Submission

By

THE NEW ZEALAND INITIATIVE

To the

Environment Select Committee

on the

Planning Bill and Natural Environment Bill

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PART 1 – HIGH-LEVEL VIEWS ON THE OVERALL REFORM PACKAGE

1. Introduction and support for reform intent

1.1 The New Zealand Initiative welcomes the opportunity to submit on the Planning Bill and the Natural Environment Bill. Together, these Bills represent the most significant reform of New Zealand's resource management system since the enactment of the Resource Management Act 1991 (RMA).

1.2 The Initiative has long supported comprehensive reform of the RMA. We have argued that the Act has failed to deliver either efficient development or effective environmental protection, and that its core shortcomings are structural rather than incidental. We acknowledge the scale and difficulty of what the Government has undertaken.

1.3 We cannot understate the importance of this reform. Much has been written about New Zealand's severe and persistent productivity problem. Productivity growth has been anaemic for decades and despite strong growth in labour input we have fallen further behind Australia and other comparable economies. Without a step-change in productivity growth, New Zealand will lack the fiscal capacity to meet the costs of an ageing population, adapt infrastructure to natural hazards and climate change, and maintain the public services its citizens expect – even before accounting for the economic shocks that history guarantees. The RMA is not the sole cause of this underperformance, but it is a well-documented contributor: by restricting land use, inflating housing costs, delaying infrastructure and raising the cost of doing business, it has suppressed investment and misallocated resources for more than three decades.

1.4 2024's Nobel Prize in Economics, awarded to Daron Acemoglu, Simon Johnson and James Robinson, recognised a body of research demonstrating that the institutional foundations of prosperity are not geography, culture or natural resources but the security of property rights and the rule of law.[1] Countries that protect property rights and constrain arbitrary state action grow richer. Countries that do not, do not. New Zealand's replacement resource management legislation is, at its core, an institutional choice about property rights, state discretion and the rules governing how land and resources are used. Getting it right is not a matter of regulatory tidiness. It is a determinant of whether New Zealand arrests its relative economic decline or entrenches it.

1.5 We therefore strongly support the Government's stated intent that RMA replacement be based on respect for property rights, and we generally supported its 10 principles

[1] The Nobel Prize for Economics, Press Release, 14 October 2024, https://www.nobelprize.org/prizes/economic-sciences/2024/press-release/

for reform agreed by Cabinet in 2024.[2] Those principles pointed in the right direction. The question is whether the Bills give effect to them.

1.6 Our assessment is that they do not yet do so. This is not primarily because the Government has failed to act on its principles, but because of a deliberate architectural choice whose consequences we believe have been underestimated. The Government has chosen to keep the primary legislation lean – focused on institutional architecture – and to delegate the operative substance to national direction and other secondary instruments. We understand the reasoning: the RMA was too detailed, primary legislation can be amended by any government regardless, and secondary instruments allow nimbler course correction over time.

1.7 We disagree with the balance the Government has struck, and we think the risks of this approach are greater than its architects appreciate. The Bills articulate the right aspirations, but the primary legislation does not embed the operative mechanisms necessary to achieve them. In several areas, what the Bills promise in their goals they withhold in their provisions. This gap between aspiration and implementation is the central concern of this submission.

1.8 The choice to leave key terms undefined in primary legislation carries a specific legal risk that we submit warrants the Committee's close attention. Some will argue that terms such as 'unreasonably affect others' and 'inappropriate development' are already defined by RMA case law and that those meanings will carry over into the new framework. We believe this thinking to be misguided. Meaning in law is framework-dependent. The Bills create a fundamentally different statutory architecture from the RMA: goals sit at the apex of a hierarchical system, national direction must 'particularise' those goals, and clause 56 of the Planning Bill requires the Minister to be 'satisfied' that national policy direction does not unreasonably restrict the achievement of other goals. That satisfaction requirement is a standard ground for judicial review. When a challenger argues that the Minister's particularisation of 'inappropriate development' is too narrow or too broad, the court will assess the national direction against the statutory goal – and to do that, it will have to form its own view of what the undefined term means within this new framework. Courts may have regard to settled RMA case law where identical wording is reused. But they are required to interpret these terms within the text, purpose and hierarchy of the new Act. In a materially different statutory architecture, prior RMA meanings are not mechanically determinative.

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[2] The 10 principles for reform agreed by Cabinet were: (1) narrow the scope of the resource management system and the effects it controls; (2) establish two Acts with clear and distinct purposes; (3) strengthen and clarify the role of environmental limits; (4) provide for greater use of national standards to reduce resource consents; (5) shift from ex ante consenting to strengthened ex post compliance; (6) use spatial planning and simplified designations to lower infrastructure costs; (7) require one regulatory plan per region; (8) provide for rapid, low-cost dispute resolution with a Planning Tribunal; (9) uphold Treaty of Waitangi settlements and Crown obligations; (10) provide faster, cheaper and less litigious processes within shorter legislation.

1.9 The mechanism is not novel. Parliament has previously placed undefined normative language at the apex of a statutory scheme and required downstream decision-makers to act consistently with it. In the State-Owned Enterprises Act 1986, the phrase "the principles of the Treaty of Waitangi" was not defined in the legislation. The courts were required to give that phrase content in order to apply it. They did so responsibly and within orthodox interpretive constraints. But once articulated, that content shaped the operation of every subsequent statute using the same formulation. The Planning Bill adopts a comparable structural choice in relation to clause 11: undefined apex terms, mandatory downstream consistency, and judicial review available at each stage. Where Parliament leaves such terms undefined, it is necessarily leaving their outer boundaries to be worked out by the courts through litigation rather than specified in primary legislation.

1.10 The durability argument cuts both ways. If primary legislation is easy to amend, national direction is easier still. A future government – possibly as soon as next year – could rewrite every national instrument without changing a single clause of the Act, reshaping the entire planning system through secondary instruments unconstrained by meaningful statutory criteria. The very leanness of the primary legislation that is meant to provide stability instead provides maximum legislative freedom to future Ministers. The Bills need fail-safe mechanisms in the primary legislation that constrain how delegated powers can be exercised, regardless of who holds them.

1.11 Against this background, four structural problems recur throughout both Bills:

- **Property rights acknowledged but not protected.** Neither Bill includes property rights among its goals. This is a fundamental omission. Ill-defined or poorly enforced property rights are at the heart of the problems these Bills seek to address (externalities, housing affordability, the tragedy of the commons and the tragedy of the anti-commons). The Bills need both a statutory presumption that land use is permitted unless restriction is justified, and a compensation framework for cases where restriction goes too far. Without the first, courts will balance property rights away. Without the second, regulators will impose restrictions without bearing their cost (see Sections 7 and 9).

- **Discretion without hierarchy.** Both Bills list broad goals without prioritisation or defined trade-offs. When goals conflict – as they inevitably will between enabling development and protecting natural character – the absence of hierarchy invites litigation and risk-averse interpretation. The RMA suffered from precisely this flaw. These Bills reproduce it (see Sections 3 and 5 of this submission).

- **Centralisation without safeguards.** The Bills' hierarchical architecture funnels authority upward: national direction, environmental limits and regional spatial plans will shape outcomes for decades. If these instruments are poorly calibrated, errors become embedded system-wide and are difficult to correct downstream. Yet the Bills provide weaker procedural disciplines for making national direction than the RMA they replace, and no meaningful error-correction mechanisms at the bottom of the system. The Government's choice to keep the primary

legislation lean makes this worse, not better: the less the statute constrains, the more weight falls on national direction, and the greater the consequences if that direction is poorly made or politically captured. Localities need the means to discover when higher-level instruments impose disproportionate costs in particular places, and the authority to seek relief. Without such mechanisms, errors in national direction will persist uncorrected regardless of their local consequences (see Sections 6, 9 and 12 of this submission).

- **Limits without discipline.** Both Bills place considerable weight on environmental limits as a central organising concept. Any such limits will be set through political processes and will reflect compromises between competing interests – they will not be objective scientific findings. The question is not whether limits can be made "clear" but whether the process for setting them will be disciplined by rigorous cost-benefit analysis, grounded in respect for property rights, and open to revision as circumstances change. Without these disciplines, environmental limits risk becoming a vehicle for regulatory creep dressed in scientific clothing (see Sections 6, 9, 22 and 25 of this submission).

1.12 These are serious concerns. We are not asking the Government to abandon its architectural approach. We accept that a leaner primary Act with stronger national direction may be preferable to the RMA's overloaded framework, provided the primary legislation contains adequate fail-safe mechanisms. However, our submission identifies two categories of change:

- **Matters that belong in primary legislation because they do unique work that national direction cannot replicate.** These include the statutory presumption in favour of property rights (Section 7), the put option for affected landowners (Section 9), and the core architecture for competitive urban land markets including agile land release mechanisms (Section 16). These provisions constrain and discipline the exercise of delegated powers. Placing them in national direction would defeat their purpose, because the powers they are meant to constrain are the very powers used to make national direction.

- **Matters where the balance between primary legislation and national direction should be adjusted.** These include defining key goal terms (Section 3), reinstating cost-benefit evaluation requirements (Section 12), and extending the regulatory relief framework to cover all environmental limits (Section 9). If the Government prefers to give these terms operative content through national direction, the primary legislation must at minimum define the outer boundaries within which that content must fall. Leaving the terms entirely undefined, as the Bills currently do, does not delegate content to Ministers – it delegates it to courts.

1.13 Understanding how the current drafting arose matters for the Committee's work, because it identifies where slippage occurred and therefore where correction is needed:

- The 2024 Cabinet paper *Replacing the Resource Management Act 1991* set a clear direction: property rights as the starting point, regulation narrowed to material effects on others, and shorter, less complex legislation.[3]

- The Expert Advisory Group (EAG) Blueprint, delivered published in March 2025, broadly tracked those principles but introduced architectural choices – broad goals without hierarchy, qualitative rather than quantitative thresholds, environmental limits as the central organising concept – that created the conditions for the drift we describe above.[4] The minority report to the EAG identified these vulnerabilities at the time and proposed specific alternatives: scope-defining purpose statements, quantitative materiality thresholds, and pre-negotiated compensation for regulatory overlays.[5]

- Cabinet's March 2025 decisions adopted some of the minority report's recommendations but mostly accepted the EAG majority's structural architecture unchanged. It delegated many key decisions on the Bills' architecture to officials.[6]

- Officials then drafted the Bills through 2025 within that architecture, and at several points the drafting moved further from the 2024 Cabinet paper's original intent: the section 32 cost-benefit evaluation requirement was removed without replacement, key goal terms were left undefined, and the compliance regulator was deferred.

- The result is legislation that reproduces the EAG's institutional architecture (two Acts, a funnel hierarchy, national standards, spatial plans, a planning tribunal) but drains it of operative force through the very mechanisms the minority report warned against. The Select Committee process is the last realistic opportunity to address this.

1.14 The success of RMA replacement will depend less on new institutional labels and more on whether the underlying incentives, disciplines and decision-making rules are materially improved. Some of the measures we are suggesting are of fundamental importance but would be strongly resisted by those who benefit from the status quo. These Bills are unfinished business in those respects. Much work is needed to get them back on the track set out in 2024.

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3 Ministry for the Environment, Cabinet Paper: *Replacing the Resource Management Act 1991*, October 2024, https://environment.govt.nz/assets/publications/Cabinet-papers-briefings-and-minutes/MfE-Proactive-Release-Replacing-the-RMA.pdf

4 Ministry for the Environment, *Report from the Expert Advisory Group on Resource Management Reform Blueprint for resource management reform: A better planning and environmental management system 2025*, https://environment.govt.nz/publications/blueprint-for-resource-management-reform/

5 Ministry for the Environment, *Blueprint for RM reform: Minority Report*, March 2025, https://environment.govt.nz/publications/blueprint-for-rm-reform-minority-report/

6 Ministry for the Environment, *Cabinet Paper: Replacing the Resource Management Act 1991 – Approach to development of new legislation*, March 2025, https://environment.govt.nz/assets/publications/Replacing-the-RMA-MfE.pdf

2. What success should look like

2.1 A successful replacement regime should deliver:

- Respect for property rights, including compensation for regulatory takings where affected property owners are made worse off for the benefit of others;
- Regulatory intervention grounded in identified market failures or externalities, with demonstrated justification for public restriction of private land use;
- Rules and arrangements that are professionally cost-benefit justified, with a meaningful replacement for the RMA's section 32 evaluation requirement – one that specifies what efficiency and effectiveness mean in opportunity cost terms;
- Constrained discretion exercised within defined boundaries, with appeal rights for those whose property rights are taken or impaired;
- A system that enables beneficial activity by default rather than by exception, delivering a measurable reduction in reliance on resource consents and a material improvement in housing affordability;
- Provisions for competitive urban land markets that embed the mechanisms necessary to achieve them; and
- Fail-safe mechanisms in the primary legislation that constrain the exercise of delegated powers, so that the system's integrity does not depend on the good intentions of any particular government.

2.2 These criteria are not ends in themselves. They are the institutional conditions that international evidence identifies as necessary for sustained productivity growth and broad-based prosperity. As mentioned above, the research recognised by the 2024 Nobel Prize in Economics found that the central difference between prosperous and poor nations is not factor endowments but institutions – specifically, whether property rights are secure, whether the state is constrained by law, and whether economic rules reward productive activity rather than rent-seeking. A planning system that restricts land use without compensation, that leaves key terms to be defined by courts rather than Parliament, and that enables regulators to impose costs without bearing them, is a system that rewards rent-seeking at the expense of productive investment. New Zealand cannot afford such a system. The replacement legislation is an opportunity to embed the institutional foundations that the evidence says matter most. The question for the Committee is whether the Bills, as introduced, actually do so.

2.3 Nor are these abstract critiques. Each translates into specific deficiencies in the Bills as introduced. The Bills do not create a clear presumption in favour of property rights,

provide for compensation for regulatory takings (see Section 9). They do not require identification of problems with private arrangements including the common law before imposing regulatory restrictions (see Section 6). They remove the RMA's section 32 evaluation requirement without substituting any equivalent (see Section 12). They leave key terms – 'unreasonably affect others', 'inappropriate development' – undefined, recreating the interpretive uncertainty that plagued the RMA and, in a funnelled system where those terms control the entire hierarchy, inviting courts to supply the content that Parliament has declined to provide (see Section 3). And while the Planning Bill includes competitive urban land markets as an explicit statutory goal, it articulates the goal without embedding the mechanisms necessary to achieve it (see Section 16).

2.4 The Government's position seems to be that these matters can be addressed through national direction. For some, that might be adequate. But for the core fail-safe mechanisms – the property rights presumption, the put option, the competitive land markets architecture – national direction is not sufficient. These provisions exist to constrain how delegated powers are exercised. Locating them in the instruments those powers produce is circular. They belong in the primary legislation.

2.5 This submission therefore urges important changes to the two Bills, changes that would give greater effect to the Government's intention to put well-designed, enforced and protected property rights back at the centre of its efforts to achieve both higher productivity and better environmental outcomes.

PART 2 – ISSUES COMMON TO BOTH BILLS

3. Discretion, prioritisation and trade-offs

3.1 A recurring feature of both Bills is the reliance on broadly framed objectives and outcomes that are not directed at overcoming identified actual problems that justify their pursuit. The Bills provide no criteria that could help decision-makers or property owners know what the priorities should or will be or when enough is enough

3.2 The Government's position is that these terms are already defined by RMA case law and will carry over. We disagree. Meaning is framework-dependent. The new Bills create a different statutory hierarchy, with goals at the apex and a mandatory downward consistency requirement. When a court reviews whether national direction has properly 'particularised' a goal, it will interpret that goal within this new framework, not by reference to the RMA's different purposes and structure. Terms that were settled under the RMA will be relitigated under the Bills.

3.3 In the Planning Bill, this is evident in the wide range of matters that regional spatial plans must address (for example, development capacity, infrastructure, climate adaptation and environmental protection), without guidance as to when enough is enough or the need to establish net benefits. Satisfying those needs would help determine resource use priorities.

3.4 The Planning Bill's stated goals illustrate this problem. Its explanatory note asserts that the Bill's system architecture comprises, amongst others, "a set of goals that tightly define the scope of the system". Yet nine broad categories of contending goals are listed and the scope for some, notably Māori participation (clause 11(1)(i)), is unlimited. The explanatory note confirms there is "no inherent hierarchy within the goals", meaning decision-makers must balance competing goals without statutory guidance on how to resolve conflicts. When goals inevitably conflict – as they will between enabling development (clause 11(1)(b)) and protecting natural character (clause 11(1)(g)) – the lack of hierarchy invites litigation and risk-averse interpretation.

