



**TCF Submission to**  
**The Environment Committee**  
**On the Natural and Built Environment and Spatial Planning Bills**  
**17 February 2022**

**Introduction**

1. Thank you for the opportunity to submit on the Natural and Built Environment (NBE) and Spatial Planning (SP) Bills. This submission covers both Bills.
2. The submission is provided by the New Zealand Telecommunications Forum (TCF). The TCF is the telecommunications sector's industry body that brings together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF member companies represent 95 percent of New Zealand telecommunications customers.
3. The TCF supports the aims of the Bills. In this submission we offer the Committee an overview of:
  - a. how the telecommunications sector interacts with the resource management system
  - b. the role of the sector in helping to achieve the aims of the reforms
  - c. aspects of the Bills supported by the industry that are important to retain
  - d. areas where we see missed opportunities or problems.
4. Members of the TCF have made more detailed submissions. This overarching submission is intended to help the Committee put these in context and identify key themes.

**Summary of our key points**

5. Submissions inevitably get summarised. To make it easier, here is a summary of our key points:
  - a. The telecommunications industry is a **provider of critical infrastructure**, providing the connectivity (mobile and internet) that communities and

businesses depend on. Our members engage with the resource management system to be able to install, maintain and upgrade the network infrastructure (such as fibre optic cables, cell towers, poles and antennas) needed to get that connectivity around the country.

- b. We support the aims of the reform, in particular its aims to simplify, standardise and speed up the resource management process. To achieve this the new **National Planning Framework** (NPF) will be critical for our industry. But the intended outcomes will not be achieved if the existing standards for telecommunications are not updated before they are transitioned into the infrastructure chapter of the NPF. We think more time is needed to do this properly, and recommend the timeframe in the NBE Bill for the first NPF to come into force be extended from six to 12 months from royal assent. We also submit that infrastructure providers be included in the set of organisations that the responsible minister engages before the completed NPF is publicly notified. This is necessary to ensure we get the infrastructure aspects right.
- c. The Bills don't go far enough to ensure that **national infrastructure priorities** are picked up at the local level and the plan making process. To achieve this we recommend changes to the NBE and SP Bills so that network utility operators are consulted earlier in the plan making process. The SP Bill should also require (or at least enable) central government to communicate investment priorities through a national spatial strategy or statements of regional priorities.
- d. **Funding for infrastructure** isn't dealt with adequately - without this we will not see the intended integration of infrastructure in land use development (e.g. ensuring quality connectivity in new housing developments). More direction is needed in the SP Bill's requirement that regional spatial strategies "support a coordinated approach to infrastructure funding by central government, local authorities, and other infrastructure providers". Developers also need to contribute to both public and private sector infrastructure funding.
- e. We have concerns about how the **system outcomes** will be balanced, and recommend that the infrastructure outcome be amended to have more directive language, similar to the approach taken with the environmental outcomes. Without this change there is a likelihood that environmental outcomes would always take precedence. The risk of this is that telecommunications services may not be able to be provided to (or upgraded in) some communities. We also recommend a role for decision makers in managing conflicts between incompatible land uses, and that the NBE Bill expressly states there is no hierarchy between the system outcomes.

- f. There are aspects of the NBE Bill that, as currently drafted, will make it a lot harder for us to get connectivity to the people of Aotearoa. These include:
- i. The new **permitted activity notices (PANs)**. The NBE Bill would enable the NPF and councils to require PANs for routine telecommunications installation and connection activities that currently do not require a resource consent and that are permitted activities under the NBE Bill. We have several concerns:
    - Requiring a PAN for permitted activities conflicts with the nature and intent of something being ‘permitted’.
    - PANs will significantly slow down our ability to provide services to consumers, and increase cost.
    - Enabling both the NPF and regional plans to require a PAN would create a duplicate and potentially conflicting system for consenting.
    - Enabling regional authorities to require PANs for NPF issues will also undermine the purpose of the NPF. It is critical to ensure that activities that are permitted under the national direction are not revisited or respecified in regional plans via a PAN requirement.

We therefore recommend that network utility operators be exempt from the requirement to obtain a PAN. If the Committee does not support that suggestion, then we submit that PANs for infrastructure provided by a network utility operator can only be required under the NPF (not by a regional authority plan overlay).

- ii. **Environmental limits.** In some communities the only option is to locate telecommunications infrastructure in areas with high environmental values. While the NBE Act anticipates exemptions for activities that have a functional or operational reason to be undertaken in a particular place, the process for getting exemptions is very complicated and needs to be simplified. We recommend an approach similar to the recent National Environmental Standards for Freshwater.
- iii. **Designations.** The NBE Bill misses an opportunity to encourage greater sharing of infrastructure corridors through multi party designations (e.g. roading and telco infrastructure providers working together). We recommend the NBE Bill require evidence that requiring authorities consult with impacted networks about the possibility of joint designations.

