Submission by

The Employers and Manufacturers Association (EMA)

to the

Environment Committee

on the

Natural and Built Environment Bill

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Employers and Manufacturers Association (Northern) Inc.
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About the EMA

The EMA has a membership of more than 7,500 businesses, from Taupo north to Kaitaia, employing around 350,000 New Zealanders.

The EMA provides its members with employment relations advice and legal services from industry specialists, consulting services in HR, ER and Health and Safety, Collective Bargaining negotiation, a People Experience Practice, and Advocacy at both Central and Local Government levels to help their businesses and people grow.

The EMA advocates on behalf of its members to bring changes in areas that can make a real difference to the day-to-day operations of our members including RMA reform, infrastructure development, employment law, skills and education, health and safety and export growth.

The EMA is part of the BusinessNZ network.

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Please note the EMA wishes to appear before the Select Committee.

Introduction

The Employers and Manufacturers Association (EMA) welcomes the chance to submit on the Natural and Built Environment Bill (NBE or Bill), one of three bills that will eventually complete the reform of the current, and no longer fit-for-purpose, Resource Management Act (RMA).

We will submit separately on the Spatial Planning (SP) Bill that is also available for submissions at the same time as the NBE and will submit again on the third part of the reforms, the Climate Change Bill, when that is made available.

The EMA has long been in favour of reform of the Resource Management Act, and both individually and through its involvement with the Resource Reform Group (RRG), continues to support that reform.

It was our joint commissioning, with Property Council NZ and Infrastructure NZ, of the Environmental Defence Society's (EDS) report that proved the RMA was failing in its environmental protection role that provided the impetus behind the RMA reform movement. Those four organisations were later joined by BusinessNZ to form the RRG.

The EMA has a long-held view that despite its best intentions, the RMA has acted as a significant handbrake on business growth, development and the provision of much-needed and too-long delayed critical infrastructure.

Our goals, and the goals of the RRG, were for replacement legislation that was less complex, easier to understand and navigate during consenting, faster and more efficient to meet the needs of the development, business and infrastructure communities (including housing), and gave better protection to the environment – especially as the current Resource Management Act (RMA) was visibly failing in that key requirement.

We want a system that is faster, more efficient, provides more certainty and protects the environment.

We support Government's initiative in finally tackling resource management reform and can see, if the new system works as promised on the tin and is implemented with a different mindset than we see currently, that the reforms could deliver on these goals.

But, we also have some concerns and can see some potential conflicts and contradictions, that may affect the efficiency of the system, and it is in seeking to help improve the Bill and its stated outcomes that we make the following comments.

Headline Issues

The fact three Bills are being used to replace the existing RMA feels inherently clunky and raises concerns around how the three will interconnect and interact, especially when we have yet to see even a draft of the third piece of legislation.

Past experience for the business, development and infrastructure communities is that too many local authorities have been focused on finding ways to not allow development or block growth. Yet, many of those same local authorities (or representatives thereof) will, under the new Bill, be placed on the Regional Planning Committees. Those plans are meant to automatically enable activities in certain areas, but there are parts of the legislation that do allow those in charge to potentially maintain their negative stance towards development, instead of enabling it. Enabling growth is asking the same people who have blocked growth for the past 30 years to make a massive switch in mindset to instead enable growth.

The issue of funding growth and finding ways for local and regional communities to benefit from that growth is also not addressed, despite funding being identified as a critical issue. Not being able to benefit from growth has also been a significant factor in local opposition to growth in the past.

There are 18 outcomes or provisions stated in the Bill but no indication of how they are ranked or how those outcomes are considered in decision-making. Some are directly contradictory. The clash between stated environmental and development outcomes will inevitably lead to court decisions. Is that easier decision making?

Even with the change to Te Oranga o te Taio, which recognises the inclusion of the impacts on people, the weighting in the legislation appears to lean heavily in favour of the environment taking precedence over all other factors.

While supportive of the reduction in district plans from 100 to 15, we do have some concerns about the flexibility required should circumstances change in a region and the ability to account for regional variations – especially where there is an overlay of national direction. While supportive of, and understanding the need for national direction, it's important that regional needs also have a priority. An example is the current push back from Christchurch City Council on urban development legislation that allows for six storey apartments right in metropolitan areas. Arguably, that scale of development is unsuited to Christchurch and potentially other metropolitan centres around the country.