3.5 Neither Bill includes property rights among its goals. This is a fundamental omission. Ill-defined or poorly enforced property rights are at the heart of the problems these Bills seek to address – externalities, housing affordability, tragedies of the commons and of the anti-commons, and low productivity growth. Clause 11 of both Bills could be amended to include an additional goal to the effect of: "Ensure that property rights are clearly defined and allocated so as to internalise costs and benefits between contending parties, guard against externality problems including tragedies of the commons and anti-commons, and provide security for investment and land use decisions." However, a goal is only one consideration among many. As we argue in Section 7, property rights would be better protected through an overarching statutory presumption that sits above the goals, establishing land use as the default position from which restrictions must be justified. This would be our preferred approach.

3.6 The Planning Bill's goals also include terms such as ‘not unreasonably affect others’ (clause 11(1)(a)) and, from clause 11(1)(g), ‘inappropriate development’, ‘high’ natural character, ‘outstanding’ natural features and ‘significant’ historic heritage. None of these terms is defined in the legislation. Because scope derives directly from goals, these undefined subjective terms at the top of the statutory hierarchy will cascade into litigation and uncertainty at every level of implementation.

3.7 Three terms in the Planning Bill are particularly problematic:

- **Unreasonably affect others** (clause 11(1)(a)) – ‘unreasonably’ is inherently subjective and disregards property rights. What one decision-maker considers unreasonable, another may consider acceptable. This will generate litigation about where the threshold lies. What counts instead is clarity about who has what legal rights. Only then is it easy for affected parties to negotiate for a mutually beneficial outcome. No policy issue of ‘reasonably affected’ arises. For example, the law against trespass may well be deemed by would-be trespassers to ‘unreasonably affect others’, but it is the law and legislation should not weaken it without a very good reason. Someone who wants permission to enter someone else’s property can ask the owner.

- **Inappropriate development** (clause 11(1)(g)) – ‘inappropriate’ is similarly subjective. The RMA's ‘inappropriate subdivision, use, and development’ language in section 6 generated decades of case law trying to pin down its meaning. There is no reason to expect a different outcome here. Again, the central issue is property rights. Those who object to an otherwise legal development as ‘inappropriate’ can offer to buy the property so they can put it to their preferred use. That approach internalises costs and benefits.

- **Participation** (clause 11(1)(i)) – the goal to ‘provide for Māori interests’ includes "participation in the development of national policy direction and plans". The term ‘participation’ is not defined, yet the operative provisions use the narrower term ‘consultation’ (clauses 69-70), which has an established legal meaning: providing a genuine opportunity to influence a decision in one’s own interest, but not requiring agreement. ‘Participation’ is potentially broader. The Committee should consider whether the relationship between the goal (participation) and the operative provisions (consultation) is sufficiently clear, or whether this undefined term creates scope for interpretive expansion – the same pattern that occurred under the RMA's undefined Treaty principles obligation in section 8.

3.8 For ‘unreasonably affecting others’, this could be given more objective content through several approaches:

- **Threshold-based criteria**: Specify measurable limits that define when effects become regulable, such as "affects others by causing effects that exceed standards set in national instruments or plans" or "causes or contributes to exceedance of environmental limits set under the Natural Environment Bill".

- **Harm-based criteria**: Focus on the type or severity of effect, such as "adversely affects the health or safety of other landowners or occupiers" or "materially interferes with the lawful use and enjoyment of neighbouring land". The term ‘materially’ has stronger common law meaning than ‘unreasonably’.

- **Category-based criteria**: List the types of effects that warrant regulation, creating a closed list that decision-makers work within. For example: "affects others through: (a) effects on human health or safety; (b) contamination of land, air, or water affecting neighbouring properties; (c) noise, odour, dust, or light spill exceeding levels set in national standards; (d) traffic generation exceeding the capacity of local transport infrastructure; or (e) other effects specified in national instruments."

- **Baseline-based criteria**: Define effects relative to what is already permitted, such as "causes effects beyond those that would be expected from activities permitted in the applicable zone".

3.9 For ‘inappropriate development’, similar approaches could specify what the legislation is actually protecting against. Rather than a general ‘inappropriate development’ test, the provision could focus on effects: "development that would destroy, remove, or significantly modify the identified values or characteristics" or "development that would diminish the values for which the area, feature, or heritage was identified". This requires the identification process to specify what the values actually are and any such test must distinguish between effects on third parties and changes that are internal to the owner's own property. A landowner should not require consent to modify characteristics of their own land unless doing so creates demonstrable adverse effects on others. The right to alter one's own property is a baseline of property ownership, not an exception to be earned through regulatory processes.

3.10 Importantly, the legislation should also enable affected parties to contract around regulatory constraints. Where a proposed activity would affect identified values, the developer and affected parties should be able to reach agreement – for example, through compensation or covenant – that permits the activity to proceed. This Coasean approach internalises costs, reveals the true value parties place on the protected characteristics, and avoids the rigid outcomes that blanket prohibitions produce. The legislation should facilitate rather than obstruct such agreements.

3.11 More fundamentally, the concept of ‘inappropriate development’ should be reconsidered. If development is lawful and does not impose demonstrable costs on third parties, the question of whether it is ‘appropriate’ is properly a matter for the property owner, not the state. Where development does affect third parties, the issue is better framed in terms of specific, measurable effects rather than a subjective judgment of appropriateness. If the community values particular characteristics of a site, the appropriate response is for those who benefit from preservation to bear some of the cost – whether through public purchase, compensation, or voluntary

covenant – rather than imposing the entire burden on the landowner through regulatory prohibition.

3.12 For ‘participation’, when combined with procedural complexity broad rights can create strategic leverage. Third parties have used participation rights to delay projects or extract concessions unrelated to the merits of the application. This is not a criticism of any particular participants; it is a structural problem created by the procedural rules. The Committee should consider whether the Bills include adequate safeguards against strategic use of participation rights, including: clear limits on standing for appeals; costs awards where participation is found to be vexatious or without merit; and procedural mechanisms to identify and address hold-out behaviour early in the process.

3.13 The Bills should also give attention to standing provisions – who may submit on plans and applications, and who may appeal decisions. Broad standing rules serve democratic participation, but they also create opportunities for strategic litigation. Environmental groups, commercial competitors, and other third parties may use appeal rights to delay projects for reasons unrelated to the statutory goals. The Committee should consider whether the standing provisions strike the right balance between access to justice and protection against strategic delay. Mechanisms such as merits-based leave requirements for appeals, security for costs, and adverse costs orders where appeals fail would help ensure that participation rights are used for their intended purpose.

3.14 In the Natural Environment Bill, a similar issue arises from the combination of multiple environmental outcomes and limits that decision-makers are required to ‘give effect to’ or ‘have regard to’, without clear rules for resolving tension between them.

3.15 Experience under the RMA suggests that this form of drafting tends to expand litigation and delay rather than reduce determinations. It also creates incentives for decision-makers to adopt risk-averse interpretations, even where the statutory intent is enabling. We recognise that some flexibility is needed and that more objective criteria may occasionally produce rigid results. However, 35 years of experience suggests the costs of subjectivity outweigh the benefits. Where flexibility is genuinely needed, it can be provided through consent pathways for activities that do not fit permitted categories, explicit "safety valve" provisions allowing departure from criteria in specified circumstances, and regular review of national standards to update criteria as circumstances change.

3.16 We therefore submit that the Committee should recommend either:

- defining ‘unreasonably’, ‘inappropriate’, and ‘participation’ in the interpretation provisions by reference to more specific criteria that respect property rights; or

- requiring national instruments to specify the standards and thresholds that give content to these terms, so that decision-makers are applying defined criteria rather than developing their own interpretations; or

- replacing the subjective terms with closed lists of the types of effects or development that the goals are intended to address.

3.17 Clarify that participation does not equal veto and consider whether the Bills' standing provisions strike the right balance between access to justice and protection against strategic delay.

3.18 The choice between these approaches involves trade-offs, but leaving the terms undefined is the worst option. It guarantees inconsistency and invites the courts to fill the gap – exactly the pattern that made the RMA unworkable.

4. Hierarchy and 'funnelling' of decisions

4.1 A key feature of the new framework is its clearer hierarchical structure set out in clause 12 of both Bills. By resolving strategic questions earlier - through national direction, environmental limits and regional spatial plans - the Bills seek to reduce the repeated re-litigation of the same issues at the consenting stage that has characterised the RMA.

4.2 This 'funnelling' of decisions has the potential to materially improve efficiency, certainty and consistency. It aligns with the objective of reducing the number of consents required and narrowing the range of effects subject to case-by-case assessment.

4.3 However, the corollary of this approach is that higher-level decisions carry greater weight and consequence. Errors, over-reach or poorly calibrated limits at the top of the system are harder to correct downstream and can lock in unnecessary costs over long time horizons.

4.4 We note that the funnel serves a dual function: it both constrains downstream discretion and defines the scope of what can be regulated at each level of the system. This creates compounding risk. If national direction or environmental limits are poorly calibrated, the consequences are not merely that lower-level decisions must implement suboptimal settings – it is that the scope of permissible regulatory action is itself defined by those settings. A system where scope is determined by the funnel places even greater weight on getting higher-level instruments right, and reinforces the case for the safeguards discussed elsewhere in this submission.

4.5 This increases the importance of discipline, transparency, proportionality and accountability at the strategic and limit-setting stages. A funnelled system strengthens the case for clearer trade-off rules, stronger property-rights safeguards and, where appropriate, compensation or compensation-like disciplines.

5. Localism, subsidiarity and the reallocation of decision-making

5.1 The Initiative has a long-standing commitment to localism and subsidiarity. We have consistently argued that decisions should be taken at the lowest level that internalises the effects of the decision. This means not only that implementation should be local where possible, but that localities should be able to define their own objectives and act on them, provided they are not imposing uncompensated costs on neighbouring communities. Democratic accountability is strongest where decision-makers are closest to those affected and bear the consequences of their choices.

5.2 We acknowledge, however, that the more decentralised model under the Resource Management Act did not adequately deliver these benefits in practice. Instead, it produced fragmentation, inconsistency, duplication and uncertainty, often without meaningful local accountability for restrictive outcomes.

5.3 In that context, we note that greater national direction and standardisation will not necessarily produce better outcomes. The key problems of standing, inadequate compensation, flawed incentives and failure to assess costs and benefits rigorously will remain at the national level just as they did at the local level. National environmental limits, common data standards and more consistent plan structures may improve clarity and reduce transaction costs – but only if the instruments themselves are well calibrated. The record of national-level resource management policy in New Zealand provides limited grounds for confidence on this point.

5.4 Subsidiarity remains relevant even within the proposed more centralised framework. The key question is not whether decision-making is shifted upward, but how far, for what purpose, and subject to what constraints.

5.5 Both Bills move substantial decision-making authority away from individual councils and toward national direction, regional-scale planning instruments and joint governance bodies. This may be justified to address system-wide failures, but it also creates new risks if not carefully disciplined.

5.6 In particular, centralisation should not become a substitute for clarity. Where decisions are made at higher levels, they should be clearly bounded in scope; grounded in transparent criteria (including for science and risks to human health); and insulated from open-ended expansion through broad discretionary powers.

5.7 Localism should therefore be preserved at the implementation and adaptation stage. Once limits, standards and strategic directions are set, landowners should retain maximum autonomy over how they use their property within those constraints. Where genuinely local public goods are at issue, local authorities should retain meaningful discretion over how outcomes are achieved in their communities. The default should be private ordering – voluntary exchange between willing parties – with regulatory intervention reserved for cases where transaction costs or externalities prevent efficient private solutions.

5.8 There should also be provision for localities to opt out of national settings where there is no demonstrable external cost to neighbouring areas. If a community determines that a particular environmental limit imposes costs that exceed the local benefits, and relaxing it would not harm adjacent communities or shared resources, the community should have a mechanism to seek departure from the national setting. This would improve the efficiency of the system and reinforce the principle that regulation should be justified by its effects, not imposed uniformly regardless of local circumstances.

5.9 Our concern is not just that the Bills reduce local discretion, but that they risk replacing one form of unstructured discretion with another at a higher level. A system that centralises authority must be correspondingly stronger on accountability, prioritisation and discipline.

5.10 If these safeguards are embedded, the Bills can be consistent with subsidiarity in substance, even if they depart from localism in form. Without them, there is a risk that decision-making becomes more distant without becoming more predictable or accountable.

6. Economic costs, property rights and regulatory certainty

6.1 The Initiative has consistently argued that weak protection for property rights and limited consideration of economic costs have contributed materially to poor outcomes under the RMA.

6.2 Neither Bill includes a strong, explicit requirement for decision-makers to consider the economic consequences of restrictions imposed on land use, nor to test whether those restrictions are proportionate to the environmental benefits sought.

6.3 A specific gap is the absence of any equivalent to section 32 of the RMA, which required an evaluation of proposed objectives, policies, rules and other methods, including assessment of their efficiency and effectiveness. Without a statutory requirement for cost-benefit analysis:

- National instruments can be made or amended without systematic assessment of their economic impacts.
- Environmental limits can be set without weighing the costs against the benefits.
- Regional spatial plans can constrain development patterns without demonstrated justification.
- There is no consistent methodology for evaluating whether regulatory interventions are proportionate to the problems they address

6.4 The absence of a cost-benefit requirement is particularly significant because it represents a step backward from the RMA. Section 32 of the RMA required an

evaluation report for any proposed national policy statement, national environmental standard, or plan provision, assessing:

- the extent to which objectives are the most appropriate way to achieve the purpose of the Act;
- whether provisions are the most appropriate way to achieve the objectives;
- the efficiency and effectiveness of the provisions; and
- a summary of the reasons for deciding on the provisions.

6.5 Section 32 was far from perfect – its analyses were often pro forma token exercises that did little to constrain regulatory ambition, and this may explain why the Government chose not to retain it. But the appropriate response to an ineffective discipline is to replace it with a more effective one, not to remove it entirely. As we discuss in Section 9, a compensation framework modelled on Public Works Act principles – requiring those who impose regulatory burdens to bear the fiscal cost where net harm is demonstrated – would provide a far stronger discipline on decision-making than any evaluation requirement. The prospect of having to compensate affected landowners concentrates minds in ways that paperwork obligations do not.

6.6 Cost-benefit analysis should include explicit identification of distributional effects – who bears the costs and who receives the benefits of proposed restrictions. This transparency serves two purposes: it disciplines decision-making by making trade-offs visible, and it guards against regulatory capture by interests that benefit from restrictions while diffuse costs are borne by others. Where restrictions impose concentrated costs on identifiable landowners for diffuse public benefits, this should be acknowledged and addressed through the regulatory relief or compensation frameworks.

6.7 One approach worth considering is a beneficiary-funded compensation model. Where regulation is proposed that imposes costs on identifiable landowners by restricting their otherwise legal property rights for the benefit of others, the beneficiaries of that regulation could be required to fund compensation through a levy. If the beneficiaries are unwilling to fund the imposition at the required level, this reveals that the regulation's benefits do not justify its costs – and the imposition should be removed. Such a mechanism would ensure that regulatory costs are transparent, that beneficiaries have genuine skin in the game, and that only regulations whose benefits genuinely exceed their costs survive scrutiny.

6.8 Neither Bill requires decision-makers to consider impacts on property rights or property values when making national instruments. The regulatory relief framework (Schedule 3, Part 4 of the Planning Bill) only applies *after* rules are made and only where they have a "significant impact on the reasonable use of land". There is no requirement to consider property impacts *before* making the rules. This means the Government can impose binding constraints on all landowners through national

direction without any statutory requirement to assess or disclose the property-value consequences.

6.9 This gap is problematic not just when councils consider their plans but also when the Government considers how to prioritise and balance goals and policy direction at the top of the funnel. The funnel architecture amplifies this concern: if higher-level instruments are set without rigorous cost-benefit analysis, poorly calibrated settings cascade through the entire system.

6.10 In the Natural Environment Bill, this omission is particularly important given the breadth of matters for which environmental limits may be set (clauses 45-63). Without a proportionality or cost-discipline requirement, there is a risk of cumulative over-regulation over time.

6.11 In the Planning Bill, long-term regional spatial plans may constrain future development patterns without being subject to the same scrutiny or appeal rights as regulatory instruments.

6.12 We submit that both Bills should include a requirement for cost-benefit analysis before making national instruments, setting environmental limits and adopting regional spatial plans. The analysis should be publicly disclosed and subject to independent review. We note that a well-designed compensation framework can serve as a more powerful discipline than a formal cost-benefit analysis requirement. If decision-makers know that poorly calibrated limits or rules will trigger compensation obligations – funded either from general revenue or from levies on the beneficiaries of the regulation – they have strong fiscal incentives to ensure that the benefits of intervention genuinely exceed the costs. This is a more durable safeguard than requiring an evaluation report, which experience shows can be treated as a compliance exercise.

