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POWERING A BETTER NEW ZEALAND TOGETHER

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Environment Committee

via e-mail: environment@parliament.govt.nz

Submission on Planning and Natural Environment Bills

Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy sector advocacy organisation. We represent participants from across the energy system, providing a strategic sector perspective on energy issues and their adjacent portfolios, such as sound regulatory frameworks. We enable constructive collaboration to bring coherence across the energy sector through and beyond New Zealand's journey to net-zero carbon emissions by 2050.

2. This document constitutes our submission on both the *Planning Bill* and *Natural Environment Bill* ('the Bills') that are proposed to replace the Resource Management Act 1991 ('the RMA'). We have focused on key areas that affect the energy and resources sectors. We provide general commentary on shared elements of the Bills and then on particular provisions.

3. We wish to present our submission to the Committee.

Key messages

4. We support the Bills and the development and economic enabling intent of the reforms with an emphasis on property rights. The costs of implementation of the existing legislative framework are now widely recognised as outweighing its benefits – both economic and environmental.

5. The specific elements of the Bills that we are particularly supportive of are the proposals for regulatory relief, spatial planning, the limits exception for significant infrastructure and the one-year processing timeframe for 'specified energy activities'.

6. Our key recommendations for the Bills are:

    a the addition of an energy specific goal;

b explicitly preventing regional councils from regulating emissions already regulated through a national framework;

c a single and broad definition of infrastructure;

d reducing the threshold and widening the scope for regulatory relief;

e extended and enhanced consultation process for the national instruments;

f activities for the supply of fuel to thermal generation are added the definition of 'specified energy activities';

g requiring registration of permitted activities only required where national instruments specify they must be registered; and

h an extended duration for coastal permits and marine consents for petroleum infrastructure.

7. The Bills set up the new planning system, but much of the detail about how the regime will operate is yet to come in key documents such as national instruments and spatial plans. The development of these documents is critical and must explicitly require consultation with infrastructure providers and other sector experts.

Summary

8. We strongly support the Government's intent for the resource management reforms to enable development and economic growth while safeguarding the environment. On the whole, the Bills represent a positive step forward in aiming to introduce a simpler and more streamlined planning system. We agree with the greater emphasis on property rights and shifting public participation to the planning rather than consenting stage.

9. Our sector has been let down by the current resource management regime. It has been slow, dense and actively constrained growth, infrastructure and productive development. The RMA has been extensively amended over the years, often allowing it to become politicised, and it now needs to be replaced.

10. The purpose of the Bills is essentially to set up the planning system. Much of the detail about how that system will operate is yet to come in national policy statements and national standards ('national instruments') and spatial planning documents. These documents will be critical, particularly in relation to future infrastructure development. It is vital that there is full and genuine consultation, including with industry and infrastructure providers, on the new national instruments.

11. A systems-based and fuel agnostic approach to managing energy infrastructure should be taken when the new national instruments are drafted. We would not want to see the current national direction framework replicated in future. Singling out parts of the complex and interconnected energy system, particularly on the basis of fuel type (e.g., renewable energy) risks differential and inconsistent treatment that can have adverse, and even perverse, outcomes. We are also concerned that the current national direction framework does not explicitly recognise petroleum infrastructure.

12. The regulatory relief provisions in the Bills serve to protect property rights and should be retained and enhanced. A government should never knowingly and deliberately derogate private property rights in new rules without compensation. The Bills should be strengthened in terms of the threshold for relief and scope of their application.

13. We support the overall direction of the proposals contained in the Bills, but there are a range of issues that need to be addressed. These include more pathways for combined processes, a new energy specific goal, the definitions of infrastructure, the evidence base for setting environmental limits and registration requirements for permitted activities. We also have concerns about the ambitious timetable for implementation and what this might mean for the quality of consultation.

14. **We recommend** to the Committee that:

    a the Bills proceed;

    b the Bills enable more pathways for combined processes to coordinate consenting and permitting under both Bills such as joint applications and hearings processes;

    c amendments are made to the 'infrastructure' goal in the Planning Bill ('PB') (Clause 11(1)(e)) to add 'protect' and that the *Natural Environment Bill* ('NEB') goal to "achieve no net loss in indigenous biodiversity" (Clause 11(d)) is qualified by a proportionality constraint;

    d a fuel agnostic energy specific goal focussing on the importance of the whole of the energy system is added to the PB;

    e a systems-based and fuel agnostic approach to managing energy infrastructure should be taken when the national instruments are drafted;

    f there should be explicit recognition in the national instruments that decommissioning of petroleum infrastructure is a single project, not a series of unrelated activities, and consents for decommissioning should be integrated;

g the consultation process for the national instruments should be enhanced to explicitly include infrastructure providers and other industry experts, extended to at least 40 working days and experts should be given the opportunity to review the draft documents for technical accuracy before they come into force;