- iv. **Coastal and other overlays.** There is an opportunity for the legislation to enable telecommunication infrastructure in overlay areas, with prescribed criteria.
- v. **Transitional provisions.** To aid the transition for existing activities we submit that all RMA resource consents (and other approvals) are deemed to be resource consents under the NBE Bill.

### **The telecommunications industry and the resource management system**

- 6. The telecommunications industry interacts with the resource management system as a provider of critical infrastructure. Our members provide the connectivity (phone and internet) services that New Zealand communities need to function and thrive. To provide these services, the sector needs to install, operate, maintain and upgrade infrastructure in the built environment, rural areas and in the infrastructure corridors in between.
- 7. For example, our members need to get fibre optic cables into the ground, have cell towers to communicate the radio signals needed to make phone calls and use wireless internet, and install poles, antennas and base stations around cities and towns to help signals get through.
- 8. Our members engage with several aspects of the resource management system to make this happen, including consents, designations and planning processes. Delays, regional variations and complications in the existing process can make it difficult for us to provide the services New Zealanders depend on. Which is why we support the intended aims of the reforms to simplify, standardise and speed up the process.

### **The role of the sector in helping to achieve the aims of the reforms**

- 9. As a sector, we also have a key role to play in helping to achieve the goals of the reforms around wellbeing, urban development and climate change:
  - a. Wellbeing: we provide the connectivity New Zealanders rely on to maintain social connections, access education and health services from a distance, engage in e-commerce, and access a host of government services and information (including emergency management).
  - b. Urban development: we provide the connectivity that enables people to live and work in more places, helping to intensify the built environment and make more urban development and housing possible.
  - c. Climate change: we support individuals and businesses to reduce their environmental impact. For example, by enabling precision agriculture, smart infrastructure and working from home.

## **The proposed National Planning Framework is very much welcomed by the sector**

10. We welcome the introduction of a NPF. Providing more centralised and national direction, and less regional variation, will make it much easier for us to provide the connectivity New Zealanders need.
11. We are pleased that the first NPF will include a direction on infrastructure, and will bring across standards for telecommunications currently set out in the National Environmental Standards for Telecommunication Facilities (NESTF). However there are elements of the existing standards that are urgently in need of updating and cannot wait until the new regime is in place and the first NPF is reviewed. For example, maximum pole heights need to be increased to provide connectivity in new multi-story developments in the built environment.
12. The need to update the existing telecommunications standards as they go into the first NPF is heightened by the fact that the first NPF (based on the RMA and not the new legislation) could be in place for up to nine years before the first review is triggered. Nine years is not regular enough to keep pace with technology changes in telecommunications infrastructure and changing societal and environmental circumstances.
13. We are engaging with officials from MFE, MBIE and Te Waihangā to see if work on updating the NESTF standards can be included in the first NPF. We would appreciate the Committee's support for this when it engages with officials and reports back to the House. The draft legislation you are considering will not be effective if telecommunication infrastructure matters are not updated.
14. We also note that the work on the component parts of the first NPF is being done in a very constrained time frame. And the opportunity to engage on the draft NPF before public notification is limited and does not include infrastructure. This risks the NPF not being fit for purpose and limits our ability to deliver telecommunications to the people of Aotearoa.

### *Proposed changes to the NBE Bill*

15. We propose that:
  - a. clause 27 of schedule 6 to the NBE Bill be amended to require each part of the NPF to be reviewed every five (not nine) years as part of a rolling review programme
  - b. the timeframe for notifying the first NPF be increased from six to 12 months after royal assent to give time for meaningful consultation with stakeholders and testing of the draft NPF
  - c. clause 2(b) of schedule 6 be amended to require the responsible minister to also engage with individuals or organisations that are representative of significant national or regional infrastructure

- d. the Committee consider whether the first NPF would be better prepared under the NBE Act rather than the RMA. Given that the NPF is the first and core document that regional spatial strategies and NBE plans have to give effect to, it is critical that the first NPF is fit for purpose.

### **Getting national direction into regional spatial strategies**

16. In addition to setting national direction through the NPF, central government will also be able to bring national priorities (including infrastructure needs) to the table when regional spatial strategies are set. The SP Bill enables this by allowing central government to have a seat on the regional planning committees, if they want to. Because this is optional there is a risk that national priorities will not flow through to the strategies.