6.13 Strengthening regulatory certainty and respect for legitimate expectations would improve investment confidence without weakening environmental protection.

7. Absence of a public goods framework

7.1 A well-designed regulatory system should be grounded in a clear conception of what problems regulation is intended to solve. The economic literature on regulation suggests that regulatory intervention can most hope to be beneficial where problems with private arrangements and the common law stop otherwise mutually beneficial transactions from proceeding (terms for these situations that are commonly used but widely misunderstood outside the economics profession include ‘public goods’, ‘market failure’, ‘asymmetric information’ and ‘externalities’).

7.2 In an environmental context, the concept of externalities is central, but it is often represented as harms to third parties who had no part in the decision or activity that caused them harm, such as a polluting activity. However, polluting is not an actionable

externality from a public policy perspective if the activity is illegal and recourse to the police or the courts can stop the offence. Nor is the harm one competitor experiences when another one competes for her customers. And those that are purely internal to the landowner, or where effects are already priced through market mechanisms, do not create a case for regulatory control. Potentially actionable externalities from a public policy perspective are those that involve harms to third parties of a different type, a type where it is too hard for the parties affected to sort things out. Non-point source pollution and the tragedy of the commons are two examples. The Bills need to be more precise about such matters.

7.3 The Bills do not adopt the above framework. While clause 14 of the Planning Bill helpfully narrows the scope of regulable effects by excluding certain matters (effects internal to the site, visual amenity, character, and so on), this exclusion operates at the level of what effects can be regulated in plans, not at the level of goal-setting or national instrument-making.

7.4 At the top of the funnel – where goals are set and national direction is made – there is no requirement to demonstrate market failure, identify genuine externalities, or distinguish between effects that warrant public intervention and effects that are better left to private ordering. The goals in clause 11 of both Bills are framed in terms of outcomes to be achieved, not problems to be solved. This gives future governments broad discretion to expand regulatory scope without having to justify intervention in public goods terms.

7.5 Not all effects are equal. An activity that imposes health risks on neighbours presents a clear case for regulation by government if not by the common law. An activity that some people find aesthetically displeasing does not. A string of factories discharging pollutants into a river creates non-point-source externalities that impede common law enforcement. Farmers making lawful use of their own land does not impose costs on others in the same way.

7.6 The absence of a public goods framework creates two risks. First, it permits regulatory creep: without a principled basis for distinguishing regulable from non-regulable effects, the scope of regulation tends to expand over time as new concerns are added without any being removed. Second, it obscures the distributional consequences of regulation: when regulation addresses actionable externalities, the costs fall on those who were imposing costs on others; when regulation addresses matters that are not problematic externalities, it simply transfers value from one party to another without efficiency justification.

7.7 We submit that the Bills would be strengthened by requiring, either in the procedural principles (clause 13) or in the provisions governing national instruments, that decision-makers identify the problem with private arrangements and the existing law that justifies regulatory intervention and demonstrate that the proposed intervention is likely to produce better outcomes than alternative approaches.

7.8 More fundamentally, the Bills lack a statutory starting position. The 2024 Cabinet paper stated that the replacement system's starting point "should be the enjoyment of property rights and respect for the rule of law" (paragraph 27). This was not one consideration among many; it was the default position from which departures must be justified. The Bills do not give that commitment operative force. Property rights appear as a background consideration, reflected in scope exclusions and regulatory relief provisions, but nowhere does the statute establish a presumption that land use is permitted unless restricted for specified reasons.

7.9 We therefore submit that both Bills should include an overarching statutory presumption to the effect that landowners may use their land as they see fit, subject only to restrictions that are necessary to manage legally-problematic material adverse effects on others, to comply with strictly-justified environmental limits set under the Natural Environment Act, and to give effect to similarly-justified national standards and plan rules made under these Acts. This presumption should be supported by a rule of construction requiring courts to resolve ambiguity in favour of the landowner where the scope or application of a restriction is unclear. Without such a presumption, the Bills lack a default position. Courts and decision-makers will balance property rights against competing goals, and experience under the RMA shows how that balance tends to resolve. A statutory presumption does not prevent regulation -- it requires regulators to justify it.

7.10 Such a presumption is not a matter that can be delegated to national direction, because its purpose is to constrain how national direction is made. It must sit in the primary legislation

8. Protection of existing use rights

8.1 An important aspect of regulatory certainty is the protection of existing lawful uses when new, more restrictive rules are introduced. The Planning Bill addresses this in clauses 20-23, which provide for certain existing land uses, building works, and surface water uses to continue notwithstanding changes to plan rules.

8.2 We support the inclusion of these provisions and consider them an important safeguard for property rights. However, several questions arise about their scope and operation:

- Clause 20 allows existing land uses to continue where they were ‘lawfully established’ and have not been discontinued for a continuous period of more than 12 months (clause 21). The 12-month threshold may be too short for some seasonal or cyclical activities, and the burden of proving lawful establishment may be difficult to discharge for long-standing uses.

- The interaction between existing use protections and the regulatory relief framework in Schedule 3, Part 4, is not entirely clear. If an existing use is protected

under clause 20, but a new rule materially constrains how that use can be carried out or expanded, is the landowner eligible for relief?

- Clause 23 provides some protection for existing surface water uses, but only until a land use consent is obtained. This suggests existing water uses will ultimately need to be brought within the new permitting framework, potentially with more restrictive conditions.

8.3 We submit the Committee should satisfy itself that the existing use protections in clauses 20-23 provide adequate security for landowners with established lawful uses. The Bill should clarify that where new rules materially constrain the continuation or reasonable expansion of an existing lawful use, the regulatory relief framework applies.

8.4 Consideration should be given to extending the discontinuance period in clause 21 beyond 12 months for seasonal, cyclical, or intermittent activities. The transition provisions in Schedule 1 should clearly protect existing resource consents and existing uses during the transition to the new system.

9. Compensation for regulatory takings

9.1 International experience suggests that systems with stronger recognition of regulatory takings tend to produce clearer rules and more careful limit-setting over time. For example, in the United States the Fifth Amendment's Takings Clause has shaped land-use regulation by requiring compensation where regulatory restrictions go 'too far', encouraging clearer statutory criteria and judicial tests for when limits impose undue burdens. Similarly, in Germany and other European countries statutory liability for planning-related injuries means legislators and regulators articulate limits and restrictions with greater precision to define when compensation obligations arise.[7]

9.2 By contrast, New Zealand's RMA has restricted land use without compensation, even where restrictions remove substantial economic value from property. The absence of compensation or compensation-like disciplines means that regulatory costs are largely externalised, reducing incentives for careful calibration of limits and increasing the risk of cumulative over-restriction over time. This is the problem of the "tragedy of the anti-commons". It has contributed to under-investment, housing shortages and a persistent bias toward regulatory expansion. It is also a very plausible reason why Section 32 analyses have been pro forma at best.

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[7] United States Takings Doctrine: The U.S. Supreme Court's *Pennsylvania Coal Co. v. Mahon* established that excessive regulation can be a taking requiring compensation, which has guided regulatory design. https://en.wikipedia.org/wiki/Pennsylvania_Coal_Co._v._Mahon

Germany and European compensation regimes: German law (and similar frameworks in several European countries) incorporates liability for planning injuries and compensation rights in regulatory contexts, leading to more detailed statutory limits and planning criteria. https://alterman.web3.technion.ac.il/files/publications/TakingsCh14-prepub.pdf

9.3 The Planning Bill and the Natural Environment Bill do not materially alter this position. While both introduce new instruments and clearer limits, in stark contrast to the venerable Public Works Act neither provides a framework for recognising or compensating regulatory takings, where regulation effectively removes or severely diminishes lawful or reasonably expected uses of property.

9.4 This omission matters for institutional reasons. When decision-makers can impose restrictions without bearing any fiscal or political cost, the system is biased toward over-regulation. Costs are concentrated on individual landowners, while benefits are diffuse. Recall that governments often have choice between fiscal and regulatory instruments for achieving desired outcomes. Which is best can vary case-by-case. But if government bears the fiscal cost of spending measures, and externalises the cost of regulatory measures, it will be biased toward choosing regulatory measures when spending would be more appropriate.

9.5 Compensation does not imply that all regulation is illegitimate or that environmental protection should be weakened. Rather, it is a mechanism for internalising costs and benefits in accordance with both the benefit principle of taxation and the polluter pays principle, depending on how existing law has allocated property rights. That process aligns incentives, disciplines regulatory choices and potentially ensures that public benefits are not delivered through possibly greater uncompensated private losses. Providing compensation through the Public Works Act when land is taken for public purposes does not mean government puts less value on infrastructure. It simply sets the burden of providing the valuable benefit on a more equitable basis. Some people object that compensation is costly. Socially, it is not costly, it merely shifts the burden of unchanged costs. The measure is important because it increases decision-makers' incentives to take costs into account.

9.6 The Planning Bill relies on ‘regulatory relief’, rather than compensation, to address burdens imposed by new constraints on land use. The regulatory relief framework in Schedule 3, Part 4 of the Planning Bill applies where specified rules have a significant impact on the reasonable use of land.

9.7 However, there are two distinct problems with regulatory relief as currently drafted.

Problem A: The threshold is too high

9.8 Schedule 3, clause 62 of the Planning Bill provides relief where rules have a "significant impact on the reasonable use of land." This is better than the RMA's "incapable of reasonable use" test in section 85, but ‘significant’ is still a high bar. The basic principle should be that if a neighbour’s impact on someone’s land was illegal, not matter how minor, the same action by government should be subject to the same discipline. The government can and where justified should use the power of eminent domain to go ahead anyway, but not without addressing the question of compensation in a principled and respectful manner. In contrast, as proposed, many landowners will suffer material economic loss – reduced property values, constrained development

potential – that falls short of ‘significant impact’. The threshold should reflect economic harm, not exceptional harm.

9.9 A lower threshold, such as "material impact on the value of a reasonable use of land", would better achieve the stated objective. 'Material' captures real economic harm without requiring exceptional circumstances. In applying this test, the net impact on the landowner should be assessed: where regulation provides benefits to the affected property that offset or exceed the imposed costs – for example, where reduced aquifer allocations restore the long-term sustainability of a water resource on which the landowner depends – the value of the property many not decline in which case no financial compensation is needed. Only net harm, after accounting for benefits the landowner receives from the regulation, should trigger financial relief or related compensation. This netting principle guards against the objection that compensation would thwart all regulation; it ensures that only regulations imposing genuine net costs on landowners attract a remedy.

9.10 The Committee should also consider whether the threshold should be expressed quantitatively rather than qualitatively. A test framed in terms of a specified percentage diminution in assessed land value (say, 15 or 20 percent, determined by a registered valuer) would provide substantially greater certainty than any adjectival test, however well drafted. Landowners would know in advance whether they qualify for relief. Decision-makers would face a clear fiscal signal when proposing restrictions. And courts would be spared the task of interpreting 'material' or 'significant' on a case-by-case basis, which is precisely the pattern that made the RMA's section 85 ineffective. A quantitative threshold also strengthens the put option we propose below (para 9.16): where diminution exceeds a higher threshold (say, 33 percent) the landowner should be entitled to require purchase at unimpaired market value. This two-tier structure provides graduated protection: standard relief for moderate impacts, and a purchase obligation for severe ones.

Problem B: The Natural Environment Bill has a substantial gap

9.11 Access to regulatory relief under the Natural Environment Bill is much more limited. Clause 111 of that Bill cross-references to Schedule 3, Part 4, but limits relief to rules relating to only three categories:

- Land-based indigenous biodiversity;
- Significant natural areas (SNAs); and
- Sites of significance to Māori.

9.12 This means freshwater limits, air quality limits, coastal water limits, and discharge restrictions - all of which may dramatically affect land value and productive use - provide no avenue for regulatory relief whatsoever, regardless of impact severity.

9.13 We acknowledge that not all regulatory impositions under the Natural Environment Bill will impose net costs on affected landowners. Good regulatory regimes should provide benefits that exceed the costs they impose. For example, if an aquifer becomes overallocated and each farmer's allocation is reduced proportionately to restore sustainability, the regulation may improve each property's long-term value by ensuring the resource endures. In such cases, no compensation should be required – the benefits of the regulation suffice. But where regulation imposes net costs on identifiable landowners for the benefit of others – for instance, where freshwater limits are tightened beyond what is necessary to protect the resource's sustainability, or where discharge restrictions are set to achieve amenity or ecological objectives that primarily benefit the wider community – the absence of any relief mechanism is unjust and likely inefficient given the fee-loading incentives and will undermine the legitimacy of the limits framework.

9.14 Without a compensation framework, or at least a compensation trigger, both Bills retain a structural bias toward over-restriction. Regulatory relief may delay or soften impacts, but it does not internalise costs or discipline limit-setting. The gap in the Natural Environment Bill significantly exacerbates this problem.

Compensation mechanisms

9.15 We submit that a durable replacement for the RMA should include more explicit recognition of property rights and a principled framework for compensation where regulation removes significant existing or reasonably expected uses of land.

9.16 One mechanism we support is a 'put option' – where affected landowners are able to require those imposing a regulatory burden from reduced legal rights to purchase the property at an unimpaired market value. This would be consistent with the approach taken under the Public Works Act for physical takings and would create a powerful discipline on regulatory decision-making.

9.17 For site-specific regulatory overlays (heritage listings, significant natural area classifications, outstanding landscape designations) a related mechanism may be more appropriate. Where a council proposes to impose an overlay that restricts the use of an identified property, compensation should be negotiated with the affected landowner before the overlay takes effect, following the model of the Public Works Act for designations. This reverses the current approach, under which the restriction is imposed first and the landowner must then seek relief. Pre-negotiation serves two purposes: it ensures the landowner is not left bearing uncompensated costs while navigating a relief process, and it forces the council to confront the cost of the overlay before deciding to impose it. If the council is unwilling to fund the overlay at the level required, that reveals the restriction's benefits do not justify its costs -- and the overlay should not proceed.

9.18 The regulatory relief framework is likely unworkable in practice, given the prohibitive complexity of disaggregating the impact of multiple overlapping planning instruments on the value and use of land. The put option cuts through this procedural complexity.

It provides a clean, self-executing fail-safe that disciplines the system from the bottom up, regardless of how well or poorly higher-level instruments are calibrated.

9.19 Even if full compensation regimes are not adopted immediately, the Bills could be materially improved by:

- Lowering the threshold from 'significant impact' to 'material impact';
- Extending the regulatory relief framework to all environmental limits with land-use impacts under the Natural Environment Bill, not just biodiversity, SNAs and Māori sites;
- Requiring explicit consideration of property-value impacts when setting limits and rules;
- Requiring justification for uncompensated takings; and
- Adopting the principle that affected landowners should be no worse off in net terms as a result of regulatory impositions – that is, compensation or relief should reflect the net impact after accounting for any benefits the landowner receives from the regulation, consistent with the approach under the Public Works Act where a road that takes half a property but doubles the value of the remainder does not give rise to a net loss claim; and

9.20 The fundamental point is that if the Government wants environmental limits to command broad legitimacy, those limits must be paired with principled treatment of those who bear the costs. We recognise the political difficulty: compensation obligations make the cost of regulation visible to those who vote for it, which is precisely why they are resisted. But this visibility is a feature, not a bug. A system that allows Parliament to impose costs on landowners without bearing any fiscal consequence will always be biased toward over-regulation.

10. Data, technology and system performance

10.1 We support the Bills' intent to make better use of data and technology to enable faster, more consistent planning decisions and to improve monitoring of performance and outcomes.

10.2 Greater standardisation, clearer rules and regional-scale planning instruments create the necessary preconditions for effective digital planning tools, automated rule application and transparent performance reporting.

10.3 To realise these benefits in practice, the new system should place explicit weight on measurable outcomes and ongoing public reporting. Without this, there is a risk that institutional reform is not matched by operational improvement.

10.4 A related concern is enforcement capacity. The Bills' architecture shifts emphasis from ex ante consenting to ex post compliance; more activities proceed as permitted, with enforcement against those who breach conditions or standards. This shift is sound in principle, but it places greater weight on monitoring and enforcement than the current system requires. If enforcement is inadequate, the result is not a lighter-touch system but an unenforced one. Council enforcement capacity has historically been uneven and under-resourced. The Committee should satisfy itself that the transition to a standards-first system is matched by adequate enforcement capability, whether through strengthened council capacity, a national compliance function, or a combination of both.

