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Chair

Environment Select Committee

PARLIAMENT BUILDINGS

**WELLINGTON**

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## **DairyNZ Submission: Natural and Built Environment Bill**

Please find below DairyNZ's submission on the Natural and Built Environment Bill (NBEA). We appreciate the additional time allowed to make a submission on this extensive draft legislation.

DairyNZ opposes this Bill as it currently stands. Although we are supportive of efforts to reform New Zealand's resource management legislation, we do not believe this Bill will achieve better outcomes for communities or the environment without significant reworking.

This Bill builds on the already overly complex Resource Management Act but adds further layers of complexity for New Zealanders to try to navigate. Specific and fundamental detail is missing, and the implementation plan is unclear, which will lead to an unpredictable transition over the next decade. Farmers, businesses, communities, and regulators will be left guessing as to how the Courts will interpret this legislation.

For dairy farmers the Resource Management Act is one of the most important pieces of legislation that touches almost every element of their lives and each aspect of their businesses. Behind the farm gate it governs if, where, what, and how they can farm and whether they can access freshwater. It also sets if and how they will be able to build houses, sheds, or other critical infrastructure.

Beyond the farm gate the Resource Management Act impacts the ability of processing plants to operate, the planning of and investment in new infrastructure, and the supply chains required to get product from farm to market. No other single piece of legislation impacts farmers more than the RMA.

This is why it is so critically important that the Government takes the time to get this reform package right.

## Executive Summary

1. Reforming the Resource Management Act to be more streamlined, user-friendly, and responsive to resource allocation needs is to be commended. At present, the processes and obligations under the Resource Management Act are excessively costly, lengthy, and unpredictable. Costly and uncertain consenting processes hamper investment and decrease productivity.
2. DairyNZ is supportive of reform that enables innovation, balances economic development and sustainable environmental management, and better manages conflicts. We note the train of regulatory reforms that farmers currently face and the anxiety and uncertainty this has created. This reform piles yet more pressure on farmers and rural communities.
3. DairyNZ remains concerned at the uncertainty this reform will create over the decade needed to bed in and transition to the new regime – new processes, decision fora and legal interpretation will take time. We are also concerned at the pace that this reform is moving at, and the lack of time taken for meaningful and genuine consultation.
4. The Bill lacks specific information and leaves important decisions to be made by the National Planning Framework. In all sincerity, farmers cannot assess the impact of the proposed resource management framework because important details, direction and emphasis will be decided through secondary legislation much later.
5. Long-term investment and development could be compromised through changes to water consents that limit use and extraction rights to only 10 years. Unless rectified this will have adverse impacts for rural communities, employment, export returns and the New Zealand economy.
6. We are concerned that existing issues with the RMA may be carried through without further amendment. This has the potential to significantly constrain the extent to which permitted activities may be provided for through the NBEA.
7. The institutionalising of environmental limits and targets must use sound science, canvass multiple perspectives, understand and quantify the full set of trade-offs in decision making, and be reviewable in light of new and emerging evidence. Similarly local government requires guidance for managing greenhouse gases to ensure consistency with national level priorities. Ideally, GHG mitigation is the purview of national level policy.
8. Because the Bill has strictly limited appeal rights, it will be important that ministerial powers are used sparingly, and that adequate account is taken of affected parties when decisions are made, including the adequate consideration of trade-offs between economic and environmental interests.
9. The freshwater working group needs appropriate representation to guide allocation decisions. It makes sense to understand the perspectives of existing users, potential users, and those with expertise in economic allocation decision making.
10. The Bill proposes to prohibit individuals and companies insuring against fines issued under the NBEA. The ability to insure against these risks should be provided for within the NBEA, and there


will need to be greater clarity provided around how fines will correspond to intent and the actual environmental impact resulting from an infringement.