We also believe there is a significant oversight in not having more varied voices or input into the Regional Planning Committees. Despite seeking outcomes for business, development and infrastructure, none of those sectors are likely to have representation in developing the NPF or in RPCs, and they are the main end users of the new system.

There is another concern around the widespread responsibilities and decision-making vested in the Minister for the Environment. This sets up the potential for ongoing political interpretation and interference as Government's change and raises the question of checks and balances on the Minister making those decisions.

Another of our key goals was the establishment of far better monitoring of outcomes and consents and the establishment of a knowledge resource on best practice. It's unclear if that database will be established or where it might be held.

Finally, we agree with the issue of allocation and potential loss of existing rights raised by our colleagues at BusinessNZ.

Other Concerns

Clause 3 appears too heavily weighted towards environmental factors over-riding all other considerations. While there are some mitigations and references to development needs and infrastructure, Clause 3, especially when combined with other clauses, e.g., **Clause 5**, is so wide in its definition that it could be used to prevent almost anything that is deemed likely to harm the environment.

The conflicting outcomes within **Clause 5** require a framework to resolve the hierarchy and conflicts between those outcomes. The cost benefit analysis suggested by the Property Council is a potential solution that may help avoid the courts.

Clause 6 could be used as catch-all to stop any development. Favouring caution and proportionate protection when information is deemed 'uncertain' or 'inadequate' is a subjective test that anyone with a pre-conceived viewpoint against a development or project could use to thwart that project. It should be deleted.

Clauses 37-46 need to allow more flexibility for decisions and input at local level rather than rely too heavily on national direction. National direction is required to provide consistency to decision making across the country – especially where plans may overlap or have similar outcomes in neighbouring districts, but they still require some regional flexibility. Without that, the exemption provided in **Clause 44** – which we support – is likely to be sought too frequently and will slow down the consents process.

The definition of infrastructure in **Clause 58** is too narrow as it possibly excludes network infrastructure such as roads and water networks and the housing they will support.

Clause 102 needs to better define a process for deciding what is 'sufficient development land provided for growth' and the timelines around using that land. Plan changes, heritage considerations and zoning rules could all impact the available land and slow down or prevent its further development.

Reducing consent categories to four from the existing current six could well streamline the consenting process, but that requires clearer definition of what activities fall into each category. Without that firm direction, risk averse consenting authorities could simply deem almost any activity as 'discretionary' requiring a longer, slower, more expensive consenting process for the applicant.

Similarly, there should be clearer definition around 'relevant community concerns', or the Minister or RPCs will likely face a stream of concerned communities, again slowing down the consenting process.

As noted earlier, the EMA is concerned at the lack of business, development and infrastructure sector involvement in setting Regional Plans. These are the groups directly affected by those plans and they will largely be those implementing those plans.

As we have seen with the likes of the Kaikoura recovery and the Auckland Unitary Plan, early engagement with these groups gives better and faster outcomes from those plans. The private and public sectors working together has led to proven better outcomes.

Yet, while Regional Planning Committees must establish an engagement register, which may include those sectors, they are not obliged to consult with them.

That means **Clause 15** in **Schedule 7**, which rejects the idea of having to consult with those implementing the plan, actively contradicts **Clause 32** in the Spatial Planning Act that clearly intends those developing the Spatial Plan should engage with those who must implement the plan. That inconsistency needs to be addressed with engagement required in both instances.

Conclusion

The EMA is generally supportive of the intent of the two Bills to make the resource management system a more certain and efficient system that achieves both better protection for our environment and better outcomes for the business, development and infrastructure sectors that deliver the crucial economic and social benefits that help our New Zealand society thrive.

Those outcomes are what drove the formation of the RRG with us, Infrastructure NZ, Property Council NZ, EDS and Business NZ.

The 7–10-year time frame suggested for implementation and the switch in mindset required from those overseeing the system to a permissive viewpoint will require firm direction nationally but must also allow for more flexibility at a regional level.

We see more engagement with those sectors implementing the new system as critical, particularly in the early phases of the RPCs and developing the Spatial Plans. Appointments to Regional Planning Committees will be a key to the success of the new system.

We look forward to continuing to work towards an effective, efficient new resource management system.