11. Economic instruments for managing environmental effects

11.1 The Initiative has long supported the use of economic instruments to manage environmental effects within clearly defined limits. Where environmental objectives are well specified, economic instruments can achieve those objectives at lower cost and with greater flexibility than prescriptive regulation.

11.2 The Natural Environment Bill establishes an environmental limits framework that is, in principle, well suited to the use of such instruments. Once a net benefit-justified limit is set, the central policy question becomes how scarce environmental capacity is allocated and used.

11.3 Economic instruments – such as cap-and-trade systems, transferable discharge permits, or pricing mechanisms – allow environmental limits to be respected while enabling users to adjust in ways that minimise overall cost. They also encourage innovation and continuous improvement. Importantly, they generate information that can inform the calibration of limits themselves: they can reveal places where limits could be tightened at low cost, through purchase and retirement of rights, as well as places where easing limits would provide substantial value relative to environmental cost. This iterative discovery function is at least as valuable as the static efficiency gains.

11.4 By contrast, command-and-control approaches within limits tend to impose uniform restrictions that ignore differences in abatement cost, land capability and local conditions. This raises costs unnecessarily and can undermine support for environmental objectives. Even the most efficient economic instruments will produce suboptimal outcomes if the limits within which they operate are fixed regardless of what the instruments reveal about costs. There should be explicit provision for environmental limits to be adjusted over time as new information about abatement costs, environmental conditions and community preferences emerges. A rigid limit that was set conservatively may prove far more costly than anticipated once economic instruments reveal the true distribution of abatement costs across a catchment or airshed. The legislation should provide structured opportunities for limits to be reviewed and adjusted in light of this information.

11.5 Economic instruments can be used both for point-source pollution (identifiable discharges from specific locations) and non-point source pollution (diffuse effects arising from the cumulative activities of many land users, such as nutrient runoff into waterways). Non-point source pollution presents different regulatory challenges from point-source pollution:

- Point-source pollution can be addressed through discharge permits with specific conditions, because the source is identifiable and monitorable.

- Non-point source pollution is harder to attribute to individual actors and harder to regulate through traditional permitting. It typically requires either land use controls (which are blunt and often inequitable), economic instruments like cap-and-trade (which set overall limits and let trading determine efficient allocation), or catchment-level collective action.

11.6 The Natural Environment Bill's environmental limits framework (clauses 45-63) does not distinguish between point-source and non-point source pollution. Limits are set for domains (freshwater, air, coastal water, soil) without differentiation based on the nature of the pollution source. This risks applying inappropriate regulatory tools – particularly in freshwater management, where non-point source nutrient pollution from agricultural land use is the dominant problem.

11.7 Cap-and-trade systems are well-suited to non-point source pollution because they set the overall environmental limit (the "cap") while allowing trading to determine the efficient allocation of reduction effort among sources. This achieves the environmental objective at lower cost than uniform restrictions, because abatement effort flows to where it can be achieved most cheaply. The Initiative's reports *Refreshing Water* (2019) and *Fording the Rapids* (2021) examined how such systems have operated successfully in other jurisdictions. [8] Similar principles can be applied to other domains, including nutrient loss, water allocation and, over time, other diffuse effects.

11.8 However, the Bills' 'market-based allocation' provisions (clauses 204-207 of the Natural Environment Bill) are permissive rather than directive. As discussed in Section 24, the definition is so narrow that it may not enable allocation of cap-and-trade rights through grandparenting to existing users – an approach that can ease political economy problems and smooth transitions toward tighter limits. A cap-and-trade system can allocate initial rights by auction or by grandparenting; both are genuine market mechanisms provided the rights are freely tradable thereafter. Without a broader definition and stronger statutory encouragement, councils are likely to default to command-and-control approaches that are less efficient and less fair.

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[8] The New Zealand Initiative, *Refreshing Water: Valuing the Priceless*, May 2019, https://www.nzinitiative.org.nz/reports-and-media/reports/refreshing-water-valuing-the-priceless
The New Zealand Initiative, *Fording the Rapids: Charting a Course to Fresher* Water, August 2021, https://www.nzinitiative.org.nz/reports-and-media/reports/fording-the-rapids/

11.9 Economic instruments also interact constructively with property rights. Clearly defined and transferable rights within limits make regulatory burdens more transparent and reduce arbitrary impacts. Where limits impose binding constraints, tradable rights provide a form of regulatory relief through choice, even where compensation is not provided. They also provide a mechanism for tightening limits that is consistent with property rights and automatically provides compensation: the purchase and retirement of emission permits by parties benefitting from tighter limits.

11.10 A necessary clarification: our support for economic instruments should not be read as support for a tax on water use or any other resource tax imposed by government. A tax and a cap-and-trade system are fundamentally different instruments, even though both attach a price to resource use. A tax transfers revenue to the state and sets the price administratively, with quantity outcomes uncertain. A cap-and-trade system sets the quantity limit directly – respecting the environmental constraint – and lets trading between rights-holders discover the price. The revenue stays with the rights-holders, not the Crown. The property rights implications are opposite: a tax treats resource use as a privilege for which government charges a fee, while a cap-and-trade system recognises use rights that can be held, traded and enforced against the state. Where existing users hold lawful resource consents or established expectations of continued access, the appropriate transition is to convert those expectations into defined, tradable entitlements – not to impose a Crown levy on activity that was previously exercised as of right. A water tax would amount to a regulatory taking by another name.

11.11 The Bills do not currently provide strong direction or encouragement for the use of economic instruments. While they do not preclude such approaches, the absence of explicit recognition risks defaulting to more rigid and costly regulatory methods. Economic instruments like cap-and-trade are not always best; they would be inappropriate in small catchments. But they should always be considered.

11.12 We therefore submit that the replacement framework would be materially strengthened by explicitly enabling and encouraging the use of economic instruments, where appropriate, as part of managing resource use within environmental limits.

12. Ministerial powers and long-term regulatory risk

12.1 The funnel architecture is sound in principle: resolving questions at higher levels reduces relitigating at consent stage. But this architecture means national instruments carry enormous weight. Both Bills confer broad powers on Ministers to set, amend or expand national direction and environmental limits through secondary instruments (clauses 38-76 of the Planning Bill and clauses 67-90 of the Natural Environment Bill).

12.2 Our concern is not the current Government's intentions, but institutional durability. A future government could use these powers to incrementally change regulatory settings – adding new matters to national policy direction, changing environmental

limits, altering the definition of protected areas – without the scrutiny associated with primary legislation.

12.3 This risk is amplified by three features of the Bills:

- Reduced appeal rights at lower levels (because matters are resolved higher up);
- The funnel means errors or overreach at the top cannot be corrected downstream; and
- National instruments are secondary legislation, subject to less parliamentary scrutiny than primary legislation

12.4 The Government has chosen this architecture deliberately, viewing a lean Act with broad delegated powers as more adaptable than the RMA's detailed prescriptions. We accept the logic in principle. But the corollary is inescapable: the less the primary legislation constrains, the stronger the procedural disciplines on delegated instruments must be. A system that concentrates authority in ministerial hands and provides weaker procedural safeguards than the Act it replaces is not 'lean' – it is unfinished.

12.5 In a system that reduces appeal rights and funnels decision-making upward, strong procedural safeguards, transparency requirements and proportionality disciplines become more important, not less. Yet the Bills provide weaker procedural disciplines for making national instruments than the RMA they replace.

12.6 Under the RMA, section 32 required an evaluation report for proposed national policy statements and national environmental standards, assessing efficiency and effectiveness. Section 46A required consultation with local authorities, iwi authorities, and other parties likely to be affected. While these requirements were imperfect in practice, they at least created documented records of the rationale for national direction and some assessment of costs and benefits.

12.7 The replacement Bills remove section 32 without substituting any equivalent. The procedural principles in clause 13 require decisions to be 'proportionate' and 'evidence-based', but these terms are undefined and unenforceable. There is no requirement to:

- Identify the problem with private arrangements including the existing law that might justify intervention;
- Consider alternative approaches that might address that problem at lower cost;
- Quantify the costs and benefits of proposed national direction against the best of forgone alternatives;
- Identify winners and losers and property right issues;

- Assess impacts on property values or development potential; or

- Publish the analysis underlying the decision.

12.8 The process requirements for national instruments in clauses 55-66 of the Planning Bill are broadly similar to the RMA's. But consultation without substantive decision criteria is procedural theatre. Affected parties can make submissions, but Ministers are not required to demonstrate that they have weighed costs against benefits or considered property impacts before making binding national direction.

12.9 This gap is compounded by the fact that compensation or regulatory relief provisions, as currently drafted, would not be triggered by changes in national direction that impair existing use rights. A Minister could tighten national policy direction in ways that substantially reduce land values across an entire region, with no obligation to compensate and no fiscal consequence. Requiring compensation for net cost impositions arising from national direction would itself serve as a powerful discipline – arguably more effective than any formal cost-benefit analysis requirement, because it would force decision-makers to confront the real costs of their choices.

12.10 We therefore submit that the Committee should recommend the following safeguards:

- **Reinstate a strengthened section 32 equivalent.** Before making or amending national policy direction or national standards, the Minister should be required to prepare and publish an evaluation report assessing the efficiency and effectiveness of the proposed provisions, including their impacts on property values, housing supply, and economic activity. This report should be subject to independent review. Requiring that compensation for net cost impositions be addressed would be one way of forcing cost benefit analysis.

- **Require identification of market failure.** National instruments should be required to identify the market failure, externality, or public good that justifies regulatory intervention, and to demonstrate that the proposed intervention addresses that failure more efficiently than alternatives.

- **Require consideration of property impacts.** Before making national instruments that constrain land use, the Minister should be required to assess and disclose the impacts on property rights and property values, and to justify any uncompensated diminution in value.

- **Sunset or review requirements.** Sunset or review requirements. National instruments should be subject to mandatory review every 10 years (aligned with spatial plan review). The legislation should specify a clear reversion point if an instrument is not renewed – for example, that affected plan provisions revert to the most recently operative national standard, or that councils regain discretion within the statutory goals. Without a defined reversion point, the prospect of

expiry creates uncertainty about what rules apply at year eleven, which may be worse than the instrument itself. The purpose of sunset clauses is to force periodic reassessment, not to create regulatory vacuums.

- **Enhanced parliamentary oversight.** Significant changes to national instruments – particularly those that expand regulatory scope or tighten environmental limits – should require affirmative resolution by Parliament rather than the standard disallowance procedure for secondary legislation.

12.11 It is common practice for officials to push back against ministers when working on national direction, instructing Ministers that secondary law is not the appropriate place to do substantive policy, and therefore they need to look to change primary legislation. This is based on first-hand experience working on national direction. Ministers need to be careful not to push too much to national direction that is substantive, because it gives officials leverage to push back on the substantive work Ministers may wish to undertake later.

12.12 The underlying principle is that a system which funnels authority upward must have correspondingly stronger rigour and accountability at the top – and meaningful safeguards at the bottom. Rigour means that higher-level decisions are subject to expert review, cost-benefit analysis and proportionality testing. Accountability means that those decisions remain anchored in democratic processes and subject to parliamentary oversight. And safeguards at the bottom mean that where the system nonetheless imposes unjustified costs on individual landowners, those landowners have recourse – including, where appropriate, the ability to require purchase of their property at unimpaired value. The Bills currently fall short on all three counts.

13. The Fast-track Approvals regime as a system-level issue

13.1 The Initiative supported the Fast-track Approvals Act 2024 as a pragmatic and temporary response to the dysfunction of the RMA. We have consistently argued that fast-track mechanisms are not a substitute for durable, system-wide reform.

13.2 A fast-track regime was justifiable as an exceptional measure to enable nationally and regionally significant projects while a replacement framework was developed.

13.3 Once the Planning Bill and Natural Environment Bill are fully implemented and operative, the rationale for maintaining a parallel fast-track regime should fall away.

13.4 Allowing fast-track to continue indefinitely risks entrenching a two-track system where exceptional processes become normalised and pressure to improve the mainstream system is reduced. Equally, sunsetting fast-track prematurely – before the replacement system has demonstrated that it can deliver timely, predictable decisions – would remove a functioning mechanism without a proven alternative.

13.5 We therefore recommend that the Government signal clearly that the Fast-track Approvals Act is intended to be temporary and will be wound down once the new resource management system is fully operational and has demonstrated comparable or superior performance. The legislation should also provide for any procedural innovations developed under the fast-track regime to be incorporated into the mainstream system where they prove effective, so that the benefits of the fast-track experience are not lost.

PART 3 – COMMENTS SPECIFIC TO THE PLANNING BILL

14. General Comment

14.1 The Planning Bill establishes the framework for regulating land use, development and infrastructure in New Zealand. It introduces several significant features: nationally standardised zones to replace the current patchwork of over 1,175 locally-defined zones; regional spatial plans to provide long-term strategic direction; and an explicit goal to enable competitive urban land markets.

14.2 We support the direction of these reforms. Properly designed, standardised zones can dramatically reduce compliance costs and improve certainty for landowners and developers. Spatial plans have the potential to improve coordination between land use planning and infrastructure investment. And embedding competition in urban land markets as a statutory goal addresses a fundamental weakness in the RMA framework.

14.3 However, the effectiveness of these reforms will depend critically on implementation. Standardised zones must be genuinely permissive, not merely nationally uniform restrictions. Spatial plans must expand development options rather than constrain them to narrow corridors. And the competitive land markets goal must be supported by operative mechanisms that detect and correct when zoning restrictions effect a substantial lessening of competition and create artificial scarcity-based rents.

14.4 The sections that follow address these issues in detail: nationally standardised zones (Section 15); competitive urban land markets and the gap between the Bill's goal and its operative provisions (Section 16); the scope and risk of regulatory over-reach (Section 17); natural hazards and property owner choice (Section 18); heritage protection (Section 19); and governance, democratic accountability and Māori participation (Section 20).

15. Nationally standardised zones and provisions

15.1 We welcome the provision for nationally standardised zones, overlays, rules, and methodologies. This addresses a long-standing criticism of the RMA system: that the proliferation of different zoning categories, definitions, and rule frameworks across 78 district and regional plans has created unnecessary complexity, inconsistency, and compliance costs.

15.2 Under the Planning Bill, national standards may include "standardised zones, provisions, and methodologies" (clause 54) that territorial authorities must apply in their land use plans. The Natural Environment Bill provides parallel standardisation for natural environment plans. This approach has the potential to significantly reduce transaction costs for applicants operating across multiple districts and improve the consistency of planning outcomes nationwide.

15.3 The Initiative has previously pointed to Japan's planning system, which uses just 13 standardised zones nationwide, as an example of how simplicity and standardisation can improve regulatory efficiency without sacrificing local flexibility in implementation.

15.4 To maximise the benefits of standardisation, the national standards establishing standardised zones must be genuinely permissive, enabling a wide range of activities as of right within each zone rather than defaulting to consent requirements. The number of standardised zones should be kept deliberately small. Complexity tends to grow over time as exceptions and sub-categories are added; starting with a parsimonious framework will help resist this tendency. We note that the combination of a relatively small number of zones with a relatively small number of potential 'overlays' can produce more complexity than may be initially appreciated. If a property with twenty potential assigned zones can have none or several of twenty 'overlays', about twenty million different combinations of zones and overlays could apply to any particular property. Thirteen zones subject to none, some or all of thirteen potential overlays provides about a hundred thousand different possible combinations. What sounds simple can quickly become complex and thwart the rollout of standardised buildings.

15.5 The development of national standards should be prioritised so that standardisation benefits are realised early in the new system's operation, rather than being deferred indefinitely. Standardised definitions and terms must also be applied consistently across both Bills to avoid the interpretive difficulties that have plagued the RMA.

15.6 We acknowledge that standardisation represents a significant transfer of planning discretion from local authorities to central government. This is acceptable where it reduces unnecessary variation and compliance costs. However, it reinforces the importance of the safeguards discussed elsewhere in this submission: clear statutory constraints on the content of national instruments, proportionality requirements, and adequate appeal rights for affected parties.

16. Enabling competitive urban land markets

<u>The Initiative's position</u>

16.1 The Initiative's high-level position has always been that property rights should, to the extent that is possible, be clear, well-defined and enforced and respected. Absent compelling public policy reasons to the contrary, landowners would be able to sell their land for housing or other purposes on a willing buyer-willing seller basis without encumbrances like zoning. This foundation pragmatically supports 'competitive urban land markets' by addressing an aspect of the supply pathologies that have impaired housing affordability, while allowing mutually beneficial restrictions, subject to such restrictions not undermining wider prosperity (e.g., housing affordability and productivity).