## **Introduction**

11. DairyNZ welcomes the opportunity to comment on the Natural and Built Environment Bill (NBEA).
12. The Environment Committee is currently considering the NBEA and the Spatial Planning Bill (SPB). These two Bills are intended to replace the Resource Management Act (RMA). We note that a third Bill, the Adaptation Bill will be introduced next year.
13. Should Parliament replace the RMA with new legislation this will mean at least a decade of transition to a new system. We are concerned that there isn't yet enough certainty to understand how this new legislation would impact resource use in New Zealand.
14. This reform will need support and consideration from all parts of society and as such also needs bipartisan support to give certainty to planning and investment into the future. This Bill is the most important change in legislation for over 30 years, with the last change impacting billions of dollars of infrastructure and development.
15. Moving to a more fit for purpose and streamlined resource management system is to be welcomed. Further clarity and education on the new concepts and terms in the Bill is warranted to give assurance that the stated intent of a better, streamlined and less bureaucratic system will indeed prevail. At this point in time, it is difficult to see through and beyond the 800 pages of clauses, their meaning and practical application.
16. The Natural and Built Environment Bill is voluminous and complex. We have concerns as to how this legislation will be implemented in practice and how New Zealand will transition from the current Resource Management Act, with its existing jurisprudence, to this new regime. We reiterate that it is difficult at this point to see how these three pieces of legislation will work in practice and in unison. These changes will likely create ongoing regulatory uncertainty for farmers and land managers for years to come.
17. This is further exacerbated for dairy farmers, as the implementation of the National Policy Statement for Freshwater Management requiring Councils to draft and notify new Regional Water Plans that give effect to the NPS by 2024 is also front of mind. The combination of these processes occurring at the same time as the resource management system creates additional uncertainty.

## **About Dairy NZ**

18. DairyNZ is the industry-good organisation representing all 11,000 of New Zealand's dairy farmers. Our purpose is to provide a better future for farmers by enhancing their sustainability, competitiveness, and economic viability. The dairy sector employs 50,000 people, generates almost \$20b in export earnings, and comprises one third of all goods revenue.
19. The primary sector continues to be a major contributor of New Zealand's economy, accounting for one in seven jobs, over 80% of exports and 11% of GDP and was integral to maintaining a thriving New Zealand economy through the COVID-19 pandemic.

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20. DairyNZ delivers value to farmers through leadership, and investment in research and development. We lead on-farm adoption of best practice farming, promote careers in dairying, and advocate for farmers with central and local government.
21. Issues pertinent in this legislation for our farmers include land and water use, greenhouse gas emissions and representation and voice at local government level.

## Key Issues

**The Bill's Purpose and System Outcomes devalues sustainable resource use, clarity of new concepts and terms is needed.**

22. When combined, the Purpose and the System Outcomes of the Bill show a clear emphasis for environmental outcomes, at the expense of economic development. The purpose of this Act is to:

*(a) enable the use, development, and protection of the environment in a way that —*

*(i) supports the well-being of present generations without compromising the well-being of future generations; and*

*(ii) promotes outcomes for the benefit of the environment; and*

*(iii) complies with environmental limits and their associated targets; and*

*(iv) manages adverse effects; and*

*(b) recognise and uphold te Oranga o te Taiao.*

23. Many aspects of resource allocation remain contentious as decision makers attempt to balance economic development, social and cultural wellbeing, and environmental sustainability. While these outcomes are not necessarily mutually exclusive, if a system tends to favour one of these over the other there are likely societal and/or environmental consequences.
24. The Bill requires a clear statement on the need to either balance environment and economic development objectives or to at least be cognisant of these two potentially conflicting ideals. The Bill appears to have a dual-purpose statement and at present the drafting appears to clearly favour one objective at the expense of the other.
25. There is a lack of clarity throughout the Bill and in particular the purpose statement. Given the wide reach of this legislation, the Bill should be written in as plain language as possible and follow a clear structure. There is room for improvement in both the drafting and the structure of the Bill.
26. We are concerned that the inclusion of new terms and concepts may require the Courts to settle disputes. This creates uncertainty, cost and may hinder investment. This is the regulatory risk of having a known system in place, reforming that system, and prolonged implementation. We see this as problematic from the outset.

27. Some examples of where we see uncertainty and the need for clarification include:

- 'Te Oranga o te Taio' is conceptually broad with ample room for different interpretation.
- What does 'needing to **uphold** Te Oranga o te Taio' mean in practice?

