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Environment Committee

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## Submission on Spatial Planning Bill 2022

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### Introduction

1. Energy Resources Aotearoa is New Zealand's peak energy advocacy organisation. We enable constructive collaboration across the energy sector through and beyond New Zealand's transition to net zero carbon emissions in 2050.
2. Energy projects and infrastructure are critical to our economic and social wellbeing. Recent legislative reforms have focussed almost exclusively on environmental sustainability, failing to fully appreciate the other, equally important, legs of the energy trilemma, namely energy affordability and security. This is particularly important given recent events in Europe which highlighted the importance of these factors.
3. This paper constitutes our submission on the Spatial Planning Bill 2022 (the Bill). We wish to appear before the Select Committee to present our submission.

### Key points

- We support the need for resource management reform. Processes under the Resource Management Act 1991 (the RMA) are too costly, time consuming and unpredictable.
- It is unclear why this Bill is being progressed through the House under urgency and in parallel with the Natural and Built Environment Bill (NBEB). Given the interrelated and hierarchical nature of the proposed legislation.
- We recommend the Government, and this Select Committee slows the process down and takes the necessary time to get this Bill right. This is a generational opportunity, and the result must deliver the necessary changes for New Zealand's future. While that will require significant amendment, many of the fundamental components of reform are present.
- We are concerned Regional Planning Committees (RPC) will have the power to determine land use matters for ratepayers, with only limited opportunity for businesses and landowners to appeal or seek compensation. The proposed



reforms shift the responsibilities for land use planning away from elected Territorial Authorities without sufficient mechanisms to hold an RPC accountable.

- The wide-ranging authority of an RPC, coupled with the Minister reserving the right to direct the development of a Regional Spatial Strategy (RSS), further erodes the rights of businesses and landowners, and significantly curtails the decision-making powers of Territorial Authorities.
- An underlying premise for an RSS is to define areas where specified activities or resource use are permitted. This presumes an RPC (or the Minister) has sufficient information and foresight to make such proactive determinations. This is not always the case.
- Access to land (acreage) for exploration and development of Crown owned minerals is adequately managed and permitted via the Crown Minerals Act 1991 (the CMA). The development (mining) of these minerals is already subject to other planning and consenting constraints. To avoid inconsistencies in legislation we recommend excluding Crown minerals from an RSS.

### Initial remarks

4. Energy Resources Aotearoa welcomes the opportunity to comment on the Bill. The Bill is the second of three Bills proposed to replace the Resource Management Act 1991. We have also submitted on the NBEB, the first of these resource management reform Bills, and refer the reader to that submission also.
5. We agree that change in New Zealand's resource management legislation is needed. The Resource Management Act 1991 (the RMA) has not delivered on its potential to efficiently manage the development and use of New Zealand's natural resources, while protecting the environment from adverse effects of that development.
6. Indeed, the RMA is considered by many to be too expensive, too unpredictable, and too time consuming. This has the effect of slowing investment and throttling New Zealand's productivity.
7. Therefore, we support the overall intent of the Bill to deliver better decisions faster through the development of long-term, durable spatial planning across New Zealand.
8. However, given the novelty of some of the amendments, and the parallel passage of the NBEB through the House, we are concerned the proposed reforms merely replace one form of complexity and uncertainty for another (arguably more complex) system, without substantive net gain.

### ***We have concerns about the legislative process***

9. Given its significance and scope of the reform, this legislation appears to be moving through the House with undue haste.
10. We note the purpose of the Bill is to assist in achieving the purpose of the Natural and Built Environment Act (the NBA), which is being progressed through the House in parallel as the Natural and Built Environment Bill (the NBEB).
11. We are not convinced that changes through a parallel Select Committee process will result in better integration and consistency. A more logical approach would be to understand how any changes to the NBEB through the Select Committee process will need to be promulgated through the Bill.
12. Indeed, the RMA has a long history of ongoing amendment.<sup>1</sup> The ongoing need for amendments highlights the complex nature and ambition of resource management, and the difficulties in getting this legislation right.
13. This provides an important signal to policymakers that enduring, sensible resource management reform should not be rushed. Constant tinkering with legislative settings creates uncertainty, leading to poor quality decisions and outcomes, the very thing this legislation seeks to avoid.
14. Our submission provides feedback and recommendations on key elements of the Bill.

### **Regional spatial strategies**

15. Part 2 of the Bill outlines the requirements and scope for the development of RSS. An RSS is intended to implement long-term, durable, spatial planning across New Zealand. While we support, in principle, the intention to establish a more predictable enabling framework for developers, this support is contingent on the processes used to establish and review these strategies being transparent, open, and based on sound scientific and economic principles.