16.2 A core objective of the Planning Bill should therefore be to enable competitive urban land markets, particularly in relation to housing. Under the RMA, urban land markets have often been characterised by artificial scarcity created through ill-justified restrictive planning rules, opaque growth boundaries and fragmented infrastructure coordination. These features have limited competition between landowners; elevated land prices across entire urban areas; depressed some by not allowing highest and best use; and constrained housing supply, particularly in high-growth urban areas. The problem also can exhibit in other areas, from supermarkets to industrial parks.

The goal is welcome but not sufficient

16.3 It is encouraging that clause 11(1)(d) includes a goal to "enable competitive urban land markets by making land available to meet current and expected demand for business and residential use and development". This represents a material advancement – for the first time, competitive land markets appear as an explicit statutory objective rather than merely a policy aspiration in subordinate national direction.

16.4 The goal should be improved by removing the “current and expected” qualification of demand to avoid empowering planners’ “predict, centrally provide and ration” approach to withholding development capacity from the market. Competitive market forces and land price signals should determine supply of land and development capacity to meet demand, not central planners personal or philosophical sentiments, or captured interests.

16.5 However, a close reading of the Bill suggests a structural gap between aspiration and operative provisions. The Bill lists competitive land markets as a goal but does not define the concepts or embed the mechanisms necessary to achieve them. There is no statutory trigger for releasing new land, no price-signal test for diagnosing scarcity, no automatic expansion or upzoning rule, and no enforceable obligation to allow additional brownfield and greenfield options when market conditions warrant.

16.6 The result is what might be termed ‘compliance without competition’. A council can satisfy every formal obligation in the Bill while still presiding over a housing market characterised by rising prices, declining affordability and the systematic extraction (including intergenerational wealth transfers) of scarcity rents. The Bill enables planning *about* competitive land markets without requiring planning *for* them.

The core conceptual problem: capacity is not competition

16.7 The concept of "sufficient development capacity" – inherited from the NPS-UD and implicitly retained in the Bill – is the key leverage point. The fundamental error is treating sufficiency as a *volumetric* concept (counting hectares and dwellings against forecast demand) when it must be understood as a *market-structure* concept (whether the planning system creates effective competitive pressure).

16.8 The current sufficiency framework has four properties that render it inadequate:

- **Forecast-led rather than market-led.** Capacity is tied to bureaucratic demand projections, not to market signals indicating whether supply is meeting demand at affordable prices. A council can be technically compliant while presiding over rapidly escalating prices, because the sufficiency test does not reference prices at all.

- **Satisfied at the margin.** A small surplus above forecast demand is treated as sufficient, even if that capacity is tightly constrained in location, timing or feasibility. The test does not ask whether the market is competitive, only whether a quantum of capacity exists on paper.

- **Compatible with sequencing.** Councils can stage-gate land release in predictable tranches tied to infrastructure budgets and political cycles. This predictability is antithetical to competitive pressure when each tranche of zoned land is not well in excess of demand – when land release is staged and known in advance, it becomes valuable to delay, fuelling land banking.

- **Ignores substitutability.** A competitive market requires genuine choices among multiple development options such that no single landowner or small group can exercise market power. The current test counts hectares; it does not ask whether those options are substitutes in any economically meaningful sense.

16.9 Scarcity rents arise not only when capacity is absent in aggregate, but when credible alternatives are absent at the margin. A planning system can provide twenty years of 'capacity' on paper while still presiding over persistent land banking, rising prices and zero competitive pressure on incumbent landowners. Judge Jackson's 2017 decision in *Bunnings v Queenstown Lakes District Council* recognised this distinction, holding that councils must work with price differentials, pay heed to efficiency and competition, and react to market signals. But that vision was embedded in a subordinate policy instrument without clear statutory foundation.

<u>The infrastructure veto</u>

16.10 Because sufficiency is not defined competitively, infrastructure constraints will continue to operate as a de facto veto on development. Councils can acknowledge that capacity exists "in principle" while maintaining it is not available "in practice" until infrastructure is funded, designed and committed. This preserves scarcity through the back door.

16.11 While the Planning Bill cannot directly address the infrastructure financing constraints that bind council decision-making, its design does not anticipate complementary reforms underway (e.g., replacement of development contributions with levies and amendments to the Infrastructure Funding and Financing Act 2020) that could jointly pre-empt infrastructure being used as a veto to resist development. Planning permissions thus become stranded: they exist on paper but cannot be activated. Councils can argue fiscal prudence under the Local Government Act, noting that

ratepayers cannot be expected to bear infrastructure costs for speculative development. All of this remains lawful under the Bill.

16.12 For these reasons, the role of infrastructure in land-use decision-making should be reframed: rather than treating the existence of infrastructure within current funding envelopes as a precondition to development, the drafting should require decision-makers to assess whether infrastructure is reasonably expected to be delivered. This is an important distinction. The relevant policy question is not whether infrastructure is already funded or scheduled, but whether it is capable of being delivered through feasible delivery and financing mechanisms.

The risk of leaving everything to national direction

16.13 Because the Bill does not itself contain operative land release mechanisms, or at least rules to effect such, all meaningful land release policy must occur through national direction or solely at council discretion (e.g., sections 93-98 of the Planning Bill). To ensure credible threat of entry, agile land release mechanisms cannot depend on councils, and could include mandatory greenfield release requirements, price-triggered rezoning to allow more apartments and townhouses, prohibitions on hard urban growth boundaries, or automatic expansion rules.

16.14 The difficulty is that none of these mechanisms are in the Bill itself. There is not a single rule that could statutorily empower such mechanisms in principle. They are entirely discretionary, dependent on future Ministers, and vulnerable to being watered down, delayed or revoked. National direction can be captured by bureaucratic conservatism or reversed by political cycles. Rights defined by policy are more easily rewritten than rights embedded in law.

16.15 The history of the National Policy Statement-Urban Development suggests that even well-designed national direction erodes over time when it lacks firm statutory foundations. For a reform explicitly framed around competitive urban land markets, this represents a material structural weakness.

16.16 Competitive land markets is a novel statutory concept that warrants more detailed treatment than other transported terms. We urge the Committee to ensure the core architecture – the statutory test, the four conditions, the independent panel, and the trigger mechanisms – is embedded in the Act itself placing agile land release mechanisms in primary legislation.

Reframing from ‘sufficient development capacity’ to ‘competitive urban land supply’

16.17 We propose a fundamental reframing. If ill-justified restrictions are to continue, they should be capped by removing ‘current and expected’ from the proposed goal and replace the statutory concept of ‘sufficient development capacity’ with ‘competitive urban land supply’. This is not an additional requirement layered onto sufficiency, but a replacement that performs the same systemic role: determining whether the

planning system is enabling housing and business development. The difference is that it uses a market-structural lens rather than a volumetric one.

16.18 Under this reframing, sufficiency requires four conditions to be met simultaneously:

- **Legal availability.** Development capacity must be legally enabled and available for immediate use, not contingent on future discretionary decisions, plan changes or infrastructure commitments that may or may not materialise.

- **Economic substitutability.** Capacity must be enabled both in peri-urban areas and in urban locations where development demand is strongest – areas of high accessibility and market value. A system that enables capacity primarily in locations that are not economically substitutable for high-demand land fails to provide genuine options.

- **Simultaneity.** Multiple development options must be enabled concurrently rather than sequentially. If councils sequence land release such that only one tranche is available at a time, they preserve scarcity even where aggregate capacity appears ample. Competition requires overlapping options at the margin, not a queue.

- **Credible threat of entry.** The system must materially reduce the expected return from delaying development by maintaining a credible threat of alternative supply. If landowners can profitably hold out because they know no competing supply will emerge, the market is not competitive regardless of what capacity appears in planning documents.

<u>The diagnostic mechanism: an independent expert panel</u>

16.19 We propose that an independent expert panel, established by the Minister and comprising persons with expertise in economics, should assess whether urban land supply is sufficient to sustain competitive urban land markets. The panel would consider whether capacity is enabled where demand is strongest, whether options are concurrent and economically substitutable, and whether observed market outcomes (price differentials, scarcity rents) demonstrate that markets are contestable in practice. The Commerce Commission could be tasked with overseeing this function, bringing in relevant expertise from other agencies as it develops its own capacity.

16.20 When the panel identifies that competitive conditions are not being achieved, this should trigger mandatory responses: decision-makers must apply rules in a manner that alleviates rather than reinforces constraints on land supply. Neighbourhood character, visual preferences or other subjective amenity considerations could no longer be relied upon to restrict development that is otherwise within environmental limits. Absence, sequencing or timing of infrastructure could not be relied upon where that infrastructure is reasonably capable of being delivered.

The boundary price differential as a market signal

16.21 When urban and rural land prices no longer match at the urban fringe – when a substantial price wedge opens between land inside and outside the urban boundary – it signals that urban land prices have decoupled from their rural opportunity cost. This decoupling is the hallmark of an uncompetitive land market. It manifests in elevated house prices, reduced affordability and systematic wealth transfer from renters and first-home buyers to established landowners. Similarly, if the boundary between land zoned for 30-story apartment towers and land zoned only for 3-story townhouses marks a substantial land price discontinuity after accounting for the costs of the infrastructure necessary to support upzoning, too little land is zoned for apartment towers. Other price measures can also signal that land use constraints impose too substantial a cost – for example, the difference between the cost of constructing an extra floor on an apartment building and the value of the floorspace, as detailed in work by Grimes and Mitchell, 2015.

16.22 A boundary price differential trigger would work as follows:

- Monitor the ratio between land prices just inside and just outside the relevant zoning boundary;

- When the differential exceeds a specified threshold (say, 2:1), this triggers a presumption in favour of rezoning adjacent land; and

- The trigger could be automatic upon determination of an independent panel with expertise in urban economics and land markets (requiring councils to immediately effect plan changes across the city-wide area) or, when developers demonstrate the existence of sufficiently high site-specific price differentials (requiring the council to immediately change their plan at a site level, without any further application or plan change process required, and provide consent for development, subject to the developer funding the growth-portion (not all) of infrastructure costs arising from that development).

16.23 This creates proactive and reactive self-correcting mechanisms: if councils release enough land to enable low-price competition, prices converge and the triggers are not activated. If they do not, the triggers force additional release. Crucially, this approach does not require specifying a target number of new houses – it simply responds to market signals indicating whether planning constraints are creating artificial scarcity.

What belongs in primary legislation

16.24 We do not suggest that every element of the competitive land market framework must be enacted in the Planning Bill, as outlined in our upcoming research note *Competitive Urban Land Markets and the Planning Bill 2025*. Some provisions may be more appropriately located in national direction, regulations or other subordinate instruments. However, the *core statutory architecture* must be in primary legislation:

- The replacement of "sufficient development capacity" with "competitive urban land supply" as the statutory test;

- The definition of competitive urban land supply by reference to the four conditions (legal availability, value-aligned location, simultaneity, credible threat of entry);

- The establishment of an independent expert panel with authority to assess competition in land markets; and

- The principle that when markets are not competitive, decision-makers must apply rules to alleviate rather than reinforce constraints, and proactively and reactively release land for urban expansion as well as remove regulatory barriers to urban intensification.

16.25 Once this architecture is established, national direction can specify the indicators (boundary price differentials, price-to-income ratios), thresholds and specific mechanisms (anti-sequencing provisions, automatic upzoning rules, mandatory greenfield release). These operational details may appropriately sit in subordinate instruments – but they must be *constrained by* the statutory architecture, not left unconstrained.

16.26 Embedding the core architecture in primary legislation would:

- Embed competitive logic in the Act, not just in policy;

- Constrain future national direction, rather than leaving it unconstrained;

- Prevent capacity dumping and strategic displacement to low-value locations;

- Make scarcity rents a justiciable planning failure, not an accepted outcome; and

- Increase durability and credibility of policy settings across changes of ministers and governments.

16.27 This approach does not mandate sprawl, abolish planning or pre-empt environmental limits. It simply ensures that planning cannot preserve scarcity while claiming success.

17. Scope and risk of over-reach

17.1 The provisions setting out the required content of spatial strategies require them to address a very wide range of matters, including development capacity, infrastructure, climate change adaptation, environmental protection and cultural considerations (clause 80). All such goals should only be pursued to the degree that the benefits exceed the costs. But the Bills omit that crucial consideration.

17.2 Without a clear hierarchy or net-benefit prioritisation within these provisions, spatial strategies risk becoming quasi-regulatory instruments rather than coordination tools. If the Government's intention is that proposals need satisfy only the goals relevant to the activity in question – rather than demonstrating compliance with all goals simultaneously – this should be made explicit in the legislation. Without such clarification, courts and planners are likely to treat the goals as cumulative requirements, enabling any decision-maker to block a proposal by reference to whichever goal it does not satisfy. The result would reproduce the very problem the reforms are intended to solve.

17.3 This creates a risk that contested policy choices are embedded at a high level and locked in over long timeframes, constraining future democratic choice and adaptability.

17.4 The risk of over-reach is compounded by a more fundamental conceptual problem: the Bill does not distinguish between two functionally distinct types of planning.

17.5 The first is long-horizon spatial preparation, which might be termed 'metropolitan corridor planning' (Tier 1 type planning):

- Its purpose is narrow and structural: to identify and reserve future corridors for arterial transport, bulk infrastructure and large-scale open space decades in advance of development.

- This function serves public good and enables markets, protecting options without requiring capital outlay or infrastructure commitments. It draws the skeleton of the future city, the grid within which market-led development can later unfold.

- Done well, it reduces the long-run cost of infrastructure provision by securing corridors before land values capitalise anticipated growth, and it enables polycentric urban expansion without predetermining where or when development occurs.

17.6 The second is land use regulation, also known as 'zoning' (Tier 2 type planning):

- Its purpose is to set clear, permissive parameters within which landowners and developers can act, not to direct growth toward particular locations or sequence development around infrastructure programmes.

- This function operates at a different scale, with different tools and a shorter time horizon. It focuses on the rules governing what may be built where, through zoning templates, development envelopes and activity standards.

- Done well, it supports deep labour markets by ensuring freedom to locate, maintaining affordability, and ensuring effective and efficient transport connectivity through the urban area as density increases.

17.7 In New Zealand, these two functions have historically been conflated. What is called 'spatial planning' in practice is often Tier 2 regulatory activity (district plans, discretionary overlays, infrastructure investment planning) miscast as strategic planning. The result is that the preparatory function of spatial planning (Tier 1) is left largely unfulfilled, while development permissions continue to be rationed through regulatory discretion under the guise of strategic coordination. To ensure critical Tier 1 type spatial planning is undertaken that keeps infrastructure supply more affordable, the Planning Bill needs to give it statutory effect.

17.8 The breadth of required content in clause 80 risks reproducing this conflation between Tier 1 (spatial planning) and Tier 2 (land use regulation/zoning) type planning. If regional type spatial plans are required to address development capacity, infrastructure sequencing, climate adaptation, environmental protection and cultural considerations simultaneously, and to do so with binding effect on lower-level instruments, they will inevitably operate as quasi-regulatory instruments rather than preparatory frameworks. Contested policy choices will be embedded at a high level and locked in over long timeframes. The Bill should therefore clearly delineate the spatial planning function as preparatory and structural: identifying corridors and constraints, not prescribing development outcomes or gating land release on infrastructure readiness.

17.9 If spatial strategies are to support enablement rather than constrain it, the Bill should more clearly limit their role to preparing for future urban expansion, protecting corridors and public spaces, rather than leaving the differentiation of this function from land use regulation to policy.

18. Natural hazards and property owner choice

18.1 The Planning Bill includes a goal to "safeguard communities from the effects of natural hazards through proportionate and risk-based planning" (clause 11(1)(h)). The Initiative welcomes the explicit reference to proportionality and risk-based approaches, which represent an improvement on the more open-ended hazard provisions in the RMA. However, insurers, lenders and property owners all do their own risk-based planning regardless. Liability laws also affect risk-taking. The Bill is unclear about what gap these regulatory measures are to address.

18.2 Proportionate, risk-based planning should not permit blanket prohibitions on development in areas subject to natural hazard risk. Property owners should in principle be able to develop in hazard-prone areas at their own risk, provided that:

- The risks are adequately disclosed and understood.
- The development does not create or exacerbate risks for neighbouring properties or public infrastructure.
- The property owner accepts responsibility for the consequences of their choice.

18.3 This approach recognises that risk tolerance varies among individuals, that land in hazard-prone areas often has significant amenity or locational value, and that blanket prohibitions can amount to regulatory takings without compensation. A genuinely proportionate approach would distinguish between development that violates the legal rights of others and development where the risk falls primarily on the property owner who has chosen to accept it. People who are willing to make otherwise legal risky investments should be allowed to do so, unless there are good public policy reasons against this.