- All plans **must** provide for all the system outcomes (despite some of these being in direct conflict with one another).
  - All persons exercising powers and performing functions and duties under this Act must **give effect** to the principles of te Tiriti o Waitangi. What does 'give effect' mean?
28. Where a new concept or set of concepts is introduced by the legislation, these should be clearly defined so that users of the legislation can have confidence of its meaning.
29. Within the System Outcomes we appreciate and support the specific reference and acknowledgement of *'well-functioning rural areas that are responsive to the diverse and changing needs of people and communities in a way that promotes the use and development of land for a variety of activities, including for primary production'* and *'the availability of highly productive land for land-based primary production.'*

**Maximum ten-year consent terms for certain types of activities will stifle long-term investment.**

30. Clause 275 of the Bill directs that certain resource consent activities, including the use of water and the discharge of any contaminant to water, may not be granted a consent with duration of longer than 10 years.
31. DairyNZ considers that a maximum 10-year consent term on these activities would be completely unworkable and, in some cases, counterproductive. A consent duration of ten years is not aligned with the timeframes that underpin most major investments in New Zealand's primary sector, many of which are predicated on reliable access to freshwater, and/or the ability to discharge a contaminant where it may enter or impact water quality (in accordance with regulations or consent conditions).
32. Dairy sector investments are typically made on a long-term basis and require a high degree of investor and lender confidence. This confidence is particularly important for investments that are not providing a clear-cut increase in profitability, for example, investment in environmental mitigation or enhancement, or in improved system resilience.
33. If implemented as drafted, the uncertainty created by Clause 275 would almost certainly result in fewer investments and reductions in the amounts invested. Reduced investment adversely impacts economic and employment opportunities across much of rural New Zealand and will forestall or increase the costs of capital investment necessary for some investment in environmental enhancement or mitigation, the ability to innovate and/or increased system resilience.
34. For example, investments farmers make in irrigation infrastructure on their farms often involve 30 to 50-year horizons. Farmers would almost certainly be unable to attract finance for irrigation projects if they could not secure access to water beyond a ten-year horizon, particularly when considered in conjunction with the risks that consents will be reviewed as proposed under Clause 75. The appropriateness of irrigation in a given area should be determined by regional NBE planning committees rather than being effectively precluded by the imposition of 10-year maximum consenting terms. Where concerns remain about whether a given irrigation project would be consistent with a relevant environmental limit, it should be scrutinised via the consenting process, with reduced consent durations imposed on a case-by-case basis.

35. DairyNZ strongly opposes the imposition of 10-year maximum consent durations under Clause 275 as this approach would greatly disincentivise the long-term investments in productivity and sustainability that are needed to ensure New Zealand's dairy sector remains a world-leader.

#### **National Planning Framework – There's too much to be decided 'down the track.'**

36. The Bill lacks specific information and leaves important decisions to be made by the National Planning Framework. Issues that are contentious or complex have been delegated to the NPF, which will be responsible for resolving conflicts e.g. between system outcomes, defining the resource allocation principles, allocating specific resources, setting environmental limits, and granting exemptions.

37. The vague nature of the National Planning Framework (which will not be finalised until the Bill is approved) creates several problems:

- Both Parliament and the public are uncertain about the law being passed.
- Farmers cannot assess the impact of the proposed resource management framework as the details will be decided through secondary legislation.
- Over time, Ministers may have different interpretations of the National Planning Framework. For example, a farmer may be granted access to a resource based on one set of allocation principles, only to have it taken away if the National Planning Framework is changed.

#### **Resource Allocation Principles are not defined.**

38. The Bill lists three resource allocation principles (Clause 36) that must be considered (sustainability, efficiency, and equity). There are no definitions or discussion of these principles, or which might take priority or whether these should be balanced.


39. Issues surrounding sustainability and equity are likely to be the subject of significant debate, unless clearly defined in this context. What constitutes 'efficiency' in respect of allocation decisions will be of particular importance for the dairy sector. The principle of efficiency can be unpacked to include its different aspects e.g. allocative, dynamic, technical and productive efficiency. Until these important principles are clarified it is impossible to consider the direct and indirect implications.