### ***The development of an RSP presumes sufficient knowledge and foresight by planners***

16. The spatial plans, as presented, focus on defining the areas where specific activities **are permitted** to take place. This approach implies a level of insight and planning beyond what would normally be expected of planners.
17. Indeed, any application to undertake an activity not contemplated in an RSS will require an exemption, increasing costs and delays, counter to the objective of faster, cheaper, better, decisions.

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<sup>1</sup> The New Zealand Legal Information Institute lists 23 Acts that amend the Resource Management Act 1991 (available at [http://www.nzlii.org/nz/legis/consol\\_act/toc-R.html](http://www.nzlii.org/nz/legis/consol_act/toc-R.html))

18. A far more practical and useful approach for a well-designed and functional spatial plan is to define the **areas where certain activities are prohibited**.
19. Schedule 4 of the Crown Minerals Act provides a practical working example of this approach. In this case the Minister cannot make available land for exploration or mining listed in Schedule 4.
20. We recommend, where appropriate, an RSS presumes development is permissible (within the normal zoning and planning constraints) and treats each application on its merits, rather than proactively prescribing whether activities or development are permitted.
21. As a matter of course we would expect any process that excludes or constrains lands from development to be subject to a robust planning and review processes, underpinned by science and other relevant information.

#### ***A concerning lack of input from businesses and landowners***

22. The composition of the RPC is a mix of local and central government appointments and iwi representation. These committees are empowered to devise their own 'regionally appropriate' public engagement process. Prima facie this appears to be a reasonable approach.
23. However, it is likely any input from businesses and landowners, other than through a submissions process on a draft RSS, will be constrained. We also note there is no requirement for an RPC to seek further consultation where substantial changes are made to a draft RSS in Schedule 4, Clause 5.
24. Landowners enjoy the right, within certain constraints and conditions, to make decisions on the best use of their land. The first-best recourse to reconciling land use trade-offs is civil means; that is, those with different preferences for how land is used can buy the land at market value.
25. Our concerns stem from the significant decision-making powers for land use being granted to an RPC. In essence the RPC has the power to make decisions weighing public and private interests in respect of the natural and built environment regardless of current use. Essentially RPC can redesignate hitherto approved and permitted land use without adequate mechanisms for input, appeal, or compensation for affected businesses and landowners.
26. We recommend grandfathering the rights of current resource users, where practical, to recognise investments already made.

## ***The National Planning Framework must be consistent with the Crown Minerals Act 1991***

27. One of the key matters set out in Clause 17 is that an RSS must provide strategic direction on is to identify areas appropriate for extracting natural resources. This covers a range of resources including geothermal and wind.
  28. We remind decision makers the distribution of certain resources, including Crown owned minerals such as petroleum, is driven by geology, not convenience. As such, development of these resources is geographically constrained.
  29. Knowledge of the subsurface distribution of these minerals is imperfect. There is the potential for an RSS to “sterilise” certain natural resources such as geothermal, petroleum and wind. That is, to make development in certain areas impossible. This would potentially be inconsistent with the allocative regime in the Crown Minerals Act 1991 (the CMA).<sup>2</sup>
- The availability of land (acreage) for exploration and development of Crown owned minerals is adequately managed and permitted via the CMA. Rights and obligations to access land to undertake exploration and development activities are also set out in the CMA. We also note these activities (such as drilling, seismic surveying, etc.) for the exploration and development (mining) of these minerals is already subject to other planning and consenting constraints.
  - To avoid inconsistencies in legislation, we recommend excluding Crown minerals from an RSS or provide a consistent national direction through the National Planning Framework (the NPF).

### **A concerning lack of transparency and accountability for Regional Planning Committees**

30. The Bill grants significant powers to the RPC and to the Minister to make significant decisions when developing an RSS. We have concerns with the sweeping powers and lack of sufficient checks and balances.

### ***An RPC has primary responsibility, but the Minister retains sweeping powers***

31. While an RPC will have primary responsibility for developing the RSS, the Minister will have significant power to intervene and assist. Clauses 58 through 63 outline the Minister’s powers in this respect, whereby the Minister may direct an RPC and local authorities to take specific actions.

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<sup>2</sup> We draw the reader’s attention to s5(a) of the Crown Minerals Act 1991 where the Minister has a duty to 2022 where there are provisions for the Minister “to attract permit applications, including by way of public tender” (we note the Crown Minerals Act Amendment Bill 2020 seeks to amend s5(a) to “from time to time offer permits for application by way of public tender”).