18.4 Climate adaptation could require difficult decisions about existing development in areas of increasing risk. The appropriate response to these challenges is transparent information about what infrastructure local government will continue to provide, a willingness to permit justifiable preventive works, such as sea-walls and riverbanks, flood water pumps, clear allocation of risk, and - where mandatory relocation or abandonment is required - fair compensation. Planning rules that prevent development by owners who are willing to accept disclosed risks need to bear the burden of proof. References to risk in the Bills should not be worded in a way that biases decisions one way or the other. The risks from inaction should be balanced against the risks from action, without bias.

18.5 We submit that the national policy direction and national standards implementing clause 11(1)(h) should distinguish between risks to third parties and risks accepted by property owners. Planning rules addressing natural hazards by altering legal rights should be subject to the regulatory relief framework in Schedule 3, Part 4, where they have a significant impact on the reasonable use of land.

18.6 The Bill should include a clear statement that property owners may develop in hazard-prone areas where they have accept full responsibility for any losses. Owners should not be compelled to retreat from places that have become riskier without good reason, such as because they put others at risk without their consent. Councils must be able to withdraw from service-provision when net benefits dictate this. To force people to abandon their properties indefinitely is to condemn their title and Public Works Act compensation provisions should apply. Effectively their land has been put into the commons.

19. Heritage protection and property rights

19.1 The Planning Bill includes a goal to protect "significant historic heritage" from "inappropriate development" (clause 11(1)(g)(iii)). Why the qualification? Is it not appropriate to protect it otherwise? The Initiative supports the protection of heritage where it is voluntary and otherwise, where the net benefits are positive. But heritage provisions that make communities worse off and disregard property rights should not be a goal.

19.2 Under the RMA, heritage listing has often been imposed on property owners without their consent, restricting their ability to modify, develop, or demolish their own

property. The costs of heritage compliance - including consent requirements, specialist reports, and restrictions on materials and methods - fall primarily on the property owner, while the benefits of preservation are enjoyed by the wider community.

19.3 This asymmetry between private costs and public benefits raises fundamental fairness and tragedy of the anti-commons concerns. Neglected and derelict buildings are a particularly visible outcome. If the community values the preservation of a heritage building, it should be happy to bear the cost in the form of lost market value. As elsewhere, we propose giving such owners a put option to crystalise the cost.

19.4 The term 'inappropriate development' in clause 11(1)(g) is not defined in the Bill, creating the same risks of expansive interpretation and litigation that affect other undefined goal language in the Bill.

19.5 We submit that heritage listing under the new framework should require owner consent, or at minimum provide for a streamlined process for owners to seek delisting where they do not wish their property to be subject to heritage controls. The regulatory relief framework in Schedule 3, Part 4, should expressly apply to heritage rules that have a significant impact on the reasonable use of land.

19.6 Heritage restrictions can substantially reduce property values and development potential, and affected owners should be eligible for relief on the same basis as other regulatory restrictions. Where heritage protection imposes significant costs on property owners, the legislation should enable or require public purchase or a contribution from those who benefit, who may be taxpayers at large, to compensate hr owner for the lost value in the community that is revealed by the drop in the property's market value.

19.7 The term 'inappropriate development' in clause 11(1)(g) should be defined or removed, to reduce the scope for subjective and expansive interpretation. Heritage New Zealand's role in the new system should also be clarified, including the relationship between its statutory lists and local authority heritage schedules.

19.8 We acknowledge that some heritage will be of such significance that protection may be justified regardless of owner consent. However, such cases should be exceptional and clearly defined, and should attract compensation or meaningful relief for affected owners. Privately owned heritage properties of national significance do exist – Larnach Castle in Dunedin, for example, has been maintained by a private family for decades. Where heritage protection is imposed on private owners without their consent, the case for a put option, compensation, or meaningful public contribution to maintenance costs is correspondingly stronger.

20. Governance and democratic accountability

20.1 The Planning Bill requires each region to establish a spatial planning committee responsible for preparing the regional spatial plan (clause 71). Unlike the repealed

2022 Spatial Planning Bill, which prescribed committee composition with mandatory iwi and local government representation, the new Bill provides that local authorities must jointly provide terms of reference to a committee (clause 71(1)), with the Minister empowered to appoint at least one member (clause 72(1)(a)).

20.2 This approach gives considerable flexibility to determine governance arrangements, but also creates uncertainty about how committees will be constituted in practice and what role different interests will play in shaping spatial plans that will guide development for 30 years. Politics will likely influence appointments. Self-interested and self-serving factions may get too much influence. Conflicts of interest could arise.

20.3 The Bill provides limited clarity on:

- How the membership and voting arrangements of spatial planning committees will be determined, beyond the requirement that they be appointed under the Local Government Act 2002 or be an existing committee established under legislation (clause 71(2));

- What role, if any, iwi and hapū will have on these committees, beyond the consultation requirements in clause 70 and the process agreement matters in clause 69(1)(e) and (f);

- How conflicts of interest are handled and disagreements within committees are resolved;

- How minority positions are treated or recorded; and

- How spatial strategies can be reviewed or revised if they prove unworkable, beyond the 10-year review requirement in Schedule 2, clause 32.

20.4 We note the parallel local government reform proposals, which would establish combined territories boards as the decision-making body for regional combined plans. The interaction between spatial planning committee governance and these proposed structural reforms is unclear, and the Committee should seek clarification on how governance arrangements will operate if both reforms proceed.

20.5 The ministerial power to appoint committee members (clause 72), combined with broad powers to set national instruments (clauses 38-76) and intervene in plan-making, represents a significant centralisation of authority. While we accept the case for stronger national direction (see section 5), decisions that shape development patterns for decades should remain clearly anchored in democratically accountable institutions. Strong accountability and review mechanisms within the spatial planning framework are needed for legitimacy and public confidence.

20.6 We support the Bills' different approach to the Treaty of Waitangi to that in the RMA. Both Bills adopt a ‘descriptive’ Treaty clause (clauses 8-10) that sets out how Crown responsibilities are met through specific listed provisions, rather than creating an

overarching obligation to "take into account" Treaty principles (as under the RMA) or to "give effect to" them (as under the repealed Natural and Built Environment Act 2023). This represents a deliberate shift from principles-based to provision-based drafting.

20.7 The advantage of this approach is greater certainty. The RMA's section 8 required decision-makers to "take into account" Treaty principles without defining which principles or how they should be applied. Over three decades, court decisions and risk-averse council practice expanded this requirement well beyond what the statute specified. The result was uncertainty for applicants, inconsistency across regions, and consultation requirements that often exceeded any reasonable interpretation of the statutory text. The new Bills address this by specifying exactly which provisions address Treaty responsibilities – participation in plan development, identification of sites of significance, and enabling development of Māori land (clause 11(1)(i)).

20.8 However, the term 'participation' in clause 11(1)(i) is not defined, and the goal language is broad. The first matter – "participation in the development of national policy direction and plans" – covers essentially all strategic planning instruments. The operative provisions use the narrower term 'consultation' (clauses 69-70 require spatial plan committees to consult with iwi authorities), which has an established legal meaning: providing a non-token opportunity to influence a decision, but not requiring agreement or compromise. 'Participation' is potentially broader and less constrained. The Committee should consider whether the relationship between the goal (participation) and the operative provisions (consultation) is sufficiently clear, or whether the undefined term creates scope for the kind of interpretive expansion that occurred under the RMA (see also Section 3 on undefined goal terms).

20.9 To be clear: the concern is not with consultation or participation as such, which are appropriate in a democratic planning system. The concern is with undefined participation rights that could be interpreted as requiring agreement, or that create procedural leverage enabling delay or hold-out behaviour. The potential for a conflict of interest is palpable. The Bills should clarify that:

- participation and consultation requirements are procedural, not substantive – they require decision-makers to consider submissions and give genuine weight to concerns, but do not require agreement or consent;

- Conflict of interests are recognised and well-managed when it comes to policy decisions;

- participation does not confer holdout or veto rights over decisions that otherwise comply with the statutory framework; and

- where participation is used strategically to delay projects raising the costs of the project promoters without a robust justifying public policy reason, decision-makers have authority to manage the process accordingly.

20.10 These clarifications would apply equally to all participants – iwi, environmental groups, neighbours, and commercial parties. The objective is procedural integrity, not the exclusion of any particular voice.

20.11 The Bills appropriately distinguish between Crown obligations under Treaty settlements – which are Acts of Parliament and should be honoured – and the informal arrangements that proliferated between councils and iwi under the RMA. Clauses 9 and 10 commit to giving existing Treaty settlement redress "the same or equivalent effect to the greatest extent possible." This is the right approach: settlements represent Crown commitments that should not be unilaterally set aside. Respecting these commitments is consistent with the rule of law and with the property rights principles that should underpin any well-functioning planning system.

20.12 The absence of co-governance structures is also appropriate. The repealed Natural and Built Environment Act 2023 required mandatory iwi representation on Regional Planning Committees and established a National Māori Entity to monitor Treaty compliance. The new Bills require neither. Spatial planning committees will be constituted according to terms of reference determined by local authorities (clause 71), with iwi involvement addressed through consultation requirements (clauses 69-70) rather than guaranteed governance roles. This maintains the distinction between consultation – which is appropriate – and co-decision-making, which risks blurring lines of democratic accountability.

20.13 One area where the Bills could provide greater clarity is the status of existing council-iwi agreements developed under the RMA, including Mana Whakahono a Rohe arrangements, joint management agreements, and memoranda of understanding. These arrangements vary significantly across regions and were often developed through local practice rather than statutory mandate. The Bills are silent on whether such arrangements continue, must be renegotiated, or fall away with the RMA's repeal. The Committee should seek clarification on the intended treatment of these agreements to avoid uncertainty during transition.

20.14 In this context, we also note the potential value of greater devolution of decision-making to iwi and hapū in relation to land they own or control, consistent with the goal in clause 11(1)(i). Where decisions primarily affect Māori land, there is a strong case for enabling governance arrangements that allow iwi and hapū to exercise meaningful authority, within the overall statutory framework. For example, hapu could elect to take up zoning, consenting, and rating authority over Māori reserves and land held under Māori land tenure. Such devolution can strengthen accountability, improve alignment between decision-makers and affected parties, and better reflect the principle of subsidiarity, provided it is voluntary, clearly defined and confined to decisions affecting the relevant land. [9]

[9] The New Zealand Initiative, *Building Nations: What Canada's First Nations can teach us about devolution and development*, October 2025, https://www.nzinitiative.org.nz/reports-and-media/reports/building-nations-what-canadas-first-nations-can-teach-us-about-devolution-and-development/

PART 4 – COMMENTS SPECIFIC TO THE NATURAL ENVIRONMENT BILL

21. General Comment

21.1 The Natural Environment Bill replaces the existing resource management system's environmental protection framework. Its core features include: environmental limits to define the boundaries within which activities must operate; outcomes and standards to guide resource management within those limits; and a "no net loss" goal for indigenous biodiversity.

21.2 We support the shift away from the RMA's open-ended effects-based approach toward clearer environmental limits where genuine biophysical thresholds exist. But such limits need to be robustly net benefit justified in each case. If so, setting firm limits and enabling activity within them offers a more transparent, predictable and durable approach to environmental management than case-by-case balancing.

21.3 However, several aspects of the Bill require attention. Most importantly, there is no explicit requirement to publish a supporting net benefit justification whose robustness is subject to independent expert scrutiny. Nor is the need to respect existing legal rights explicit. Environmental limits that are set conservatively, applied too broadly, or insufficiently tested for proportionality risk imposing high economic costs without commensurate environmental benefit. The 'no net loss' biodiversity goal, while well-intentioned, raises questions about the net benefits for the public, measurement, offsetting, and the treatment of landowners who bear the costs of biodiversity protection. And even the inadequate regulatory relief framework available under the Planning Bill does not extend equally to all environmental limits under the NEB - a gap that could leave landowners affected without recourse.

21.4 The sections that follow address these issues: the relationship between environmental limits, property rights and allocative efficiency (Section 22); the "no net loss" biodiversity goal (Section 23); freshwater allocation and the case for market-based mechanisms (Section 24); proportionality in setting limits and outcomes (Section 25); the tension between discretion and certainty (Section 26); the definition of effects, including the treatment of positive effects (Section 27); and greenhouse gas emissions (Section 28).

22. Environmental limits, property rights and allocative efficiency

22.1 The Natural Environment Bill places environmental limits at the centre of the new resource management framework. We support the move away from the RMA's open-ended effects-based approach toward clearer boundaries where genuine biophysical thresholds exist. In principle, well-defined and justified limits can improve transparency, certainty and durability compared with case-by-case balancing.

22.2 However, we caution against an approach that treats conservative quantity limits as the primary or default mechanism for managing environmental effects. From an economic and institutional perspective, limits are a blunt instrument. If set too tightly, applied too broadly, or insufficiently tested for proportionality, they risk freezing land use and resource allocation in ways that impose high costs, entrench existing patterns of use and reduce adaptability over time.

22.3 We have consistently emphasised a more Coasean approach to environmental management, centred on clarifying entitlements and enabling voluntary exchange. Where environmental capacity is scarce, clearly defined and transferable use rights, combined with pricing or trading mechanisms, allow environmental objectives to be achieved at lower cost and with greater flexibility than static limits alone. In smaller catchments or communities, Ostrom-style collective governance arrangements – where resource users develop and enforce their own rules – can achieve similar outcomes without formal markets. The common principle is that clearly defined rights and local knowledge produce better environmental and economic outcomes than centralised command-and-control regulation.

22.4 By contrast, quantity limits that are not paired with robust allocation and trading frameworks tend to privilege incumbency, disadvantage new or more productive activities, and obscure the true costs of environmental protection. In these circumstances, limits may protect environmental outcomes in a narrow sense while undermining economic efficiency, fairness and long-term legitimacy.

22.5 We therefore submit that environmental limits should operate as outer bounds, not as the principal allocative mechanism. Within those bounds, greater emphasis should be placed on clarified property rights, pricing and trade to manage environmental effects efficiently and fairly. This approach is more consistent with the Bill's objectives of enabling development within limits, improving certainty and making better use of data and incentives to achieve durable environmental outcomes.

23. The 'no net loss' biodiversity goal

23.1 The Natural Environment Bill includes a goal to "achieve no net loss in indigenous biodiversity" (clause 11(d)). While we support robust protection of indigenous biodiversity, this goal warrants careful scrutiny given its potential implications for land use and development. Its pursuit should be subservient to the net benefit principle – New Zealanders should not be made worse off overall compared to the best of the forgone alternatives.

23.2 A 'no net loss' standard, if applied literally, would require that any activity affecting indigenous biodiversity must be offset or compensated so that overall biodiversity is maintained or improved. This could apply to a wide range of land use activities, from housing development to pastoral farming to infrastructure construction, wherever indigenous vegetation or habitat is present.

23.3 Several concerns arise:

- The goal does not specify how 'no net loss' is to be measured, over what timeframe, or at what geographic scale. A forest could reduce in size but have fewer pests and greater species diversity – whether this constitutes 'net loss' depends entirely on how biodiversity is measured. These definitional questions will significantly affect compliance costs and regulatory burden.

- The Bill provides that not all goals need be achieved in all places and at all times. This qualification may soften the literal application of 'no net loss', but it is unclear how decision-makers are to determine when and where the goal applies, or what standard applies in locations or circumstances where full achievement is not required.

- Rules implementing the 'no net loss' goal should be covered by the regulatory relief framework, since land-based indigenous biodiversity is one of the three categories for which relief is available under the Natural Environment Bill (clause 111). However, this should be confirmed, and the relief threshold ('significant impact on the reasonable use of land') may still be too high to provide meaningful protection for affected landowners.

- Unlike the natural hazards goal (clause 11(e)), which expressly requires 'proportionate and risk-based planning', the biodiversity goal contains no proportionality constraint. This asymmetry is difficult to justify and may lead to disproportionate restrictions on land use to achieve marginal biodiversity gains.

- Achieving 'no net loss' may require mandatory biodiversity offsetting for a wide range of activities. The costs and practicalities of offsetting, particularly for smaller landowners or in areas where suitable offset sites are unavailable, are not addressed in the Bill or its Regulatory Impact Statement.

- Compelling owners to provide biodiversity amenities through regulation can create unintended, but entirely foreseeable, consequences. For example, regulatory impositions through the Endangered Species Act in the United States made ownership of habitat suitable for endangered species costly. So owners would destroy potential habitat in advance of designation.[10] By contrast, paying owners for providing biodiversity amenities encourages their provision.