40. DairyNZ recommends that there is further work done to better define, discuss and understand the implications of the trade-offs associated with using these principles to allocate resources.

#### **Existing issues with the RMA may be carried through without further amendment.**

41. The Bill intends to better provide for activities as permitted activities. Delivery on this intention is contingent on the NBEA framework and wording ensuring there are no barriers to this intent.

42. A recent Environment Court interim decision (*Aratiatia Livestock Limited v Southland Regional Council [2022] NZEnvC 265*) has highlighted a risk the scope to provide for some activities through



permitted activity status may be significantly narrowed or limited. This is due to the Environment Court's interpretation that section 70 of the RMA applies to diffuse discharges for incidental farming activities. Other, non-incidental activities are managed through specific rules.


43. A potential implication of the Environment Court's interpretation of section 70 of the RMA is that Regional Councils cannot provide for discharges as a permitted activity unless it is first satisfied that the activity will not have significant adverse effects on aquatic life, even if these discharges are incidental, and the environmental impacts of a specific activity are not well known.
44. Section 70 has to date been interpreted as applying to point source discharges, where contaminants are discharged directly into a waterbody from a single fixed point. The Environment Court's decision creates a risk that no discharges can be allowed into a catchment that is degraded.
45. It is our firm view that S70 applies to point source discharges but does not apply to diffuse discharges. However, the Environment Court's decision means that this is not currently clear. This decision and the applicability of the decision to other land uses has the potential to significantly constrain the extent to which permitted activities may be provided for through the NBEA. This is because Clause 118 of the NBEA closely replicates the wording of S70 of the RMA.
46. The potential implications of this Environment Court decision are significant and need to be understood. If affirmed, Clause 118 of the NBEA requires amendment.

**Environmental limit determination and local decision making on greenhouse gas mitigation may be fraught without transparency and further guidance. Ideally, this is the purview of national level policy.**

47. The Bill requires the introduction of hard environmental limits (Clauses 37 – 46). These limits will be prescribed in the national planning framework, or the Minister may prescribe the requirements for environmental limits to be set in natural and built environment plans (Clause 39).
48. While environmental limits are warranted, how and on what basis they are set (including the evidence before decision makers) is critical. For example, New Zealand's current climate targets and carbon budgets are derived from IPCC global assessments. This is despite the IPCC stating that *"These pathways illustrate relative global differences in mitigation strategies, but do not represent central estimates, national strategies, and do not indicate requirements...National and sectoral characteristics can differ substantially from the global trends shown<sup>1</sup>."*
49. The materiality of these choices flows through to NZ ETS unit supply settings and the consequent cost on businesses and the economy to meet carbon responsibilities. DairyNZ believes environmental limit setting must use sound science, canvass multiple perspectives, understand and quantify the full set of trade-offs in making decisions, and be reviewable in light of new and emerging evidence. At the local level it may also make sense to ensure there is flexibility to meet the localised trade-offs that communities might be prepared to make i.e. a one size fits all approach may not make sense.
50. These high-level targets now flow down to local government who will have some responsibility for greenhouse gas mitigation. While the government has provided guidance to Council's for processed industrial heat, there is no such guidance for agriculture.

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<sup>1</sup> IPCC, 2018: Summary for Policymakers. Global Warming of 1.5°C. pp.16.

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51. We have seen one draft plan where a Council has conflated long and short-lived greenhouse gases (not sound science) and used global mitigation pathways (contrary to IPCC's advice) to justify its own climate goals. The IPCC often states that its advice is policy relevant but not policy prescriptive because of the inherent choices and trade-offs that science cannot answer. This Council's approach, if implemented, is at odds with national targets and could over-reach ambition with consequent and unnecessary economic impacts.
  52. The industry has worked extensively with the Government over the last 3 years to advance a pricing and incentive regime for agricultural biological GHG's that, unlike the NZ ETS, is fit for purpose. This approach is intended to also take account of on-farm vegetation (sequestration) that is not currently recognised in either GHG inventories or the NZ ETS. This scheme is scheduled to come into effect from 1 January 2025. To have Councils' supplementing this, and potentially dampening or exacerbating these economic signals is problematic and undermines the agriculture sector's efforts to date.
  53. DairyNZ's preference is that greenhouse mitigation for the agriculture sector is best dealt with at the national level and not also the responsibility of local government. An express exclusion of agricultural greenhouse gasses could be a simple solution.
  54. If the Government disagrees with this approach, then guidance to Councils about core climate change policy issues is warranted to ensure consistency, aid clarity and provide predictability. It would be undesirable to have a particular activity accepted in one region, but not in another, simply because of misconstrued climate goals.