h the regulatory relief provisions in the Bills are retained, 'significant' is replaced with 'material' impact on land use and that the provisions should apply to a broader but still clearly defined range of environmental limits that may impact the reasonable use of land;

i the Bills should explicitly prevent regional councils from regulating emissions, such as greenhouse gases, that are already regulated through a national framework such as the Emissions Trading Scheme ('the ETS');

j there should be a clear and fulsome single definition of infrastructure that applies across the Bills and that this is broadened to ensure that any key missing pieces of energy infrastructure are explicitly covered;

k the exception for significant infrastructure that may breach environmental limits is retained, but the 'significant' qualifier is removed and there is alignment with other provisions in the NEB;

l the one-year processing time limit for permits and consents for 'specified energy activities' is retained and includes thermal electricity generation as well as activities for the supply of fuel to thermal generation;

m environmental limits, particularly ones that affect the petroleum sector, are based on good industry practice and scientific evidence provided by technical experts, including sector experts such as petroleum engineers;

n registration of permitted activities is only required where national instruments specify that particular permitted activities must be registered; and

o coastal permits and marine consents for petroleum infrastructure should receive the same extended duration of 20 years as ports and 35 years for renewable energy respectively in these Bills.

Submission

Support for the policy intent of the reform package

The cost of the current legislative regime has become disproportionate to its benefits

15. The basis on which the RMA was established was broadly sound. However, its implementation has left much to be desired, causing significant unnecessary costs. Such costs are manifest in the form of the misallocation of resources away from their highest value use (allocative inefficiency), administrative burdens that do not reflect reasonable costs (productive inefficiency) and a dampening of the desire to invest in productive capacity (dynamic inefficiency). This appears to reflect the growing rules-based gulf that now separates how the RMA was intended to operate (the legitimate protection of the public interest in the environment) from its increasing use to reallocate private property rights[1] and interests in order to achieve often opaque or highly dubious public goals.[2]

16. As could be expected, the incentives created by the presence of such a gulf have generally been negative. Ever complex rules designed to deliver such opaque public goals at the cost of private interests have had unintended consequences that ultimately serve to defeat the objectives sought. For example, rules making it harder to remove trees serve only to discourage them from being planted in the first place. Incentives do matter, though their impact is often hard to measure.

The new legislative regime is a welcome reset

17. We welcome the much needed and long overdue new Bills to replace the RMA. We agree with the aims of the new legislation to improve the quality and speed of decision-making and reduce unnecessary barriers and red tape. Greater standardisation and national consistency, including more nationally set standards, should improve efficiency. A focus on the protection and enjoyment of existing property rights, allowing rights holders to do more, is critical.

18. As energy infrastructure and systems need to be managed over long time horizons, we also support the new long-term spatial planning framework. Underpinned by national directions, they will and facilitate smoother more certain development processes for new energy infrastructure in the future. All this should create greater consistency and certainty and streamline consenting helping to give investors the confidence they need to invest in our natural resources, including petroleum.

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1 The term "private property rights" should not be confused as referring solely to ownership by private interests (as ownership can be held by either a public entity or a private citizen), nor does it only reflect the status of ownership, but can encompass a range of rights, such as use or management rights, and the responsibilities that accompany them.

2 While now mostly addressed, a number of relatively well-known examples of such were the 1.2 metre limits on heights of front fences and rules requiring lounge rooms to face the street.

19. The current resource management system has not been adequately facilitating major infrastructure and development projects, and the problems have been getting worse over time. The consenting processes for these projects have been pedestrian at times and many have been rejected or had oppressive conditions placed on them, all of which increases costs. The grounds for rejection have often focussed on managing adverse effects such as regional environmental impacts and did not sufficiently recognise the national social and economic benefits of the projects. Vexatious appeals (e.g. of consents and plan review processes) have also led to significant cost and time uncertainty, which can derail projects.

20. These problems have played out time and time again with major energy projects, including those for renewable energy such as wind and solar farms. A 2021 report for the Infrastructure Commission[3] estimated that current consenting processes for infrastructure projects cost $1.29 billion per year and that it took nearly twice as long to get a resource consent for key projects as it did five years before. Much of our existing energy infrastructure was built with support from government, including the gas transmission system in the North Island. In our view, it would be nearly impossible for anything on this scale to be developed by any party in today's policy environment, at least not without huge costs and significant delays.

21. It is also crucial that New Zealand holds on to all its existing energy assets, and along the way, enhances and adds to these assets to maintain security of supply and, in turn, continue to support the growth of our economy. Increasing regulatory burdens have been placed on the operation of existing infrastructure such as electricity and gas distribution networks. These have become disproportionate and act as a barrier for many routine operational activities.

