- 2.47 Although supportive, BusinessNZ does have concerns around whether these changes will streamline the consent process in practice. For example, while one would hope that local authorities will make more use of the permitted activity use to speed up the development process, no provisions in the Bill actively encourage or require them to do so. Without local authorities having better direction, there is a risk they may be more inclined to use the discretionary activity status. This has the potential to lead to notification and slow down the consenting process.

Part 10: Exercise of functions, powers, and duties under this Act
Subpart 1 – Functions, powers, and duties of Minister

Clause 630: Functions and powers of Minister for Environment

- 2.48 The Minister for Environment has significant functions and powers as outlined in clause 630. There is concern as to whether there are enough checks and balances, given widespread ministerial powers will potentially impact on the use and development of resources, including setting out potentially different resource allocation frameworks.
- 2.49 There is also concern that, given the very wide powers for Ministers to make changes via regulation, there is the potential for significant changes in position depending on the pressures facing the Minister at the time and/or when a government changes. This will provide businesses with little certainty given the long-term investment horizon of some projects.
- 2.50 With the Bill's strictly limited appeal rights, it will be important that ministerial powers are used sparingly, and that adequate account is taken of affected parties when decisions are made, including adequate consideration of trade-offs between economic and environmental interests as appropriate.

Clauses 689 – 693

- 2.51 The Bill proposes a Freshwater Working Group be set up to provide a report on options for allocation but if the group is to be truly effective and forward-thinking, it is important for it also to include representatives of existing users, potential users, and those with expertise in economic allocation decision-making.
- 2.52 The impact on existing-use rights to resources could be problematic given that RPCs, comprised only of members from local government and Māori (as noted in 2.44), could see existing property rights to some resources (e.g., freshwater) eroded over time, with obvious impacts on investment certainty. It is noted that the NPF can give directions providing further detail on the meaning of the resource-allocation principles (sustainability, equity, and efficiency) and on allocation methods that must be given effect to, through NBE plans to allocate specified resources. As previously stated, how such principles are defined, and which principle takes precedence could have significant implications for current and, potentially, future natural resource users.
- 2.53 It is also noted the government proposes that water allocation will move from the current “first-in-first-served” approach to allocation mechanisms determined by RPCs. The absence of any business representation (apart from the normal submission process) could be problematic if it is decided to reduce water takes and/or reallocate water. While some existing electricity development, such as hydroelectricity, will receive an automatic rollover during the transition phase, other water uses e.g. abstraction from bores, could potentially face cutbacks and shorter consenting phases (see clause 275 – Duration of certain resource consent activities).
- 2.54 The effective ruling out of increased market-based mechanisms for freshwater management and allocations based on price is disappointing. Bureaucratic mechanisms for allocation (e.g. merit based) are a weak (uncertain) substitute for individual business decision-making. They will also, by definition, create greater uncertainty as to what constitute “good uses” of freshwater in the eyes of an RPC.
- 2.55 Decision-makers need to be careful when it comes to taking away or unnecessarily interfering with people’s property rights, since without adequate compensation, the effect on investment decision-making will be chilling. Moreover, it is often not adequately recognised that not only are current owners affected by a loss of property rights but the communities in which they operate suffer as well. Too often the wider effects of resource-use decisions are not properly understood, a particular danger with centralised

decision-making when decision-makers are too remote from the communities affected. There is a danger planners will pick winners without properly recognising the impact on existing businesses, a situation not helped by the Bill implying that in general, the (current) maximum consent period of 35 years for water is too long with proposals for many consents to be paired back to around 10 years for some uses. The issue of property rights is scarcely mentioned, if at all, let alone the need for compensation if private property rights are taken or reduced in the public interest.

- 2.56 Clearly a water-user does not have right of ownership of the actual water resource, but resource consents do give the user the right to take, dam or divert water. In this regard, a resource consent is a property right or at the very least, affects the decisions made about property. Farmers unable to renew water consents are unlikely to upgrade farms (including to improve water quality) and may find access to finance is affected. Rural employment will suffer and communities will atrophy. A similar effect is likely if electricity generators have no confidence their water use consents will be renewed. Water permits are recognised and valued as rights, particularly where there is an increasing demand for water. Therefore, semantics aside, water consents *are* water rights, as reflected in the large infrastructure investments undertaken in New Zealand - electricity generation, large scale irrigation schemes, manufacturing, processing, mining etc. In many cases the value of consents for agricultural irrigation has been capitalised into land values.
- 2.57 BusinessNZ considers that to encourage greater accountability, there is a strong case for including in the Bill a cost/benefit test (something much better than the RMA's original section 32), ensuring a strong understanding of the impacts associated with plan changes in respect to economic development and employment, along with any significant environmental effects.

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 affecting 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 plan changes (e.g. an enhanced Section 32 of the RMA).**

Appendix One - Background information on BusinessNZ

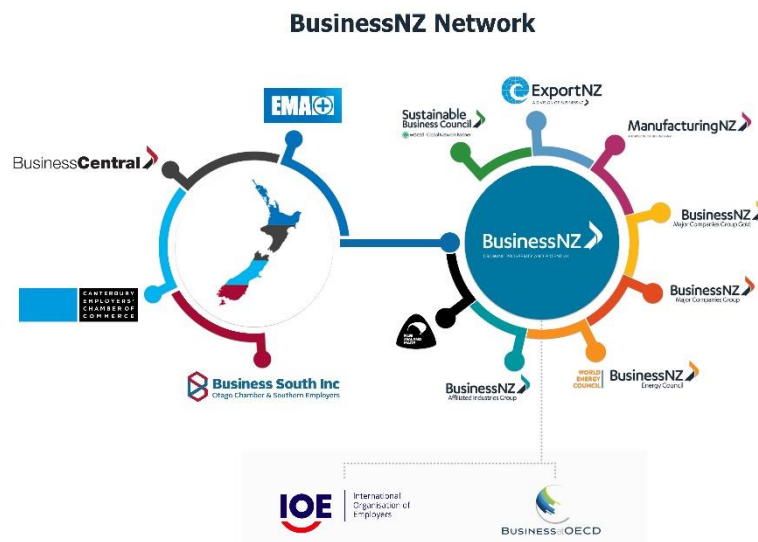


The BusinessNZ Network is New Zealand's largest business organisation, representing:

- 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.