#### *Proposed change to the SP Bill*

17. The above problem could be addressed by requiring (or at least enabling) central government to communicate its investment priorities in other ways, for example through a national spatial strategy or statements of regional investment priorities that regional spatial strategies must give effect to. We recommend the SP Bill provide for this.

### **Ensuring infrastructure issues flow through into the plan making process**

18. While the focus on infrastructure in the proposed NPF is welcome, it is not enough on its own. The focus on infrastructure also needs to be carried through into regional spatial strategies and NBE plans. To achieve this, the Bills need to do more to ensure that infrastructure providers (such as network utility operators) are engaged early in the plan making process.
19. The Bills currently list infrastructure as a key matter to be considered in the development of plans and strategies, but they do not mandate its inclusion or require engagement with infrastructure providers in the planning process.

#### *Regional spatial strategies*

20. For example, while clause 16(1)(c) of the SP Bill requires that regional spatial strategies provide strategic direction on a number of matters, including infrastructure (listed as a key matter in clause 17(1)(g) and (h) and clause 18(1)(c) and (g)), this is only to the extent that the regional planning committee considers they are of strategic importance to the region.
21. The first opportunity to check whether a committee has appropriately identified or addressed infrastructure issues is when a draft regional spatial strategy is developed and made available as part of a public consultation process (step three of the process set out in Schedule 4). The Bill only provides the opportunity for appointing bodies to review an earlier draft. Appointing bodies are local authorities, the responsible minister or a Māori appointing body (defined in clause 1 of Schedule 8 to

the NBE Act). Given the importance of regional spatial strategies to the ability of network utility operators to deliver infrastructure, this opportunity should also be afforded to those operators.

#### *NBE plans*

22. Similarly, while clause 102 of the NBE Bill says that NBE plans must ensure the integration of infrastructure with land use and provide for system outcomes (which include the provision of infrastructure services), the Bill does not require engagement with infrastructure providers such as network utility operators on this issue. The only opportunity for infrastructure providers to make a submission on a proposed plan is once it has been developed and publicly notified. We think the engagement on infrastructure needs to happen earlier in the process.

#### *Proposed changes to the Bills*

23. We propose the following changes to the bills to ensure there is consultation with network utility operators early enough in the planning process:
  - a. Adding network utility operators to the list of groups that have the right to be consulted by a regional planning committee on a draft NBE plan (see clause 15 of Schedule 7 to the NBE Bill)
  - b. Amending step two in clause 3 of Schedule 4 of the SP Bill (re review of draft regional spatial strategies) so it also applies to network utility operators.

#### **Balancing the system outcomes**

24. We are supportive of the move to a focus on improving environmental outcomes, with a longer term view to protecting the environment. However, we have questions about how the proposed system outcomes in clause 5 of the NBE Bill will be balanced in the event of a conflict. There is a lot riding on the first NPF and NBE plans providing adequate direction on balancing outcomes. This lack of certainty could hinder infrastructure planning and investment.
25. For example, how will the provision of infrastructure services to support the well-being of people and communities (clause 5(i)) be balanced against protecting outstanding natural features (clause 5(a))?
26. While there is no hierarchy in clause 5 of the NBE Bill (we do not think there should be one), more directive language is used to frame the environmental outcomes compared to the infrastructure and urban development outcomes in sub-clause (i). In the event of a conflict between the outcomes, RMA case law suggests it is likely the outcomes with more directive language (e.g. to “protect” or “promote”) will prevail. If this happens more often than not, then the consequence of weighing environmental outcomes more highly than infrastructure could result in some regions losing out on vital connectivity improvements. This is because community demand for mobile and internet services, and the practical limitations in constructing

infrastructure, sometimes dictates the only possible location for infrastructure is in areas with high environmental values.

27. We also note that the drafting of the infrastructure outcome does not recognise the role of infrastructure in providing for well-functioning urban environments. And that the current drafting refers to “infrastructure services” which is not a defined term in the Bill and could limit the application of the provision to the service aspects of infrastructure.

*Proposed changes to the NBE Bill*

28. To address the issues raised above, we propose that that infrastructure outcome in clause 5(i) of the NBE Bill is redrafted to:

- a. use more directive language
- b. refer to infrastructure instead of infrastructure services
- c. note the role of infrastructure in providing for well-functioning urban and rural environments.

29. We also propose two changes to better provide for the management of conflicts between incompatible land uses:

- a. an addition to clause 5 of the NBE Bill to clarify that no automatic priority or hierarchy exists between the system outcomes in clause 5
- b. an addition to clause 6 of the NBE Bill to clarify that decision makers have a specific role in managing conflicts between incompatible land uses.