22. We have also been increasingly concerned that the objectives of resource management legislation in New Zealand had expanded into matters for which it was never intended. The RMA was supposed to be an enabling regime to allow economic players to invest, subject to the effects of the activities they were undertaking. It was never intended to be a tool to favour any particular means of delivery or a means for advancing Government objectives, such as increasing renewable energy generation. Over time, however, the legislative regime was increasingly amended to be used for political objectives, as evidenced by the special treatment given to some issues (such as climate change) or technologies (such as coal-fired boilers). Our expectation is that the emphasis on property rights in these reforms will mitigate these risks and refocus the new regime back on to effects.

23. **We recommend** that the Bills proceed.

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[3] The Cost of Consenting of Infrastructure Projects in New Zealand, July 2021, Sapere report commissioned by the Infrastructure Commission.

Commentary on shared elements of the Bills

Interfaces between the two new Bills and other legislation

24. The new regime will involve a policy and regulation split between the two new Bills. The Planning Bill ('PB') establishes a consenting framework for planning and regulating the use, development and enjoyment of land, managing a narrower scope of effects than the RMA. The Natural Environment Bill ('NEB') establishes a permitting framework for the use, protection and enhancement of the natural environment.

25. The success of the system as it stands is likely to depend on how clearly the boundaries between the Bills are drawn and how easily applicants can navigate situations where they both apply. It would be useful to have more pathways for combined processes to coordinate consenting and permitting under both Bills. For example, the Bills could enable joint applications and hearings processes.

26. The interaction between the new Bills and related legislation such as the Crown Minerals Act 1991 (CMA) will also be of interest. This may not be clear until other elements of the regime are in place. As a matter of principle, all matters of environmental consenting should be undertaken under the new legislative regime. For reasons predominantly surrounding duplication of effort, or responsibility falling between legislative 'cracks' and consequential accountability 'leakage', policy effort should be applied to ensuring that this risk is avoided.

27. For example, resource allocation decisions under the CMA should remain separate and independent as they should be by design, with any consenting elements returned to these new frameworks. Other interfaces include the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and possible bespoke legislation on carbon storage and LNG importation. Further work will be required to better understand these legislative interconnections.

28. **We recommend** that the Bills enable more pathways for combined processes to coordinate consenting and permitting under both Bills such as joint applications and hearings processes.

The Goals

29. The Bills have different sets of 'goals' that set out the substantive outcomes. There is no hierarchy between the goals.

30. The focus is on enabling use and development of natural resources with environmental limits and supporting and enabling economic growth through the

use and development of land. A number of economic and infrastructure and development goals have been included, but there is no energy specific goal.

31. In contrast to the RMA, sustainable management is not on either list and nor is the effects of climate change. This has removed any recognition of the benefits of renewable energy or climate change mitigation from the core provisions that guide decision making under the Bills. This should help to ensure that these are not privileged over other forms of energy generation such as thermal. We strongly support this as climate change issues are already managed through the Climate Change Response Act 2002 (for more on this see paragraphs 74 – 78 below).

32. We support the general approach that has been taken to these goals. It is important to get the settings for them right as they provide the foundation for the system.

33. We have concerns about some of the language that is used in the current goals, for example:

    a the tone in the goals is slightly different between the Bills and may need to be recalibrated. For example, the goals in the PB seem to use softer language such as "support", "maintain" and "provide for" and may need to be strengthened; and

    b they include undefined and subjective terms such as "unreasonably affect others" (Clause 11 (1) (a)) and "inappropriate development" (Clause 11 (1) (g)) that leave uncertainty and could ultimately result in litigation. This vague language may also encourage decision-makers to act more cautiously and be risk-averse in exercising their discretion.

34. In terms of the specific goals:

    a there is an 'infrastructure' goal in the PB (Clause 11 (1) (e)). Existing and potential capacity within current assets and electricity transmission infrastructure will remain central to any future energy system. This goal should therefore be enhanced to make it clear that this existing infrastructure needs to be safeguarded. This could be done by adding "protect" to the goal; and

    b the NEB includes a goal to "achieve no net loss in indigenous biodiversity" (Clause 11 (d)). This current wording is concerning for several reasons including that it is not clear how this will be measured and it may require mandatory offsetting. It would be preferable if this goal was qualified, perhaps by a proportionality constraint (e.g., by adding "proportionate and risk-based planning" as is done in the 'natural hazard' goal in Clause 11 (e)).

35. We think that the inclusion of an energy specific goal in the PB is warranted given the strategic and extreme public interest that this sector now elicits. This is simply reinforced by the fact that the Government's objectives for economic growth and community resilience are fundamentally dependent on an affordable, secure and sustainable energy system. We are aware that every sector is likely to want to see its objectives explicitly recognised in a goal.

