

# ICOMOS NEW ZEALAND

## TE MANA O NGA POUWHENUA O TE AO

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES  
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES  
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

P O BOX 90 851 VICTORIA STREET WEST, AUCKLAND 1142, NEW ZEALAND.

WWW.ICOMOS.ORG.NZ

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### **Submission to the Environment Committee**

#### **Spatial Planning Bill**

**4 February 2023**

#### **Introduction**

ICOMOS is an international non-governmental organisation of heritage professionals dedicated to the conservation of the world's historic monuments and sites. The organisation was founded in 1965 as a result of the international adoption of the Charter for the Conservation and Restoration of Monuments and Sites in Venice in the previous year. ICOMOS is UNESCO's principal advisor in matters concerning the conservation and protection of historic monuments and sites and is the cultural heritage advisory body to the World Heritage Committee. The New Zealand National Committee was established in 1989 and incorporated in 1990.

ICOMOS New Zealand (ICOMOS NZ) has 155 members made up of professionals with a particular interest and expertise in heritage issues, including architects, engineers, heritage advisers, archaeologists, lawyers, and planners.

In 1993 ICOMOS NZ published the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value. A revised ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value was approved in September 2010 and is available on the ICOMOS New Zealand website.

The heritage conservation principles outlined in the Charter are based on a fundamental respect for significant heritage fabric and the intangible values of heritage places.

#### **Context of this submission**

Like New Zealand's natural environment our built environment is unique and special. It provides us with places to live, learn, work and socialise and is a fundamental part of our local and national identity.

Within this environment cultural heritage plays a valuable role in contributing to the sense of uniqueness and quality of urban environment we experience. It is a finite resource that helps ground our 'sense of place' and provides wellbeing benefits to present and future generations. Cultural heritage places, for example:

- Enable us to appreciate our collective history of occupation and settlement, including a greater awareness of our people, places and stories
- Act as agents to bring diverse communities together, promoting social inclusion, cohesion and empathy

- Contribute to our tourism economy through enhancing the reputation and attraction of an area, along with their viability as visitor destinations in their own right
- Create, through their conservation, high quality employment and educational opportunities
- Contribute to our resilience in the face of significant change by providing a focus for community sentiment and sense of place
- Provide opportunities for emissions and building waste reduction through retention and adaptive reuse

Currently our cultural heritage is under pressure from various sources such as climate change, natural hazards such as earthquakes and development pressures. Patchy, inconsistent and infrequent identification of places of cultural heritage value across the country, coupled with inadequate protection in policy statements and plans, has also increased the likelihood of preventable loss.

Efforts to ensure this important resource is appropriately protected and managed has been further hampered by emergency and special issue legislation such as the Canterbury Earthquake Recovery Act 2011, Hurunui/Kaikōura Earthquakes Recovery Act 2016, Housing Accords and Special Housing Areas Act 2013 and earthquake prone buildings provisions in the Building Act 2004. More recently it has been subject to the additional pressures exerted by the intensification provisions contained in the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the National Policy Statement on Urban Development 2020.

### **Scope of this submission**

In light of this context ICOMOS NZ welcomes the opportunity to submit on the Spatial Planning Bill (SPB). Due to the combined length and complexity of the SP and N&BE Bills, coupled with the tight time constraints to meaningfully consider their content and prepare a thorough response, our submission is centred around the following 'headline' SPB topic areas:

- The Purpose and preliminary matters such as the proposed system outcomes
- Regional Spatial Strategies
- Implementation Plans and agreements

Given our specific heritage related remit and interests, the clauses that we have chosen to focus our submission on are ones that have particular implications for the effective ongoing management and protection of cultural heritage in New Zealand. A detailed analysis of these is contained in **Appendix 1**.

ICOMOS NZ trusts that the matters raised in our submission will assist the Committee's inquiry into the Bill. To reinforce these we would like an opportunity to make a further oral presentation to the Committee. Further, given the significant size, scale and transformative nature of the SP and N&BE Bills we would also urge the Committee to devote the time and level of inquiry necessary to ensure they adequately satisfy the objectives sought by the reform process and are appropriately 'equipped' to deliver the system outcomes identified.