- The relationship between the 'no net loss' goal and the separate goal to protect and enhance 'the life-supporting capacity of air, water, soil, and ecosystems' (clause 11(b)) is unclear. Indigenous biodiversity is arguably a component of ecosystem life-supporting capacity, raising questions about why it requires a separate and more stringent goal.

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[10] Lueck, Dean and Jeffrey Michael. 2002. "Preemptive habitat destruction under the Endangered Species Act". *The Journal of Law and Economics* 46:1.

23.4 The Committee should seek advice on the expected compliance costs and practical implications of the 'no net loss' goal, including the extent of land and activities that may be affected. The Bill should be amended to include a net benefit test and a proportionality qualification in clause 11(d), consistent with the approach taken in clause 11(e) for natural hazards. The regulatory relief framework should expressly apply to rules implementing the 'no net loss' goal.

23.5 National instruments implementing the biodiversity goal should also be required to provide clear, workable methodologies for measuring biodiversity outcomes and determining offset requirements, with appropriate thresholds to exclude minor or temporary effects.

24. Freshwater Allocation and Market Mechanisms

24.1 As discussed earlier in this submission, the Initiative has long advocated for market-based approaches to freshwater allocation, including cap-and-trade systems that set environmental limits while allowing efficient allocation of resources within those limits. Our reports *Refreshing Water* (2019) and *Fording the Rapids* (2021) set out the case for this approach and examined international examples of successful implementation.[11]

24.2 The Natural Environment Bill makes some provision for market-based allocation. Clause 223 enables regional councils to allocate natural resources through various methods, and clauses 204-207 explicitly enable 'market-based allocation processes' including auctions, tenders, and comparative consenting.

24.3 However, the Bill defines 'market-based allocation process' narrowly. The definition requires a process that: (a) involves competing offers, such as an auction or tender; (b) manages demand through a competitive pricing process; and (c) provides only a right to apply for a permit, not the permit itself. This framing is problematic for several reasons:

- By requiring competitive initial allocation, the definition appears to exclude systems where existing rights are converted into tradable entitlements. A fisheries-style model, where historical users receive initial allocations that then become freely tradable, would not qualify as a 'market-based allocation process' under this definition because the initial allocation was not via auction or competitive pricing. Yet such systems can deliver substantial efficiency gains by enabling resources to move to higher-value uses over time, regardless of how initial rights were allocated.

- The definition conflates initial allocation methods with ongoing tradability. Whether initial rights are auctioned, grandfathered, or allocated by some other

[11] The New Zealand Initiative, *Refreshing Water: Valuing the Priceless*, May 2019, op cit., and *Fording the Rapids: Charting a Course to Fresher* Water, August 2021, op cit.

method is a distributional question, separate from whether those rights can subsequently be traded. A well-functioning market requires tradability; it does not require any particular method of initial allocation. The Bill should separate these concepts.

- The provision that a successful participant receives only a 'right to apply for a permit' suggests that planners retain discretion to refuse applications even after a competitive allocation process. If a water user wins an allocation at auction but can then be refused a permit at the application stage, the value of the market mechanism is substantially undermined. The transaction costs and uncertainty of a subsequent permitting process will deter participation and reduce the efficiency gains that market allocation is intended to deliver.

- The definition does not clearly provide for secondary markets. If users can acquire only a right to apply for a permit, what happens when a permit holder wishes to sell excess capacity to another user? Clause 195 of the Natural Environment Bill provides for transferability of water permits, but requires each individual transfer to be approved by the permit authority, replicating the high transaction costs of the current RMA framework.

24.4 These provisions are permissive rather than directive. The Explanatory Note states that market-based allocation methods 'cannot be used until they are introduced through national instruments'. Without clear central direction, councils will default to traditional first-in-first-served permitting.

24.5 We submit that the Bill's approach to market-based mechanisms requires reconsideration. The definition of 'market-based allocation process' should be broadened to encompass any system of tradable resource rights, regardless of how initial allocation occurs. The legislation should provide for tradable permits, not merely tradable rights to apply for permits. Transfer provisions should enable trading without case-by-case regulatory approval, subject to appropriate safeguards for third-party effects and environmental limits.

24.6 For example, smart-market systems can automatically account for differences in environmental burden from withdrawals in different locations – so that a trade from one part of a catchment to another is adjusted for its differential impact on the resource, without requiring separate case-by-case regulatory approval of each transfer. The system is self-authorising within its environmental constraints. Such approaches are particularly valuable for water, where a draw from one location is not equivalent to a draw from another and where case-by-case assessment of equivalence has proven to impose prohibitive transaction costs, as experience with the Lake Taupo nutrient trading scheme demonstrated.

24.7 The Government should therefore commit to prioritising the development of national instruments that enable these approaches within the first two years of the new system's operation.

24.8 Where environmental limits require reductions in resource use, the legislation should explicitly enable and encourage trading of entitlements to achieve those reductions at least cost. Crown or council buy-back of emission rights can be part of a just transition. Crown buy-back is particularly appropriate where national standards are tighter than those that a community would choose for itself. The Bill should also include a requirement for regional councils to report on the efficiency of their allocation methods and consider market-based alternatives where traditional methods are not achieving efficient outcomes.

24.9 The pairing of firm robustly justified environmental limits with flexible market-based allocation is the most promising path to achieving both environmental protection and economic efficiency. The Initiative urges the Committee to ensure the legislation gives this approach the prominence it deserves.

24.10 We are particularly concerned that the regulatory relief framework does not apply to freshwater limits and allocation rules under the Natural Environment Bill. Clause 111 limits access to relief to rules relating to land-based indigenous biodiversity, significant natural areas, and sites of significance to Māori. This means that freshwater limits, which may significantly constrain irrigation, water takes, and discharge permits, provide no avenue for regulatory relief, regardless of their impact on land value or productive use. This gap reinforces the case for either extending the relief framework to cover all environmental limits with significant land-use impacts, or introducing compensation mechanisms for affected landowners.

25. Limits, outcomes and proportionality

25.1 The Bill allows environmental limits and outcomes to be set across a wide range of domains. All limit-setting involves value judgments – science can identify the effects of human activity on environmental systems, but the decision to regulate those effects, and the level at which limits are set, reflects choices about net benefits, acceptable risk, cost and priority. Some limits are more closely tied to identifiable biophysical thresholds (such as minimum flows necessary to sustain aquatic ecosystems) than others (such as amenity-based standards for visual or recreational quality). The Bill does not distinguish between these categories, creating a risk that limits grounded primarily in political preference are presented as scientific necessities.

25.2 There is a risk limits will be unduly influenced by partisan interest groups or become proxies for broader policy objectives without adequate scrutiny. The Bill would benefit from stronger requirements, either in the limit-setting provisions or accompanying decision-making tests, to demonstrate:

- Necessity;
- Proportionality, including net benefits overall; and
- Cumulative economic and social impacts.

25.3 Even with such disciplines, there is a risk of incremental regulatory tightening over time, even where environmental gains are small relative to the costs.

25.4 As emphasised above, neither Bill requires a robust net benefit analysis of proposed environmental limits. While environmental necessity may justify limits, the absence of mandatory economic assessment implies that Parliament is allowing limits to be set without due consideration of their cumulative impacts on land use, investment, and housing supply. A statutory requirement to assess and disclose the net benefits for New Zealanders of proposed limits would improve transparency and discipline while improving justifiable environmental protection.

25.5 We earlier noted the case for cap-and-trade systems. An appropriately designed cap-and-trade system does not just provide the least-cost way of achieving an environmental objective. It also generates information that can help inform the next period's environmental limits. For example, a single water-quality standard applied across the country could reveal very high economic costs of attaining the standard in some places, and opportunities for improving environmental quality at little economic cost in other places.

26. Discretion and certainty

26.1 Despite its enabling intent, the Bill continues to rely heavily on broad evaluative judgement in its operative provisions. Experience under the RMA suggests that this approach increases uncertainty and litigation rather than reducing them.

26.2 Greater reliance on clear standards and rules, particularly for activities with well-understood effects, would materially improve certainty for landowners and investors without undermining environmental protection.

27. Definition of effects

27.1 The Natural Environment Bill adopts a broad and highly ambiguous definition of 'effects' that includes positive effects from an unidentified perspective, animal, vegetable or mineral, and relative to an unspecified alternative. That ambiguity allows too much scope for idiosyncratic and unstable decision-making. A positive or negative effect is not itself a justification for government action. Government action is justified if it passes the test of net benefits for New Zealanders and respect for their property rights and persons. Much better guidance is needed about these matters.

27.2 This ambiguity about the scope of permissible trade-offs is a related concern. Consider a proposal that would affect indigenous biodiversity: it is unclear whether 'positive effects' are limited to the same domain (such as biodiversity offsets that replace affected habitat with equivalent or better habitat elsewhere) or whether they extend

to unrelated benefits (such as economic growth, employment, or contributions to the green economy).

27.3 If positive effects are interpreted broadly, the Bill may permit outcomes-based trade-offs where environmental harm is justified by economic or social benefits. If interpreted narrowly, the Bill may require like-for-like environmental offsetting regardless of broader public interest. Neither interpretation is obviously correct from the text, and the choice between them has significant implications for how the system operates.

27.4 The Bill should provide clearer guidance on the broad matters mentioned in 27.1 and:

- Whether positive effects must be within the same environmental domain as adverse effects, or whether cross-domain trade-offs are permissible;
- How cumulative positive and negative effects are to be weighed; and
- The relationship between the effects framework and the environmental limits framework, particularly where a proposal would breach a limit but deliver substantial positive effects.

27.5 We also note that the definition of effects appears to include effects that are internal to the applicant (such as effects on the applicant's own land or business). This is inconsistent with standard economic analysis, which focuses on a subset of externalities – effects imposed on third parties who have not consented to them. Regulating internal effects imposes costs without a public policy justification. The Bill should clarify that effects requiring regulatory consideration are limited to those invoking public good considerations.

28. Greenhouse gas emissions

28.1 The Natural Environment Bill is silent on the regulation of greenhouse gas (GHG) emissions by regional councils.

28.2 In 2004, Parliament amended the RMA to prevent regional councils from managing the effects of GHG emissions on climate change. This made sense: New Zealand has an Emissions Trading Scheme (ETS) to manage and reduce GHG emissions. Allowing councils to impose additional GHG-related restrictions would create regulatory duplication, inconsistency across regions and undermine the ETS's role as the primary instrument for emissions reduction.

28.3 In 2020, the Labour-led government reversed this position by amending the RMA to allow regional councils from 2022 to consider the effects of GHG emissions on climate change. This created the risk of fragmented and inconsistent climate policy across regional councils, with potential for cumulative regulatory burden that duplicates and conflicts with the ETS. It also provides councils with a lever to thwart housing

development by blocking new developments that do not satisfy carbon-neutrality goals.

28.4 The current Bills' silence on GHG emissions is better than a specific allowance or requirement for councils to regulate them. However, silence creates ambiguity. Courts may interpret the broad goal language and environmental outcomes provisions as permitting or even requiring consideration of GHG effects, replicating the problems of the post-2020 RMA position.

28.5 We submit that the Bills should explicitly prevent regional councils from regulating emissions that are already regulated through a national framework, like the ETS, consistent with the pre-2020 position. Climate policy should be set nationally through the ETS and Climate Change Response Act, not fragmented across regional planning instruments.

PART 5 – RECOMMENDATIONS AND CONCLUSION

29. Recommendations

29.1 The New Zealand Initiative supports the overall intent of the Planning Bill and the Natural Environment Bill. However, to ensure the new regime delivers a genuine improvement over the Resource Management Act, we recommend the following targeted changes.

29.2 Our recommendations fall into two categories that reflect the architectural choice the Government has made.

29.3 The first category comprises fail-safe mechanisms that must be located in the primary legislation because they exist to constrain how delegated powers are exercised. Placing them in national direction would defeat their purpose, since the powers they are meant to discipline are the very powers used to make national direction. A future government could simply revoke them. These are:

- An overarching statutory presumption in favour of property rights, establishing land use as the default from which restrictions must be justified (recommendation 29.6 (k) below);

- A put option enabling affected landowners to require purchase of their property at unimpaired market value where regulation effectively removes existing or reasonably expected uses (recommendation 29.6 (o) below); and

- The core statutory architecture for competitive urban land markets, including the replacement of "sufficient development capacity" with "competitive urban land supply", the four conditions defining that concept, the independent expert panel, and agile land release mechanisms triggered by market signals (recommendations 29.7 (b)–(e) below).

29.4 The second category comprises matters where the balance between primary legislation and national direction should be adjusted. We accept that the Government may prefer to give these matters operative content through secondary instruments. But where the primary legislation leaves terms entirely undefined and procedural disciplines entirely absent, it does not delegate content to Ministers – it delegates it to courts. These include:

- Defining or constraining the undefined goal terms in clause 11, either directly in the interpretation provisions or by requiring national instruments to specify the standards and thresholds that give them content (recommendation 29.6 (b) below);

- Reinstating and strengthening the cost-benefit evaluation requirement removed when section 32 was dropped (recommendation 29.6 (h) below);

- Extending the regulatory relief framework to cover all environmental limits with significant land-use impacts under the Natural Environment Bill, not just biodiversity, SNAs and Māori sites (recommendations 29.8 (l)–(m) below); and

- Strengthening procedural safeguards for ministerial powers, including sunset clauses, parliamentary oversight and mandatory assessment of property impacts (recommendation 29.6 (s) below).

29.5 The recommendations that follow are organised by theme rather than by these two categories, but the Committee should be aware that recommendations in the first category are not amenable to being addressed through national direction and must be resolved in the primary legislation.

29.6 System-wide and cross-cutting recommendations:

(a) **Constrain discretion and clarify trade-offs**. Both Bills should provide clearer statutory guidance on how competing objectives and outcomes are to be prioritised and reconciled (see clause 11 (goals) and clause 12 (hierarchy) of both Bills). Reliance on broad evaluative judgement should be reduced in favour of clearer rules, standards and decision-making hierarchies (see Section 3 of this submission).

(b) **Define or constrain undefined goal language**. The Planning Bill's terms 'unreasonably affect others' (clause 11(1)(a)), 'inappropriate development' (clause 11(1)(g)) and 'participation' (clause 11(1)(i)) should be defined in the interpretation provisions, or national instruments should be required to specify the standards and thresholds that give content to these terms, or the subjective terms should be replaced with closed lists of the types of effects or development or involvement the goals address. The Natural Environment Bill has a similar issue from the combination of multiple environmental outcomes and limits that decision-makers are required to 'give effect to' or 'have regard to', without clear rules for resolving tension between them. Leaving terms undefined guarantees inconsistency and invites courts to fill the gap (see Section 3 of this submission).

(c) **Clarify that participation rights are procedural, not substantive.** The Bills should expressly provide that consultation and participation requirements require decision-makers to genuinely consider the views of participants, but do not confer veto rights or require agreement. This clarification would provide certainty for all parties and guard against strategic use of participation rights to delay decisions or extract unrelated concessions (see Sections 3 and 20 of this submission).

(d) **Guard against strategic use of participation rights.** The Bills should include mechanisms to address hold-out behaviour and strategic litigation, including: appropriate standing thresholds for appeals; costs awards where participation is found to be vexatious or without substantive merit; and procedural tools

enabling decision-makers to manage processes efficiently where strategic delay is identified. These safeguards should apply equally to all participants (see section 3 of this submission).

(e) **Standing.** Consider whether the Bills' standing provisions strike the right balance between access to justice and protection against strategic delay (see section 3 of this submission).

(f) **Strengthen discipline at higher decision-making levels**. The funnel serves a dual function: it both constrains downstream discretion and defines the scope of what can be regulated at each level. This creates compounding risk if higher-level instruments are poorly calibrated. Given the increased reliance on national direction, environmental limits and regional spatial plans, the legislation should ensure that higher-level decisions are subject to clear statutory criteria, proportionality requirements and regular review, recognising both their system-wide effects and their role in defining regulatory scope for the entire system (see Section 4 of this submission).

(g) **Respect subsidiarity within a more centralised framework**. Where decision-making is centralised to improve consistency or environmental protection, the legislation should ensure that local authorities retain meaningful discretion over implementation choices, subject to clear limits and standards (see Section 5 of this submission).