36. If there were to be one for energy, it should be fuel agnostic and systems focussed. The delivery part of energy is largely covered in the infrastructure goal, but an energy specific goal could emphasise the importance of taking a whole-of-system approach rather than the reductive, siloed approach taken previously. For instance, all forms of generation require a complex relationship of infrastructure that includes activities such as drilling, hydraulic stimulation, earthworks and many others.

37. The Bills also contain 'procedural principles' such as proportionality and acting in a "timely and cost-effective" and "enabling" manner that all decision-makers will need to take practicable steps to achieve. We support the inclusion of these principles as these considerations have often been absent from RMA processes. They will aid in a culture change to help achieve the intentions behind the new system.

38. **We recommend** that:

    a amendments are made to the 'infrastructure' goal in the PB (Clause 11 (1) (e)) to add 'protect' and that the NEB goal to "achieve no net loss in indigenous" (Clause 11 (d)) is qualified by a proportionality constraint; and

    b a fuel agnostic energy specific goal focussing on the importance of the whole of the energy system is added to the PB.

The hierarchy

39. The 'funnel' architecture of the Bills is a key feature which is almost the reverse of the current RMA. Under the RMA, every decision can be relitigated at every level, including national policy statements, regional plans, district plans and consents.

40. The new system in contrast locks decisions in at a higher level as each instrument must 'implement' the instrument higher up the hierarchy. Once national instruments determine how competing goals are balanced, councils will not easily be able to revisit those questions. Public participation will also be concentrated at the higher-level processes such as plan making, rather than on individual consents.

41. The objective is for there to be more certainty for development and less need for consents. From a systems perspective, this represents a shift from distributed, localised interpretation to a top-down centralised direction. Having these boundaries set up front will reduce case-by-case discretion and limit litigation.

42. We support this new architecture as it:

    a will address what can only be described as the shameful situation where individual consent applicants have been forced to run the costly appeal gamut to get the Courts to take a position that should have resided with public policy makers in the first instance;[4] and

    b should help to address a range of issues with the RMA in terms of pedestrian decision-making and endless delays.

43. While councils remain responsible for local planning, Ministers' ability to intervene and set detailed requirements will mean that their discretion may be significantly reduced particularly where national priorities drive decisions making. In relation to councils, Ministers' powers will include being able to direct councils to prepare or change plan, set methodologies for councils in preparing plans and investigate their performance. It is important, however, to ensure that consideration is given to local knowledge and pragmatism regarding compliance. This will be further at risk under the local government reforms if the enforcement functions are moved to the national level.

The importance of national instruments

44. It is intended that that there will be one set of national policy direction (NPD) under each Bill. These will include targeted objectives, policies and directives to meet the goals, how the goals will be achieved and to help resolve any conflicts. They will be implemented by national standards.

45. The hierarchy of the new system relies heavily on the quality of the NPD and new national standards (collectively the 'national instruments'). In order to maximise the outcomes that are sought to be achieved, it is critical that these are clear and effective. Otherwise any issues at this stage will flow through the new plans and into unnecessary consent requirements and/or inconsistent decision making, which will undermine the effectiveness of the new regime.

46. The new NPD will ultimately consolidate and rationalise all the current national directions into an integrated framework. This includes the changes to the national directions under the RMA that were recently consulted on and included the development of the new *NPS for Instructure.*

[4] The TTRL judicial journey is a particular case in point.

47. We submitted on these proposals and raised concerns about them that have not been addressed in the final versions that came into force in January this year. We supported the *NPS for Instructure* and its objectives. However, we considered that the rationale as to what it does (or does not) cover was unclear and ambiguous. It currently covers energy infrastructure, *but not* renewable electricity generation or transmission, which have separate instruments.

48. From a principled perspective, our view was that an *NPS for Instructure* should be given primacy for *all infrastructure*, including all forms of energy generation, transmission and distribution to signal the importance of all of these forms of infrastructure to New Zealand's future prosperity and economic growth.

49. The approach embodied in the current formulation *is not agnostic* of activity or effects. This approach risks preferencing renewable energy and particular parts of the energy system to the detriment of other parts of what is an interconnected system, and therefore being inconsistent with the government's policy objectives. For example, it is not clear why renewable electricity generation is privileged over thermal electricity generation, or electricity transmission is privileged over gas transmission (or electricity distribution, for that matter) given the commonality of their attributes.

50. While our reliance on fossil fuels will likely diminish over time, as it stands, natural gas must continue to play a vital role in the security of our electricity system. It will provide crucial 'peaking' and 'firming' to back up other less reliable intermittent energy sources through 2050 and beyond, such as wind and solar. These renewable energy sources cannot be viewed in isolation. Favouring particular technologies without considering the necessary interrelated nature of New Zealand's energy supply would risk continuing the kind of policy failures that have led to the current energy crisis that is afflicting energy-intensive industries around the nation.