**Freshwater Working Group needs appropriate representation to guide allocation decisions.**

55. The Bill proposes a Freshwater Working Group be set up to provide a report on options for water allocation (Clauses 689-693). It will be important to include representatives of existing users, potential users, and those with expertise in economic allocation decision making.
56. The impact on existing-use rights to resources could be problematic given that regional planning committees, comprised only of members from local government and Māori, could see existing access to some resources (e.g., freshwater) eroded over time, with obvious impacts on investment certainty.
57. It is also noted the Government proposes that water allocation will move from the current 'first-in-first-served' approach to allocation mechanisms determined by the regional planning committee. The absence of any business representation (apart from the normal submission process) could be problematic if it is decided to reduce water takes and/or reallocate water.
58. The effective ruling out of increased market-based mechanisms for freshwater management and allocations based on price is disappointing. Bureaucratic mechanisms for allocation (e.g., merit based) are a weak (uncertain) substitute for individual business decision-making. It will also, by definition, create greater uncertainty as to what constitute "good uses" of freshwater in the eyes of the regional planning committee.
59. Clearly, investors will not invest in relevant schemes if they consider their rights to future water use will be unduly jeopardised. It is certainly the case that some investments have been delayed, or simply abandoned, because of uncertainty over existing and future water property rights. To





secure future investment in water infrastructure, current property rights to water need to be enhanced to provide greater certainty of future use.

**Ministerial powers in the Bill are significant.**

60. The Minister for the Environment appears to have many powers to give effect to the National Planning Framework (Clause 630). This includes, to set objectives, environmental limits (air, indigenous biodiversity, coastal water, estuaries, freshwater and soil), targets and policies for each region. The Minister can also exempt a region from an environmental limit, thereby choosing which regions may develop, or not.
61. Given the range of powers for a Minister to make changes via regulation, there is potential for significant changes in policy positions depending on circumstances or context. Because the Bill has strictly limited appeal rights, it will be important that ministerial powers are used sparingly, and that adequate account is taken of affected parties when decisions are made, including the adequate consideration of trade-offs between economic and environmental interests.
62. Further, these proposals shift planning from the local level (district and regional) through to a sub-set of regional representatives. We have concerns that between the powers of the Minister above and the sub-set of regional council representatives, whether these processes will fairly represent rural interests.

**Infringement penalties and fines.**

63. The Bill proposes significant changes in relation to infringement offences and penalties. Maximum fines for non-compliance are proposed to increase from \$300,000 to \$1,000,000 for individuals and from \$600,000 to \$10,000,000 for companies. The Bill also proposes to prohibit individuals and companies insuring against fines issued under the NBEA.
64. Sections 762(1) and 764 of the Bill outline that the NBEA will be a strict liability statute, in line with the RMA, meaning there is no requirement to prove an intent to commit an offence. For dairy farmers, under the RMA this has resulted in prosecutions in instances where equipment has broken down (for example, in the application of effluent to land).
65. Dairy farming is subject to a range of complex interactive factors, in particular environmental factors, that are outside the farmers' immediate scope of control. Removing the ability to insure against fines while increasing the maximum amount of these fines creates a significant risk that dairy farmers will face unnecessarily punitive and potentially ruinous financial penalties for events outside of their control.
66. The ability to insure against these risks should be provided for within the NBEA, and there will need to be greater clarity provided around how fines will correspond to intent and the actual environmental impact resulting from an infringement.

**SUBMISSION ENDS**