32. We are concerned about the lack of sufficient checks and balances on the Minister's powers. The lack of grandfathering existing right-to-use and constrained provisions for appeal further exacerbates our concerns.
33. We recommend introducing a right-to-appeal process where decisions by the Minister and/or the RPC affect existing property rights.

### ***Regional Planning Committees lack sufficient checks and balances***

34. An RPC will have the authority to set many of the rules that govern land use and development. This will impact the lives of many New Zealanders.
35. As such the quality of decisions and governance of these RPCs will have a direct effect on growth, productivity, and the natural environment across New Zealand.
36. It is our view these committees lack sufficient oversight and accountability. Members of an RPC are appointed with minimal public input or are nominated by iwi and hapū groups. This appointment process lacks the public accountability that would normally be expected (via the ballot box), as committees, once appointed, are effectively at arm's length from the democratic process.
37. It is our view the purpose and rules governing these committees set out in the Bill do not adequately reflect the principles of good governance, transparency, and public accountability.
38. Processes involving land-use and resource allocation decisions need to retain Territorial Authorities as the primary decision-makers. The broader legislative environment that Territorial Authorities operate in provides an existing framework for transparency and governance, with public accountability at the ballot box. This will ensure local democracy remains strong.
39. We note the Government is undertaking a review into the "Future of Local Government" in New Zealand.<sup>3</sup> We recommend any decisions that curtail the authority of local government do not go ahead until that review and consultation has concluded.

### ***Engagement agreements with iwi and hapū***

40. We support, in principle, the introduction of engagement agreements in the Bill as a mechanism to allow more fulsome contribution from Māori groups with interests in the region in the development of an RSS.
41. We caution of the perception and need to manage potential conflicts of interest where engagement agreements, including where funding arrangements are entered into with Māori groups by the RPC (which contains members nominated by those same iwi and hapū).

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<sup>3</sup> This is an independent review in the future of local government, expected to deliver its final report in June of 2023. See <https://www.futureforlocalgovernment.govt.nz/>

42. Given the potential for conflicts of interest to arise, we recommend the Bill include provisions for central government to undertake and agree any funding arrangements for these engagement agreements, and for these agreements to be made public.

### ***No compensation where land use is inhibited or restricted***

43. The implications of Clause 66 are of serious concern. Our reading of this clause suggests a business or landowner has no recourse to compensation should the RPC decide to restrict a hitherto approved land use through the development of an RSS.
44. In the absence of appropriate compensation for affected businesses or landowners an RPC (and potentially the Minister) are incentivised to make decisions without truly needing to weight the distinction between public good and private interest.
45. Where previously approved uses are subsequently prohibited by an RSS a business or landowner should be appropriately compensated. It is concerning the provisions set out in s86 of the RMA have not been carried over into the legislation proposed by the Bill. This omission needs to be rectified.
46. We recommend requiring an RPC undertake a cost benefit analysis when recommending changes to an RSS and, where appropriate, compensate businesses and landowners for changes in conditions of land use.

### ***A concerning absence of transitional provisions***

47. We note there are limited transitional provisions in the Bill for existing land use consents to be considered by an RPC in developing an RSS.
48. The lack of appropriate transitional provisions was a notable weakness in the recent reforms to the CMA, leading to unnecessarily strict decommissioning provisions to be imposed on permits and licences nearing the end of their economic life.
49. We recommend including the continuation of hitherto approved land use consents in Schedule 1 and include consideration of those same consents in clause 25, which sets out the matters an RPC must have regard to when developing an RSS.

### **Summary**

50. Energy Resources Aotearoa supports the need for resource management reform and the overall intent of this Bill to provide strategic direction for resource use across the country.

51. We are concerned the Bill grants significant decision-making powers to an RPC and the Minister. This reduces the authority of local government to make land use and planning decisions at the local level, and further erodes the property rights of businesses and landowners, with no recourse to compensation and highly constrained rights of appeal.
52. We would also like to see Crown-owned minerals including petroleum excluded from an RSS. These resources are, by their nature, are distributed subject to geology and the availability of acreage for exploration is the purview of the Crown Minerals Act.
53. Our overarching recommendation is this Bill and the Natural and Built Environment Bill be withdrawn. In both cases the Bills will not achieve better resource management outcomes through better, faster decisions, and require substantial rework and further, more fulsome public consultation.