51. Gas infrastructure, particularly the reticulation network in the North Island, is also critical for new and some renewable fuel sources such as LNG and biogas. With New Zealand looking to nearly double its electricity generation capacity over the next 30 years, natural gas will enable us to electrify our economy safely and securely.[5]

52. Under the new national instruments, a systems-based and fuel agnostic approach to managing energy infrastructure should be taken. There should be no arbitrary distinctions between fossil fuel-related and renewable infrastructure *especially if climate change considerations are being addressed under other pieces of legislation*. Retaining such a disconnect speaks to an absence of policy coherence.

[5] See: https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-statistics-and-modelling/energy-modelling/electricity-demand-and-generation-scenarios.

53. Policy makers should not have it both ways – either infrastructure related to thermal generation, such as the building of gas fired peaking plants, should have some prominence and visibility or they should be covered by the cloak of fuel and technology agnosticism along with all other forms of fuels and technology. These are necessary parts of the system. Similarly, petroleum infrastructure should be on the same footing as renewables. Singling out parts of the complex and interconnected energy system, particularly on the basis of fuel type, risks differential and inconsistent treatment that can have adverse, and even perverse, outcomes.

54. Some of our oil and gas fields are nearing end of life and facing the prospect of costly decommissioning of infrastructure. This is a major and vital part of New Zealand's energy transition. To support these processes, there should be explicit recognition in the national instruments that decommissioning of petroleum infrastructure is a single project, not a series of unrelated activities. The national instruments should direct local authorities that consents for decommissioning should be integrated and time bound, conditions should support safe and efficient site restoration processes and that rules should not unreasonably delay or complicate decommissioning through fragmented processes.

55. When the NPD come to be drafted, it is not clear how all the current instruments will be combined into two documents. If they are condensed, there is a real risk of them being watered down or oversimplified. Alternatively, they may just be combined largely unchanged into much larger documents without any clear benefit. It may also be preferable to have a single NPD to avoid interpretation and inconsistency issues.

56. The process for developing the national instruments could also be improved. The drafts will be subject to public notification, but participation is limited to a single submission before they are approved. The quality of the consultation on them will be critical, needs to include industry and infrastructure providers and to be longer than the 20 working days currently required in the Bills.

57. In addition to commenting on the drafts, infrastructure providers and other industry experts including from the petroleum sector should be able to review draft final documents for technical accuracy prior to being gazetted and coming into force. Clause 46 of the PB could be expanded to make expert participation explicitly clear and to change the 20 working days to at least 40. The implementation timeframes will make this robust process difficult (see below) and will require the Government to appropriately resource this consultation.

58. **We recommend** that:

    a a systems-based and fuel agnostic approach to managing energy infrastructure should be taken when the national instruments are drafted;

b there should be explicit recognition in the national instruments that decommissioning of petroleum infrastructure is a single project, not a series of unrelated activities, and consents for decommissioning should be integrated; and

c the consultation process for the national instruments should be enhanced to explicitly include infrastructure providers and other industry experts, extended to at least 40 working days and, in addition, experts should be given the opportunity to review the draft documents for technical accuracy before they come into force.

Spatial planning

59. The new spatial planning framework in the PB will replace regional policy statements and development strategies under the RMA. It will provide long-term, strategic direction and identify development areas and strategic sites. They will have a 30-year horizon and be aligned with the national instruments

60. We support providing this focus for development over coming decades. It is sensible to take into consideration the needs of future generations and where it is appropriate for development to occur, and also to clearly identify those areas which are off limits. This is particularly important for energy projects as they have very long time horizons.

Regulatory relief

61. The Bills allow relief to be granted if a 'specified rule' in a plan has a 'significant impact on the reasonable use of land' (see Part 4 of Schedule 3 of the PB). A person is eligible for relief under a relief framework if they own land that is impacted by a specified rule in a plan when it takes effect, subject to exceptions. Local authorities would be able to use a range of tools when providing relief including rates relief, development rights, waiving fees, access to grants or payment of compensation.

62. Property rights are at the core of an economy and are the basis for an exchange between willing buyers and sellers. For centuries, property rights have protected ordinary people against governments taking homes, liberties and titles. These rights ensure that what you have and earn remains yours. By doing so, living standards have increased overall and there has been a growing demand for tradable goods and services.

63. The 2018 ban clearly demonstrates what happens when private property rights are not respected. The untold truth of the 2018 ban on offshore gas exploration is that it did not leave existing permits unaffected – in reality, the ban led to investor flight from existing permits. Only nine of the 25 investors active in 2018 remain. Unaffected permits were handed back and their resources left

unexplored. Permit holders faced a massive discontinuity in their operating context; fundamentally altering the economics of their investments. The ban also affected other sector participants because no new permits were available to leverage the massive investment made in seismic studies.

64. Due to the lack of respect for those private property rights New Zealand faced many years of being an uncertain place to invest and is still swinging from energy crisis to energy crisis.