Pamela Dziwulska

***Chairperson, ICOMOS New Zealand***

[icomosnzsecretary@gmail.com](mailto:icomosnzsecretary@gmail.com)

# Appendix 1: Spatial Planning Bill – Detailed Analysis

Note: Recommended text to be included is underlined, with that to be deleted ~~struck out~~

| Topic                                    | Sub-topic                        | Clause              | Support | Support in part | Oppose | Reason/s   | Recommendation   |
|--|----------------------------------|---------------------|---------|-----------------|--------|--|--|
| <b>Purpose &amp; Preliminary Matters</b> | <i>Purpose &amp; Integration</i> | cls.3/4/<br>Sched.5 |         |                 |        | <p>The intent of the Purpose clause is generally supported but the introductory phrasing of the clause is awkwardly worded. In particular we note that the primary aim is centred around providing for a particular output that is a means to an end – regional spatial strategies – instead of the objective of providing strategic direction that assists in:</p> <ul style="list-style-type: none"> <li>• Achieving the purpose and system outcomes set out in the Natural and Built Environment Bill (N&amp;BEB)</li> <li>• Promoting greater integration of relevant inter-related statutory functions</li> </ul> <p>Given the significance of this clause we strongly consider that it would benefit from further amendment to more precisely clarify its strategic intent.</p> <p>Inclusion of provisions in cl.4 and Sched.5 that direct integration of relevant inter-related statutory functions is welcome and strongly supported.</p> <p>Curiously though we note the absence of provision for integration with the Climate Change Response Act 2002 in both the purpose and cl.4. Given that a key objective of the resource management system reforms is to ‘better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change’ we consider that this is a lost opportunity that needs to be addressed.</p> | <ol style="list-style-type: none"> <li>1. Amend cl.3 as follows:<br/>‘The purpose of this Act is to provide <del>for regional spatial strategies</del> <u>strategic direction</u> that—<br/>(a) assists in achieving—<br/>i. the purpose of the Natural and Built Environment Act 2022, including by recognising and upholding te Oranga o te Taiao; and<br/>ii. the system outcomes set out in that Act; and<br/>(b) <u>promotes</u> integration in the performance of functions under the Natural and Built Environment Act 2022, the Land Transport Management Act 2003, and the Local Government Act 2002 <u>and the Climate Change Response Act 2002</u>’.</li> <li>2. Include consequential amendments to cl.4 and Sched.5 – Amendments to other Acts</li> </ol> |
|  | <i>Te Tiriti o Waitangi</i>      | cl.5                |         |                 |        | <p>Inclusion of a strengthened Te Tiriti o Waitangi clause is strongly supported. However, interpreting how the principles of Te Tiriti are to be given effect to would benefit from further direction to reduce unnecessary confusion and the prospect of lengthy and contentious litigation.</p>   | <ol style="list-style-type: none"> <li>1. Either:<br/>(a) Include specific direction in the first iteration of the National Planning Framework (NPF) to clarify the practical implications of this directive and what these mean in practice<br/>(b) Develop companion guidance to assist understanding of the shift in practice required by those charged with exercising RMA related powers and functions/duties</li> </ol>  |
| <b>Regional Spatial Strategies</b>       | <i>Scope &amp; Content</i>       | cls. 16-19          |         |                 |        | <p>Inclusion of a requirement that a regional spatial strategy (RSS) is prepared for each region (cl.12) is strongly supported as it sets the scene for the new system of environmental management proposed and underpins the intended shift to a more strategic, long-term integrated and coordinated approach to this at a regional scale. We are also supportive of the intent to transition RSS development in advance of NBE plan making as this will help to ensure that land use control and infrastructure provision across regions is developed and delivered in a coordinated, consistent and sequenced manner.</p> <p>Given the key role that RSSs are intended to play in informing the direction of NBE plans under the companion N&amp;BEB the proposed scope and general form and content of these strategies is supported. Of importance in this regard are the key matters in cl.17 requiring strategic direction to be provided through RSSs, supplemented by the ability for RPCs to identify and consider additional matters of ‘sufficient significance’ in the region, subject to satisfying specified criteria.</p>   | <ol style="list-style-type: none"> <li>1. Amend cl.17(1)(b) as follows:<br/>‘<del>areas of cultural heritage and areas with resources that are of significance to Māori</del>’</li> <li>2. Prepare either a national spatial strategy, GPS on spatial planning or regional statements outlining central government priorities</li> <li>3. Clarify the relative roles of RSSs and NBE plans in relation to addressing matters of strategic importance within a region</li> </ol>  |