**6 Decision-making principles**

(1) To assist in achieving the purpose of this Act, the Minister and every regional planning committee, in making decisions under the Act, must –

...  
(f) manage conflicts between incompatible land uses.

**Environmental limits**

30. We support the concept of setting environmental limits. But there is a need for a clear consenting pathway for infrastructure in areas where environmental limits are set. Without this, there is a risk our members will not be able to install, protect, maintain or upgrade infrastructure in sensitive environments. As noted above, the result of this could be degraded services or no services at all for some communities where the only option is to locate telecommunications infrastructure in areas with high environmental values.

31. Clause 64 of the NBE Bill anticipates the granting of exemptions to the effects management framework, including for activities that have a “functional or operational” reason to be undertaken in a particular place, despite adverse effects on biodiversity or cultural heritage. But the process for getting an exemption is very



complicated. Regional planning committees (when developing their regional spatial strategies or NBA plans) request an exemption from the Minister to an environmental limit set in the NPF. The Minister then directs that the exception be included in the NPF. It is not clear whether exemptions to environmental limits granted by the Minister would apply nationally or just to the region that requested it.

32. This process will probably work for bespoke regional issues. But there are exemptions for the operation of network utilities that would be needed nationally that could be built into the NPF when it is first developed. This would save a lot of time. It could be supplemented by more specific exemptions sought at the regional level. The model we have in mind is similar to the recent National Environmental Standards for Freshwater ("NES-F") – which provide exceptions for specified infrastructure, but also for other positive activities (e.g. restoration works) from the strict limits set. It could also allow for temporary activities.

#### *Proposed changes to the NBE Bill*

33. The suggested approach to exemptions to environmental limits could be achieved by amending clause 44 of the NBE Bill to enable:
- a. network utility operators to request an exemption
  - b. the Minister to direct exemptions for certain classes of activities when preparing or revising the NPF.

#### **Integrating infrastructure with land use development**

34. We welcome the requirement for NBE plans to ensure the integration of infrastructure with land use (see clause 102(2)(i) of the NBE Bill). Enabling integration will allow telecommunications providers to better respond to the changing needs of communities and the environment. However, it's hard to see how this will be achieved in practice.
35. It's one thing to draw lines on a plan for where you need telecommunications infrastructure. But it won't happen if there isn't funding. The requirement in NBE plans will not be effective if funding issues are not also addressed (see below).

#### **Funding for infrastructure**

36. While clause 15(2) of the SP Bill requires the regional spatial strategies "to support a coordinated approach to infrastructure funding by central government, local authorities, and other infrastructure providers", there is not enough certainty on how this will play out.
37. While there is an intention to have implementation agreements to complement regional spatial strategies that identify a programme of actions and sources of funding, the agreements are not mandatory and are not binding.

38. We also note that the requirement in clause 15(2) does not include developers who profit from infrastructure investments. Developers should be required to contribute to the costs of all the infrastructure required to support a new development (e.g. water, electricity, telecommunications, roading, mobility and open space such as reserves). These sorts of funding contributions are currently only available to public infrastructure. Clause 15(2) should bring developers into the mix.
39. A recent example of funding challenges concerns the 60 to 80 private plan changes being progressed in various locations all over Auckland at the moment. It is not possible for network utility operators to fund new infrastructure in all these places.

*Proposed change to the SP Bill*

40. We propose that clause 15(2) of the SP bill be amended to add “developers”.

(2) In meeting the requirements of this section and **section 16**, a regional spatial strategy must support a co-ordinated approach to infrastructure funding and investment by central government, local authorities, ~~and other infrastructure providers,~~ and developers.

**Designations and multi-party infrastructure corridors**

41. The NBE Bill is missing an opportunity in not adequately providing for multi-party designations that would make it easier for multiple infrastructure providers to co-locate and share infrastructure corridors. Having multi-party designations would bring efficiencies, save costs (that then don't need to be passed on) and help get critical infrastructure to more communities faster. It will also promote collaboration and synergies across infrastructure. The RMA reforms provide an opportunity to move away from the siloed approach that exists at the moment.
42. The situation with infrastructure and roads is a large part of the problem. The designation provisions (in the RMA and the NBE Bill) do not recognise that often there are multiple existing networks that need to position infrastructure along or under roads. Problems arise when organisations such as Waka Kotahi seek to designate roads for their transport projects. A recent example involved Waka Kotahi issuing a notice of requirement in Auckland for the North West Strategic Network Rapid Transit Corridor. Spark and Chorus have significant network under this roading and transport project.
43. A better approach would have been to create a designation that included both Waka Kotahi and these telcos as requiring authorities. But instead the status quo (and the situation under the NBE Bill) is that telecommunication network providers are required to move network, re-dig up roads and put up with compromised access to network that Aotearoa depends on, including the international cable.
44. Transmission Gully, which was built with a number of mobile blackspots, is another example of why it makes sense for telcos to have new networks included in what

would otherwise be a roading designation. Connectivity along Transmission Gully is having to be addressed retrospectively, rather than being built in from the start.