65. Furthermore, we believe that compensation is a necessary twin of property rights in an open and transparent economy. We do not believe that such a requirement will stymie development or progress. A government should never knowingly and deliberately derogate private property rights, or regulatory takings, without compensation, unless overwhelmingly in the public interest.

66. This (derogation) occurs when the government forces the expropriation of returns by regulatory fiat. Sovereign risk arises from two angles: the retrospective taking of rights, or the damage inflicted on existing rights by the government breaking the promise under which businesses invest – that today's investment will be kept whole tomorrow. The Public Works Act 1981 generally covers the taking of private property in its specified circumstances and progress has not faltered for this reason.

67. However, in other instances, when the government limits how property can be used there is seldom any compensation. This means that businesses experience a serious decrease in the value of their assets. This situation needs to be addressed and rectified in these Bills.[6]

68. We have consistently supported compensation for regulatory-induced losses or 'takings' and specifically advocated for this in our submission on the *Regulatory Standards Bill*. We therefore support the regulatory relief provisions in the Bills as councils will now have to confront the costs that they impose on society.

69. The provisions in the Bills may, however, need to be strengthened. They currently only allow for relief if there is a 'significant' impact, which is quite a high threshold. It is arguable that relief should be available for any 'material' reduction in land value caused by a new restriction that is imposed for a public benefit. Access to regulatory relief is also limited under the NEB. It is effectively only available for rules on 'specified topics' relating to matters such as significant historic heritage, outstanding natural landscapes or features, sites of significance to Māori, or areas of high natural character. Environmental limits on a whole range of other topics such as freshwater, air quality and coastal water which may materially affect land use are not covered.

6 In essence we believe that councils should be required to 'put their money where their values are' and that this constraint ensures that only high priority and highly valued actions occur.

70. There are some issues with the operation of the framework that should be resolved. For example, a national direction may set out how a relevant goal has to be achieved and the council will have implement that direction. The council will be obliged to offer regulatory relief for something that is required of them, which creates a conflict in duty. The provisions may also effectively have retrospective effect if councils roll over planning controls under from their existing plans under the RMA. The potential impact on council balance sheets could be significant, particularly in the light of the forthcoming rates cap.

71. **We recommend** that regulatory relief provisions in the Bills are retained, 'significant' is replaced with 'material' impact on land use and the provisions should apply to a broader range of environmental limits that may impact the reasonable use of land.

Ministerial powers

72. The Bills propose a much more active role for central government and Ministers. For example, the Minister for Environment will have the power to amend national standards without following the full process, allowing changes to be made to binding rules more easily. Ministers also have wide powers to make changes through regulation.

73. There is a real risk, given how broad these powers are, that significant changes could be made depending on pressures facing Ministers or when there is a change of government. The potential for rapid swings in policy direction will cause uncertainty that could impact investor confidence given the long time horizons for some projects, particularly in the petroleum sector. These powers should be exercised sparingly with environmental and development trade-offs clearly articulated. There may also be a need for further checks and balances to help provide policy stability at the ministerial level.

Climate change consideration risk

74. With the current drafting of the Bills, there is a risk that the courts will find that climate change considerations must be taken into account in decisions by regional councils. This is despite the fact that there is no goal on climate change and it is not a stated consideration for these decisions.

75. This risk has already materialised in relation to the CMA. The CMA sets out exactly what matters must be considered in granting permits and says nothing about climate change. Nevertheless, in *Climate Clinic Aotearoa Inc v Minister of Energy and Resources* [2025] NZSC 197 the Supreme Court found that climate change was a "mandatory relevant consideration" when the Minister decides whether to offer petroleum exploration permits. This was based on the interventionist judicial idea that courts may add considerations they regard as "obviously material", even if Parliament did not.

76. Climate policy should be set nationally through the ETS and Climate Change Response Act 2002, not fragmented across regional planning instruments.

77. The NEB is currently silent on the regulation of greenhouse gas emissions by regional councils. This is preferable to an allowance or requirement to regulate them, but it leaves uncertainty and an explicit statement to the contrary would be the best approach.

78. **We recommend** that the Bills should explicitly prevent regional councils from regulating emissions, such as greenhouse gases, that are already regulated through a national framework such as the ETS.

Commentary on specific provisions

Infrastructure definition

79. Surprisingly there is no definition of infrastructure that applies throughout the Bills. There is, however, one for the purposes of designations (See Schedule 5, Clause 1 of the PB). This is expanded from the previous definition under the RMA to include social infrastructure such as schools, health facilities, emergency services, defence facilities, prisons and recover and waste disposal facilities. This definition is the same as the one that was used in the *NPS for Instructure.* We would suggest that there should be a single clear and fulsome definition of infrastructure that applies across the Bills universally and not just in relation to designations.