(h) **Reinstate and strengthen cost-benefit analysis requirements.** Both Bills should include a requirement equivalent to and improving on section 32 of the RMA, requiring evaluation of efficiency and effectiveness before making national instruments, setting environmental limits and adopting regional spatial plans. The evaluation should assess impacts on property values, housing supply and economic activity, and should be publicly disclosed and subject to independent review. The removal of section 32 without substitution is a step backward that should be reversed. We note that the 'put option' we describe at (o) would encourage more rigorous cost-benefit analysis. (see Section 6 of this submission)

(i) **Require identification of the problem with private arrangements including the common law that justify considering restricting people's rights to the enjoyment of their properties.** Before making national instruments or setting environmental limits, decision-makers should be required to identify the problem with existing arrangements that justifies considering regulatory intervention, and to demonstrate convincingly that the proposed intervention provides net benefits for affected New Zealanders compared to the best of the forgone alternatives, including the status quo, and respects property rights. This would ground the system in a principled framework for distinguishing matters that warrant public intervention from matters better left to private ordering (see Section 7 of this submission).

(j) **Strengthen existing use protections**. The Committee should satisfy itself that the Planning Bill provides adequate protection for existing lawful uses, including clarifying that the regulatory relief framework applies where new rules materially constrain existing uses (see Section 8 of this submission).

(k) **Establish an overarching property rights presumption.** Both Bills should include a statutory presumption that landowners may use their land within the law as they see fit. Restrictions under these bills must respect property rights and have a net benefit justification. This presumption should be supported by a rule of construction requiring ambiguity to be resolved in favour of the landowner. The October 2024 Cabinet paper said the replacement system's starting point "should be the enjoyment of property rights." A good starting point would be to delineate those rights as a statutory default, not merely background acknowledgement (see Section 7).

(l) **Distinguish regulatory relief from compensation**. While transitional provisions and grandfathering are valuable, they should not be treated as substitutes for compensation. This concern is heightened by the fact that regulatory relief under the Natural Environment Bill is limited to rules relating to biodiversity, SNAs, and Māori sites, leaving landowners affected by freshwater, air, and coastal limits without any relief mechanism. The legislation should extend the regulatory relief framework to all environmental limits with significant impacts on otherwise legal land-use rights, or introduce compensation mechanisms for affected landowners (see Section 9 of this submission).

(m) **Set effective and, where possible, quantitative thresholds for regulatory relief.** The current test of "significant impact on the reasonable use of land" (Schedule 3, clause 62) should at minimum be replaced with "material impact on the value or reasonable use of land." The Committee should also consider specifying a quantitative threshold (such as a 15 or 20 percent diminution in assessed land value), determined by registered valuer -- to provide certainty that no adjectival test can match. Where diminution exceeds a higher threshold (say, 33 percent), the put option described at (o) should apply (see Section 9).

(o) **Provide a put-option safeguard for landowners**. Where the replacement system nonetheless imposes regulations that effectively remove existing or reasonably expected uses of land, affected landowners should be able to require purchase of their property at unimpaired market value, consistent with the approach taken under the Public Works Act for physical takings. This safeguard disciplines the entire system from the bottom up, regardless of how well higher-level instruments are calibrated (see Section 9 of this submission).

(p) **Improve data, technology and performance monitoring**. The Bills should place explicit weight on common data standards, measurable outcomes and transparent performance reporting to ensure institutional reform translates into operational improvement (see Section 10 of this submission).

(q) **Encourage the use of economic instruments within environmental limits**. The legislation should explicitly enable and encourage the use of economic instruments to manage resource use within environmental limits. The definition of "market-based allocation process" in the Natural Environment Bill is too narrow and should be broadened; transfer provisions should enable trading without case-by-case regulatory approval, subject to appropriate safeguards (see Section 11 of this submission).

(r) **Distinguish between point-source and non-point source pollution.** The environmental limits framework should recognise that point-source and non-point source pollution present different problems for private arrangements, particularly for legal enforcement. For diffuse pollution – particularly agricultural nutrient runoff – the Bills should more strongly encourage cap-and-trade and other economic instruments that can achieve environmental limits at lower cost and with greater fairness than uniform land use restrictions (see Section 11 of this submission).

(s) **Constrain and future-proof ministerial powers**. The current procedural principles in clause 13 ('proportionate' and 'evidence-based') are too vague to provide meaningful constraint (see Section 12 of this submission). The Committee should ensure that ministerial powers to set or amend national direction and environmental limits are subject to:

- A reinstated section 32-equivalent requiring robust assessments of efficiency (net benefit), effectiveness and property impacts;
- A requirement to identify the problem with private arrangements that justifies considering intervention;
- A requirement to assess and disclose likely impacts on property values before constraining land use and to address compensation issues;
- Sunset or review requirements (10-year review with automatic expiry if not renewed); and
- Affirmative parliamentary resolution for significant changes that reduce the legal scope for enjoyment of one's property.

(t) **Treat the Fast-track Approvals regime as temporary**. The Government should signal clearly that the Fast-track Approvals Act is an interim measure and commit to winding it down once the new resource management system is fully operational and bedded in (see Section 13 of this submission).

(u) **Reduce reliance on resource consents**. The legislation should more explicitly narrow the range of effects that require case-by-case consent, enabling a greater proportion of activities – particularly housing and infrastructure – to proceed as permitted or controlled activities within clear limits.

(v) **Ensure reform delivers a measurable reduction in regulatory burden**. The Committee should seek assurance that the replacement framework materially reduces unnecessary compliance costs, consent volumes and processing time, particularly for housing and infrastructure, rather than simply reallocating decision-making to earlier stages of the system. System performance reporting should be designed to measure these outcomes.

(w) **Enforcement and compliance capacity.** The Committee should satisfy itself that the shift toward more permitted activities and fewer consents is matched by adequate enforcement and compliance monitoring capacity, given that a standards-first system depends on effective ex post enforcement rather than ex ante gatekeeping (see Section 10 of this submission).

29.7 Recommendations specific to the Planning Bill:

(a) **Welcome and strengthen net-benefit justified standardised zones**. The Initiative supports nationally standardised zones and provisions as a means of reducing complexity and compliance costs. National standards should establish a small number of well-justified permissive zones, with standardised definitions applied consistently across both Bills (see Section 15 of this submission).

(b) **Replace 'sufficient development capacity' with 'competitive urban land supply' in primary legislation**. This reframes the statutory test from volumetric to market-structural, creating a statutory anchor that constrains national direction and makes scarcity rents a justiciable planning failure (see Section 16 of this submission).

(c) **Define competitive urban land supply by reference to four conditions in the Act**: legal availability, economic substitutability, simultaneity and credible threat of entry. These form the core statutory architecture that cannot be watered down through national direction (see Section 16 of this submission).

(d) **Establish an independent expert panel in primary legislation to assess whether urban land markets are competitive**, with findings that trigger mandatory responses when markets are not. The Commerce Commission could be tasked with this function (see Section 16 of this submission).

(e) **Include a mandatory duty on the Minister to issue net-benefit justified national direction specifying indicators of land market competitiveness** (including boundary price differentials and price-to-income ratios), thresholds and response mechanisms. The specific indicators and mechanisms may sit in national direction, but the duty to issue such direction should be in the Act (see Section 16 of this submission).

(f) **Treat infrastructure as a delivery and financing problem**, so that the absence of infrastructure is not a precondition to development where there is a reasonable expectation that infrastructure can be delivered through feasible mechanisms (see Section 16 of this submission).

(g) **Narrow the scope of regional spatial plans**. Regional spatial plans should focus on net-benefit justified coordination, sequencing and capacity-setting rather than embedding contested policy choices or operating as quasi-regulatory instruments. The breadth of required content in clause 80 should be reconsidered to this end (see Section 17 of this submission).

(h) **Clarify the legal effect of regional spatial plans**. The Bill should make clearer how regional spatial plans interact with national direction and regulatory plans and ensure they do not pre-emptively constrain land use without appropriate net-benefit test and respect for property rights safeguards (see Section 18 of this submission).

(i) **Adopt a net-benefit justified approach to natural hazards**. National instruments should distinguish between unrequited risks to third parties and risks accepted by informed property owners, and should not prohibit development where owners are willing to accept disclosed risks without a robust net benefit justification. Planning rules addressing natural hazards should respect property rights, including being subject to the regulatory relief framework (see Section 19 of this submission).

(j) **Heritage protection should better respect owner rights**. Heritage listing should require owner consent or provide for streamlined delisting. If consent is not obtained, the owner should have the right to require the authority imposing the designation to purchase it at an unimpaired market value. Regardless, the regulatory relief framework should expressly apply to heritage rules that significantly affect the reasonable use of land. The undefined term "inappropriate development" should be deleted clarified (see Section 20 of this submission).

(k) **Strengthen democratic accountability in spatial planning**. The Bill provides that local authorities determine the composition of spatial planning committees through terms of reference, with the Minister empowered to appoint members. The Committee should seek clarification on how committee membership and voting arrangements will operate in practice, what role iwi and hapū will have beyond consultation requirements, and how governance arrangements will interact with the proposed combined territories boards under parallel local government reforms. Clearer accountability, transparency and dispute resolution mechanisms would improve legitimacy and public confidence, given the long-term impacts of regional spatial plans (see Section 20 of this submission).

(l) **Clarify the relationship between 'participation' and 'consultation'.** The goal in clause 11(1)(i) refers to Māori 'participation' in the development of national policy direction and plans, while the operative provisions require "consultation" with iwi authorities. The Committee should consider whether this distinction is intentional and, if so, what "participation" requires beyond consultation. If the terms are intended to be equivalent, clause 11(1)(i) should be amended to use 'consultation' for consistency (see Section 20 of this submission).

(m) **Enable voluntary devolution of decision-making to iwi and hapū for Māori land**. The Bill should explicitly enable voluntary governance arrangements, consistent with the goal in clause 11(1)(i), that allow iwi and hapū to exercise zoning, consenting, and rating authority over Māori reserves and land held under Māori land tenure, within the overall statutory framework. Such arrangements would function analogously to small territorial authorities over the relevant land. Devolution should be voluntary, clearly defined, and limited to decisions affecting the relevant land (see Section 20 of this submission).

(n) **Provide for review and adaptability**. Regional spatial plans should be subject to regular review and adjustment to ensure they remain responsive to changing economic, demographic and environmental conditions (see Section 20 of this submission).

29.8 Recommendations specific to the Natural Environment Bill:

(a) **Ground environmental limits in transparent robust net-benefit criteria**. Environmental limits should distinguish between limits tied to identifiable biophysical thresholds and limits that reflect broader policy choices about acceptable environmental quality. Both can be legitimate if net-benefit justified, but they require different levels of justification and should be subject to different procedures. Value-laden objectives should be addressed through transparent policy processes with explicit net-benefit assessment, not embedded in limit-setting as though they were scientific findings (see section 25 of this submission).

(b) **Treat environmental limits as backstops, not primary allocative tools**. Environmental limits should operate as outer bounds to protect genuine biophysical thresholds. Within those bounds, the legislation should place greater emphasis on clarified entitlements, pricing and trading mechanisms to allocate environmental capacity efficiently and fairly, rather than relying primarily on conservative quantity limits that risk freezing use and entrenching incumbency (see Section 22 of this submission).

(c) **Provide greater certainty for landowners**. The legislation should strengthen protections for legitimate expectations and existing lawful uses, particularly where new limits materially restrict legal rights and thereby land value or development potential. The regulatory relief framework should be extended to

cover all environmental limits under the Natural Environment Bill, not just rules relating to biodiversity, SNAs, and Māori sites. The current limitation leaves landowners affected by freshwater, air, and coastal limits without any relief mechanism, regardless of the severity of impact on their land (see Section 22 of this submission).

(d) **Ensure the pursuit of the 'no net loss' biodiversity goal is limited to interventions that are net-benefit justified.** The Committee should seek advice on the compliance costs and practical implications of the 'no net loss' goal, including how 'net loss' is to be measured and over what timeframe. The pursuit of the goal should be subject to the usual net-benefit test, as for natural hazards. The Committee should also clarify the relationship between the 'no net loss' goal and the separate goal to protect the life-supporting capacity of ecosystems, given that indigenous biodiversity is arguably a component of ecosystem life-supporting capacity (see Section 23 of this submission).

(e) **Confirm that regulatory relief applies to rules implementing the 'no net loss' goal**. Land-based indigenous biodiversity is one of the three categories for which relief is available, but this should be expressly confirmed for rules implementing the 'no net loss' goal. Rules implementing the goal should be subject to workable offset methodologies with appropriate thresholds to exclude minor or temporary effects (see Section 23 of this submission).

(f) **Prioritise market-based allocation of natural resources**. The Government should commit to developing national instruments that enable cap-and-trade and other market-based allocation methods for freshwater and other natural resources within the first two years of the new system's operation. However, the underlying statutory provisions also require amendment (see section 24 of this submission):

- The definition of 'market-based allocation process' should be broadened to include systems where initial rights are allocated to existing users and then made tradable (not only systems with competitive initial allocation); successful participants should receive permits, not merely rights to apply for permits;

- The transfer provisions in clause 195 should be amended to enable trading without case-by-case regulatory approval, reducing transaction costs and enabling genuinely liquid markets.

- Grandparenting existing rights for a defined transitional period – say, 25 years – with allocation by auction thereafter. This would ease the political economy of transition by protecting existing users' expectations in the near term while establishing a principled long-term framework. The key requirement is that rights are freely tradable from the outset, regardless of how they were initially allocated.

(g) **Introduce robust net benefit requirements**. When setting limits and outcomes, decision-makers should be required to publish robust net-benefit assessments of the case for imposing those requirements. Issues of necessity, proportionality and consideration of cumulative impacts should not be neglected. The procedural principles in clause 13 should be strengthened, and the limit-setting provisions should include explicit net benefit tests (see Section 25 of this submission).

(h) **Reduce reliance on broad evaluative judgement**. The Bill should expand the use of clear standards and rules for activities with well-understood effects, reserving discretion for genuinely uncertain or high-risk cases. The relationship between goals (clause 11) and operative provisions should provide greater certainty (see Section 26 of this submission).

(i) **Clarify the scope of effects and the treatment of positive effects**. The Natural Environment Bill's definition of 'effects' creates far too much ambiguity about what is meant. Whether positive effects must be within the same environmental domain as adverse effects (such as biodiversity offsets) or whether cross-domain trade-offs are permissible (such as justifying environmental harm by reference to economic benefits) should be clarified. The Bill should provide clearer guidance on this question and on the relationship between the effects framework and the environmental limits framework. The definition should also clarify that effects requiring regulatory consideration are limited to those that involve identified problems of a public policy nature with private arrangements including the common law – rather than effects internal to the applicant (see Section 27 of this submission).

(j) **Prevent regional councils from regulating emissions already regulated through a national framework, like greenhouse gas emissions**. The Bills should explicitly prevent regional councils from managing the effects of greenhouse gas emissions on climate change, consistent with the pre-2020 RMA position. Climate policy should be set nationally through the Emissions Trading Scheme and Climate Change Response Act, not fragmented across regional planning instruments (see Section 28 of this submission).

30. Conclusion

30.1 The New Zealand Initiative welcomes the Government's commitment to replacing the RMA and supports its stated intention to put the freedom to enjoy one's property at the centre of the Planning Bill and the Natural Environment Bill.

30.2 We recognise that huge task to replace the RMA, especially in a short period of time. We also recognise that the Government has made a deliberate architectural choice: a lean primary Act focused on institutional structure, with operative substance delegated to national direction and other secondary instruments. We understand the reasoning and do not ask the Government to abandon this approach.

30.3 But a lean Act is defensible only if it contains the fail-safe mechanisms that prevent delegated powers from being exercised in ways that undermine the system's stated purposes. Without a statutory presumption protecting property rights, courts will balance those rights away regardless of what national direction says. Without a put option, regulators will impose restrictions without bearing their cost, and the regulatory relief framework will provide little or no meaningful recourse. Without the competitive land markets architecture in primary legislation, the goal in clause 11(1)(d) will remain an aspiration that any future Minister can hollow out through national direction.

30.4 The Bills as introduced do not contain these mechanisms. They articulate the right aspirations but withhold the operative provisions necessary to achieve them. The result is legislation that is not lean but incomplete.

30.5 New Zealand's productivity challenge makes this more than a question of regulatory design. A country that has fallen further behind its peers over decades cannot afford a planning system that suppresses investment, inflates housing costs and rewards rent seeking over productive activity. The international evidence is clear: secure property rights and constrained state discretion are institutional preconditions for sustained prosperity. These Bills are an opportunity to embed those foundations. The Committee should ensure that opportunity is not wasted.

30.6 The Initiative notes that a durable planning system requires stability across electoral cycles, which means broad political support. The Committee should consider whether there is scope for cross-party agreement on the core architecture of the reform, recognising that frequent legislative changes undermine the certainty and confidence the new system is intended to provide.

30.7 The amendments we have made in this submission are necessary for improving the Bills' ability to deliver the step-change New Zealand desperately needs.

30.8 We would welcome the opportunity to appear before the Committee to elaborate on these views.

ENDS