45. While the designation provisions could enable multiple party designations (Spark and Chorus have about 80 sites across the country), without a requirement to consider the opportunity for multiple party designations requiring authorities will not have to consider the opportunity and benefits of multiple party designations. And while the NBE Bill requires regional planning committees to have particular regard to whether there has been adequate consideration of the co-location of infrastructure in a designation context, and will enable infrastructure providers to make submissions on notices of requirements, this will not be as effective for co-location as multi-party designations.

#### *Proposed changes to the NBE Bill*

46. We recommend that a new sub-clause (c) be added clause 503(2) to require evidence that the Requiring Authority considered and consulted with any networks impacted by the proposal to designate, to see if they want to have a joint designation.

#### **Consenting and the proposed permitted activity applications**

47. We have concerns about some aspects of the proposed consenting process. These mainly relate to the proposed permitted activity notices (PANs).
48. The new PANs under clause 156(2), while intended to make the process easier, could have the unintended consequence of becoming a defacto consenting process with additional requirements.
49. At the moment, around 70 percent of the routine activities carried out by our members are authorised as permitted activities under the NESTF. Meaning that resource consents are not needed for these activities, right across the country. This enables quicker and easier installation of low-impact infrastructure, speeding up access to connectivity services for consumers. Network utility operators must of course comply with standards under the NESTF. The very nature and success of the NESTF as enabling legislation for telecommunications infrastructure has been due to the permitted activity standards.
50. As currently drafted, the proposed legislation could result in all new permitted activities (including those for small scale and routine telecommunications activities) requiring a PAN rather than the option to apply for a Certificate of Compliance. Network operators are not required to do so under the RMA. This would result in additional costs and administrative burden and delay, which goes against the Government's intent behind RMA reform, without guaranteed improvements in environmental outcomes. Our members undertake thousands of connections and installations every week. If these routine activities were subject to a PAN it could significantly slow down access to telecommunications services. In addition, requiring

a PAN for permitted activities would in itself conflict with the nature and intent of something being 'permitted'.

51. Another concern with the current drafting is that the legislation would enable both the NPF and regional plans to specify which permitted activities require a PAN. The proposed legislation also enables councils to decline a PAN application without providing a reason. In practice, this could mean that certain activities that are permitted under the national direction (i.e. under the NPF) could require a PAN in specific regions, with councils having an ability to override national direction and block certain permitted activities without having to provide a reason. This risks creating a duplicate and potentially conflicting system for consenting, and goes against the legislation's overall intent to provide efficiency improvements through a national direction.

#### *Proposed changes to the NBE Bill*

52. We submit that clause 302(1)(a) of the NBE Bill be amended so that network utilities are exempt from the requirement to obtain a PAN, so we are able to maintain network utilities and provide services to communities.
53. Alternatively, if the Committee does not support this suggestion, we submit that PANs for infrastructure provided by a network utility operator can only be required under NPF (not by a plan). It is critical to ensure that activities that are permitted under the national direction are not revisited or respecified in regional plans via a PAN requirement.
54. If network utilities are required to obtain a PAN then we recommend that clause 202(4)(a) be amended so that consent authorities are required to give reasons if they decline to issue a PAN or think an application is incomplete.

#### **Coastal and other overlays**

55. One of the consequences of the coastal and other overlays enabled under the existing resource management system is that there are large areas of land where it is not possible to situate telecommunications infrastructure. In a great deal of cases, this infrastructure would not negatively affect the environment.
56. We think there is an opportunity for the legislation to enable telecommunication infrastructure in overlay areas, with prescribed criteria.

#### **Transitional provisions**

57. There is a lot of uncertainty concerning the transition from RMA to the NBE Act, and when existing requirements cease and new ones come into effect. While there is a transitional provision in schedule 1, clause 2, which provides that "RMA documents" (including resource consents) will "continue in force, subject to the NBEA", this does not provide enough certainty that existing activities will be allowed to continue. A

better approach would be that all RMA resource consents (and other approvals) are deemed to be resource consents under the NBE Bill.

**Conclusion**

58. The TCF is happy to answer any questions the Committee might have on the views set out in this submission.
59. We would like to be heard when the Committee is hearing public submissions.