80. The definition needs to ensure gaps are not left for key energy infrastructure. It currently includes 'pipelines' for the distribution of "natural or manufactured gas" and "petroleum" and "facilities used to generate electricity for supply". It should be broadened to ensure that any key missing pieces of energy infrastructure are explicitly covered such as:

    a battery energy storage systems (BESS), including grid scale batteries and long-duration energy storage (LDES);

    b energy (other than electricity) generation facilities likely to be connected to the transmission or distribution networks, such as those for manufactured gas (e.g., for biomethane) and other fuels (e.g., biomass);

    c infrastructure associated with the importation of LNG; and

    d wells and well operations for the supply of fuel for thermal generation or direct energy use.

81. **We recommend** that there should be a clear and fulsome single definition of infrastructure that applies across the Bills and that this is broadened to ensure that any key missing pieces of energy infrastructure are explicitly covered.

Infrastructure exception to environmental limits

82. There is a noteworthy carveout for infrastructure in Clause 86 of the NEB for significant infrastructure that may breach environmental limits. The NEB does not define 'significant infrastructure', but explanatory material from the Ministry for the Environment refers to critical projects that cannot be located elsewhere, including ports, airports, major transport and energy networks. It is not clear whether this would cover fuel production and energy supply sites such as power stations and gas processing plants, but it should.

83. We consider this to be a constructive and pragmatic provision that is essential in ensuring that critical infrastructure has a clear consenting pathway. The qualifier of 'significant' could be removed as there is likely to be dispute over what this term means, and the restriction is unnecessary considering that the pathway will be narrowed by national standards.

84. Further alignment may also be required with other provisions in the NEB. For example, Clause 67 (3) seems to require regional councils to take action for all breaches of environmental limits and the enabling goal in Clause 11 (a) to use and develop natural resources "within environmental limits".

85. **We recommend** that the exception for significant infrastructure that may breach environmental limits is retained, but the 'significant' qualifier is removed and there is alignment with other provisions in the NEB.

One-year permit/consent decisions for specified energy activities

86. We were pleased to see that the one-year processing time limit for decisions on 'specified energy activities' has been brought into the new regime for both permits and consents (see Clause 118 of the PB and Clause 139 of the NEB).

87. Renewable electricity generation projects exist in a complex operating environment. This is especially the case for intermittent renewable generation, such as solar and wind projects. It is important that these projects do not outrun the necessary firming capacity needed to ensure stable operation of New Zealand's national electricity grid.

88. Thermal electricity generation facilities were included in the definition of these activities through our submission for the *Resource Management (Consenting and Other System Changes) Amendment Act*. This has been carried through into the Bills (see the definition of 'specified energy activities' in the *Interpretation* section of the PB), which we strongly support and should be retained. It should also be

expanded to include activities for the supply of fuel to thermal generation. This would ensure that all generation projects benefit from the expedited processing timeframes, not just renewables, and that sufficient dispatchable power is built to support renewable generation in a timely manner.

89. In fact, 'specified energy activity' should also be included in the setting of environmental limits and in all goals and policies relating to protecting and maintaining existing electricity generation capacity. The PB definition of "specified energy activity" should also be added to the NEB.

90. **We recommend** that the one-year processing time limit for permits and consents for 'specified energy activities' is retained and includes thermal electricity generation as well as activities for the supply of fuel to thermal generation.

Setting effects and evidence based environmental limits

91. The NEB facilitates the setting of environmental limits to protect human health and the life-supporting capacity of the natural environment. Regional councils will set ecosystem health limits, whereas human health limits will be set nationally. To avoid breaching environmental limits, national standards may require regional councils to set up and implement an action plan, a cap on resource use, or both. If an environmental limit is breached, this breach must be notified, and an action plan must be created to detail how the breach will be remedied.

92. What the limits are and how they are arrived at will be crucial for the energy and resources sectors. They have the potential to prevent development or use of resources without there being any opportunity to weigh up the overall costs and benefits of proposed activities. It is also not clear how they will be managed – will it be first-in-first-served that prevents later developments, or will limit trading options be developed to reveal individual company's marginal benefit? In terms of how they are set, it will be important to have the right experts involved and that the limits are set with a strong scientific basis.

93. For the petroleum industry, environmental limits may constrain:

    a flaring;

    b produced water discharges;

    c land disturbance;

    d coastal occupation; and

    e seismic impacts.

94. Uniform limits risk unintended consequences for produced water, flaring, seismic operations, and coastal occupation without the relevant technical and geological information. Activity based regulation limits may prohibit safe, low impact activities.

95. We consider that environmental limits set by the Bills must be based on 'effects' not 'activities'. They should also be founded on good industry practice and scientific evidence. This ensures that environmental outcomes are protected, operational flexibility is maintained, safety critical activities are not inadvertently prohibited and recognises technical and engineering realities.