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|-------|----------------|--------------|---------|-----------------|--------|---|---|
|       |                |              |         |                 |        | <p>Although inclusion of 'areas of cultural heritage and areas with resources that are of significance to Māori' in the list of key matters identified in cl.17 is welcomed, the spatial emphasis on 'areas' is queried. As 'cultural heritage' includes, by definition, a wider range of considerations such as historic sites, structures and places, archaeological sites, sites of significance to Māori (including wāhi tapu and wāhi tūpuna) and cultural landscapes<sup>1</sup> we are strongly of the view that these matters also need to be considered within the context of a RSS and an appropriate level of strategic direction provided.</p> <p>Further, we are strongly concerned about the current lack of spatial direction at a national level that could be used to inform the development of RSSs. For example, neither the NPF content proposed under the N&amp;BEB nor content in relevant Government policy statements (e.g. GPS on housing and urban development) appear to include a strategic spatial element. In the absence of such direction it is unlikely that Central government will be able to meaningfully participate in RSS development and usefully provide coherent and co-ordinated input concerning its anticipated focus and investment priorities within each region. It also raises the risk that this void will inevitably be subject to 'political whims' that undermine or compromise the intended long-term strategic direction setting role of RSSs.</p> <p>We also note that there appears to be an overlap between the role of RSSs and NBE plans in relation to addressing matters of strategic importance within a region, with regional planning committees (RPCs) required to:</p> <ul style="list-style-type: none"> <li>• Provide 'strategic direction' in RSSs on relevant matters listed in cl.17 and any additional matters of 'sufficient significance' identified</li> <li>• Ensure that NBE plans contain 'strategic content' that reflects the major policy issues in a region (cl.102 N&amp;BEB)</li> </ul> <p>To avoid confusion over the relative roles of these instruments and the risk of unnecessary litigation arising we consider that this relationship would benefit from further clarification.</p> |   |
|       | Considerations | cls.24/25/29 |         |                 |        | <p>Inclusion of a requirement for regional planning committee's (RPCs) to have 'particular regard' to statements of community outcomes and regional environmental outcomes is supported. However, as this is one of the few avenues available in the Bill to enable matters of local importance to inform the development of RSSs we strongly consider that greater weight needs to be accorded such statements where they have been prepared. This could also act to incentivise their development, noting that these instruments are currently not a mandatory requirement in either this Bill or the companion N&amp;BEB.</p> <p>Provision to include information in existing RMA documents such as classification of particular features of the environment into RSSs is supported, particularly as it offers an opportunity for localised content to be incorporated into these strategies. However, as this is at the discretion of RPCs and offers one of the few opportunities in the Bill for local communities via their respective local authorities to inform RSS content we strongly consider that this should be a mandatory requirement.</p> <p>Further, we note that reference in subclause (1)(b) to 'decisions on whether areas or features of the environment have particular characteristics, should be classified in a particular way, or meet related criteria that are set out in legislation' is ambiguous and consider that it needs to be reframed to avoid interpretive confusion.</p>   | <p>1. Include new cl.24(1) as follows:<br/> <u>(1) The regional planning committee must ensure, to the extent relevant, that the regional spatial strategy is consistent with -</u><br/>           (a) <u>a statement of community outcomes prepared by a territorial authority or unitary authority; and</u><br/>           (b) <u>a statement of regional environmental outcomes prepared by a regional council</u></p> <p>1. Amend cl.29(1) as follows:<br/>           'A regional spatial strategy <del>may</del> <u>must</u> incorporate the following from the region's operative natural and built environment plans:<br/>           (a) information on the state and characteristics of the <u>regional</u> environment:<br/>           (b) <del>decisions on whether</del> <u>decisions on whether</u> areas or features of the <u>regional</u> environment <del>have identified as having particular distinct</del> <u>have identified as having particular distinct</u> characteristics <u>that should be classified in a particular</u></p> |

<sup>1</sup> Refer cl.8, SPB and cl.7, N&BEB

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|-----------------------------|--|---|---------|-----------------|--------|--|---|
|                             |  |   |         |                 |        |  | way, or meet related criteria that are set out in legislation’.   |
|                             | <i>Development &amp; decision making process</i> | cls.22/24/30-35/<br>Sched.4,<br>cls.2-6 |         |                 |        | <p>Provisions enabling RPCs to exercise flexibility in determining an appropriate process to develop RSSs are broadly supported, particularly the inclusion of key process steps that committees need to satisfy given the latitude available to them. Although the process steps outline the broad expectations relating to RSS development and incorporate certain safeguards regarding matters that must be had regard to by RPCs and the level of external input into the process we are concerned that these do not go far enough, particularly given the limited avenues available for local communities and key interest groups to provide input.</p> <p>Specific areas of concern include:</p> <ul style="list-style-type: none"> <li>Absence of any formal requirement to have regard to the New Zealand Heritage List/ Rārangī Kōrero (cl.24(3))</li> <li>No formal requirement that RPCs ensure there are clear opportunities for local communities to participate/collaborate in determining the process and developing the content of RSSs – as proposed, the emphasis is only on ‘encouraging participation by the public and all interested parties, particularly those who may be involved in implementing the regional spatial strategy’ (cl.32)</li> <li>Discretion as to whether a hearing is held, noting the significant implementation and compliance implications once an RSS has been adopted (cl.35)</li> <li>Interested parties and the public are only required to be given a ‘reasonable opportunity’ to provide written submissions on the draft strategy (Sched.4, cl.4)</li> <li>Opportunities for further comment on a draft RSS are only available where a RPC proposes to adopt a RSS that is ‘materially different’ from that notified, with the extent of this ‘proportionate to the significance of the difference’ (Sched.4, cl.5)</li> <li>Lack of adequate ‘checks and balances’ concerning the decision making process with no further right of appeal (Sched.4, cl.6)</li> </ul> | <p>1. Amend cl.24 as follows:<br/>(d) ‘<u>relevant entries on the New Zealand Heritage List/ Rārangī Kōrero made under the Heritage New Zealand Pouhere Taonga Act 2014</u>’;</p> <p>2. Amend cl.32 as follows:<br/>‘The process required by section 30 must be designed to <del>encourage</del> <u>actively enable</u> participation by the public and all interested parties, particularly those who may be involved in implementing the regional spatial strategy’</p> <p>3. Amend cl.35(1) as follows:<br/>‘The process required by section 30 <del>may</del> <u>must</u> include hearings’.</p> <p>4. Amend Sched.4, cl.4 as follows:<br/>‘A regional planning committee must—<br/>(a) make the following documents publicly available:<br/>i. the draft regional spatial strategy;<br/>and<br/>ii. the associated scenarios and draft evaluation report; and<br/>(b) give public notice of where the documents are available; and<br/>(c) give interested parties and the public a reasonable opportunity to provide written submissions on the draft strategy; <u>and</u><br/>(d) <u>give interested parties and the public an opportunity for their submissions on the draft strategy to be heard</u>’.</p> <p>5. Amend Sched.4, cl.5 as follows:<br/>(2) The regional planning committee must—<br/>(a) consider whether it is appropriate to give any persons, or the public generally, an opportunity to <del>comment</del> <u>be heard</u> on the difference; and<br/>(b) if so, give those persons, or the public generally, that opportunity in a way that the committee considers is proportionate to the significance of the difference.</p> |
| <b>Implementation Plans</b> | <i>Preparation &amp; content</i>                 | cls.52/54                               |         |                 |        | <p>Inclusion of provisions relating to the preparation and adoption of mandatory implementation plans to deliver on the priority actions in RSSs is supported. So too are the proposed requirements relating to consultation on their development, including obtaining agreement of those responsible for delivering these actions.</p> <p>We consider that these plans have the potential to play a useful delivery role, particularly as they are required to set out for each priority action:</p> <ul style="list-style-type: none"> <li>a summary of the key steps that will be taken to deliver the action and who will be responsible for taking them</li> <li>how progress will be monitored and reported on and who will be responsible for it</li> <li>any interdependencies between the action and other priority actions</li> </ul>  | <p>1. Retain as proposed</p>  |

| <b>Topic</b> | <b>Sub-topic</b>                 | <b>Clause</b> | <b>Support</b> | <b>Support in part</b> | <b>Oppose</b> | <b>Reason/s</b>   | <b>Recommendation</b>  |
|--------------|----------------------------------|---------------|----------------|------------------------|---------------|---|--|
|              | <i>Implementation agreements</i> | cl.57         |                |                        |               | Neither implementation plans nor supporting implementation agreements are legally binding, with the latter being an optional arrangement that can be exercised at the discretion of 2 or more parties that have a role in delivering a priority action. Given the crucial function that implementation will play in progressing the strategic direction identified in RSSs and the system outcomes set out in the N&BEB, we are concerned that the absence of adequate measures to 'lock in' the delivery of priority actions will seriously undermine the efficacy of these plans and agreements and the key role they are intended to perform in operationalising agreed actions. | 1. Review and revise to mandate delivery of all or part of a priority action where this has been formally ratified by parties to an implementation agreement |