96. We therefore request that environmental limits are set with advice and/or inclusion of technical advisory groups such as petroleum engineers and with the explicit recognition of the national importance of secure gas supply for electricity reliability and industrial feedstock.

97. **We recommend** that environmental limits, particularly ones that affect the petroleum sector, are based on good industry practice and scientific evidence provided by technical experts, including sector experts such as petroleum engineers.

Activity classifications and permitted activities

98. Activity status classifications will be simplified into four categories under the Bills: permitted; restricted discretionary; discretionary; and, prohibited activities. 'Controlled' and 'non-complying' activity statuses are being discarded. Each activity category will be subject to clear and distinct information and assessment requirements. This will mean fewer resource consents/permits will be required because there will be more permitted activities, which we support.

99. There is a risk that simplification of activity classifications may result in unintended and perverse outcomes. The removal of controlled activity status may lead to increased reliance on restricted discretionary activities potentially increasing complexity, cost and uncertainty.

100. The Bills as drafted, though this may be in error, require registration for all permitted activities. This would be inefficient, unnecessary, and disproportionate for applicants and for councils. This could be amended to clarify that registration is only required where national instruments specify that particular permitted activities must be registered. This would enable councils to assess if standards and being complied with.

101. **We recommend** that registration of permitted activities is only required where national instruments specify that particular permitted activities must be registered.

Durations for marine consents and coastal permits for petroleum infrastructure

102. The amendments to the RMA in the *Resource Management (Consenting and Other System Changes) Amendment Act 2025* extended:

    a port coastal permits by 20 years to 30 September 2046 (see section 165 ZZC); and

    b renewable energy and long-lived infrastructure consents to 35 years (see section 123B (2)).

103. In another example of renewable energy infrastructure being given preference, petroleum marine consents and coastal permits were not included in these amendments.

104. We consider that marine consents and coastal permits for petroleum infrastructure should receive the same extended durations as ports and renewable energy in these Bills. This is justified as offshore petroleum assets are long-lived, re-consenting is costly and uncertain, ports and petroleum infrastructure share similar marine footprints and the lack of parity undermines investment confidence.

105. **We recommend** that coastal permits and marine consents for petroleum infrastructure should receive the same extended duration of 20 years as ports and 35 years for renewable energy respectively in these Bills.

Implementation timeframes and transitional provisions

106. It is anticipated that the Bills will be enacted by mid-2026 and will fully commence by 2029. This is, of course, subject to the outcome of the 2026 election and whether any new government might decide to make fundamental changes to the legislation.

107. There will be a few extremely intensive years of regulatory activity. The national instruments will be prepared first, within the first nine months, then the spatial plans, regional combined plans with land use and natural environment plans to follow.

108. The national instruments will be delivered in two stages. The first suite of national instruments to inform spatial plans are expected to be finalised by the end of 2026. They will include both of the NPDs, an indicative list of standardised zones and overlays and a set of national standards needed for the spatial plans. The second suite of national instruments is to be delivered by mid-2027. It will include the national standards for the Natural Environment Act and processes to set environmental limits.

109. This timetable is very ambitious. We are particularly concerned about the short windows to develop the national instruments and spatial plans while ensuring that the content and approach are appropriate. The consultation process, and its exact timing, has not yet been set out. As mentioned before, this consultation will be very important for the energy sector. Given the limited capacity of the resource management profession, it may be necessary to stagger elements of the implementation, particularly the plan making processes. In light of these concerns, a longer timeframe for the transition may produce better and more robust outcomes.

110. There is a risk of the transitional period dragging on and causing confusion and uncertainty. Given the complexity and wide-ranging nature of the changes, the transition period needs to be managed efficiently to avoid confusion or possible perverse outcomes. For example, there may be a rush of consent applications under the old provisions to avoid the uncertainty of the future provisions.

111. Given the broad legislative reforms occurring now and proposed in the future, it will also be important that transitional provisions consider amendments to other enactments. For example, consequential amendments may be required to the related legislation mentioned earlier such as the CMA.

Concluding comments

112. Our overall assessment is that the new regime will be beneficial for the energy and resources sectors and consequently for the New Zealand economy. Key features that we can support are a greater recognition of property rights as a guiding principle, the proposals for regulatory relief, spatial planning, the limits exception for significant infrastructure and the one-year processing timeframe for 'specified energy activities'.

113. What we really need is consistency and policy stability in resource management. This will only happen if there is bipartisan support and we welcomed support in the Bills' first readings of the Labour Party. The previous absence of bipartisanship has delayed fundamental changes to the planning regime and created massive uncertainty for developers, infrastructure providers and potential investors. There will always be differences in the margins, but we are calling for cross-party consensus on the key elements of these reforms. All parties should work together to develop a clear plan for the future that balances our economic and social well-being with our aspirations for long-term environmental sustainability.

114. We wish to present our submission to Select Committee.