10 February 2023

Committee Staff
Environment Committee
Parliament Buildings
Wellington

environment@parliament.govt.nz

Dear Environment Committee

Orion Submission on the Natural and Built Environment Bill

1. Orion New Zealand Limited ("**Orion**") thanks the Environment Committee for the opportunity to comment on the Natural and Built Environment Bill (NBE Bill).

2. Orion supports the introduction of the NBE Bill and the Spatial Planning Bill. We are looking forward to the introduction of the Climate Adaptation Bill. Reforming the Resource Management Act 1991 (RMA) is essential if we want a system that is integrated, cheaper and easier to use, enables infrastructure and responds to the climate emergency.

3. Orion also supports the submission of the Electricity Networks Association on the NBE Bill.

4. However, we would like to raise with the Committee several matters of concern that we have with the NBE Bill. These matters are –

    - There will still be the risk of delays in consenting;
    - New clause 26 dealing with existing use rights omits reference to designations, and is unclear;
    - Matters relating to reverse sensitivity are not adequately dealt with;
    - Greater emphasis could be placed on the importance of infrastructure in system outcomes;
    - The relationship between designations and the National Planning Framework is unclear;
    - The Bill does not address adequately the integration of decision-making where multiple consents from multiple consent authorities are required;
    - The current makeup of regional planning committees does not expressly provide for infrastructure experts;
    - The Bill is very long and, for usability and accessibility, could be split into two or more Bills; and
    - The proposed 10-year implementation period for RMA reforms is simply too long.

5. Before we address those matters, here is some background about Orion. Orion owns and operates the infrastructure that distributes electricity to over 219,000 customers in central Canterbury. As one of the largest electricity distribution networks in Aotearoa New Zealand, we cover remote rural areas, regional towns and Christchurch City.

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6. Orion is a community owned company with two shareholders – an 89% shareholding by Christchurch City Holdings Limited (which is 100% owned by Christchurch City Council) and an 11% shareholding by Selwyn District Council. Orion also owns Connetics Limited (100% shareholding). Connetics designs builds and maintains electrical infrastructure across Aotearoa New Zealand.

7. As Aotearoa New Zealand transitions to a low carbon economy, the energy sector has a critical enabling role to play. The electricity distribution system will be particularly crucial to enable the public to take advantage of new technologies that will lower our carbon footprint.[1]

8. At Orion, our purpose is powering a cleaner and brighter future with our community. We want to ensure that we are a vital player in that transition for our community, our region and Aotearoa New Zealand.

9. We are also committed to sustainability - we want to sustainably manage the economic, environmental and social effects of our business to achieve strong connected communities, a healthy environment and a prosperous economy. By acting ethically, transparently and responsibly, we can create long-term value for our shareholders and our wider community.

Specific concerns

Delays in consenting

10. Our first concern relates to the delays in obtaining resource consents. We are not convinced that the proposed changes to the consenting regime in the NBE Bill are necessarily going to make things quicker or easier for infrastructure applicants, even with the fast-track consenting provisions.

11. Orion has found that the current consenting regime under the RMA is complex, costly and slow. It does not allow us to deliver the distribution network in the most efficient and effective way. A recent example where we have experienced consenting delays relates to one of our key projects – the building and commissioning of a new zone substation at Milton Street and connecting it with new 66kV XLPE cables to the existing 66kV sub-transmission network at the Bromley zone substation. Whilst the works on the cable replacement have been able to proceed, the works on the new zone substation have not been able to proceed until consenting matters are resolved. This incurs costs for us when construction cannot proceed as planned and our contractors have currently disestablished the construction site in the meantime.

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[1] See the Boston Consulting Group (BCG) report *The Future is Electric A Decarbonisation Roadmap for New Zealand's Electricity Sector* 2022 which was commissioned on behalf of several participants across the electricity sector, comprising generators, distributors (including Orion), and retailers. The report notes that "*As the electricity system becomes more dynamic and distributed, it will need to accommodate multidirectional flows and more distributed resources (with greater levels of unpredictability and intermittency). The ability of networks to incorporate smart assets is important, and enabling mechanisms such as low voltage visibility, Advanced Distribution Management Systems (ADMS), and distributed energy resources will be critical to the electricity sector of the future*."

12. With the need to decarbonise, New Zealand's electricity system must become more dynamic and distributed. The system (including distribution networks) is going to require significant new infrastructure and therefore investment, and as the Boston Consulting Group report stated,

> *".. .[It] requires a replacement of the RMA that is fit-for-purpose and meets the needs of a rapidly growing electricity sector. It must be supportive of modern technologies, and appropriately consider the benefits of renewable electricity development (not just its use of resources)*[2]

13. We urge the Committee to have another look at the routine consenting provisions of the Bill to see whether any improvements can be made to speed up consenting processes. We note that many of the routine consenting provisions of the RMA have been transposed into the NBE Bill, and it is likely that the same delays with routine consenting will remain. Now is the time to make improvements to these provisions. New Zealand will need an efficient and effective consenting regime to meet its emissions budgets and achieve decarbonisation. This is particularly so for the electricity distribution sector.

14. In any event, Orion acknowledge the fast track consenting process that is set out in clauses 315 to 327 of the Bill but considers there is still the possibility for delays with this process. Orion considers the following aspects of the specified housing and infrastructure fast-track consenting process could result in undue delay:

    a. There is no time limit by which the Minister must make a decision under clause 318 of the Bill to accept or decline an application to use the fast-track process.
    b. The Minister may direct the Environmental Protection Authority to suspend processing of an application once the application has been referred to the expert consenting panel (see clause 319). There is no time limit on the length of the suspension and there likewise appears to be no limitation on the reasons the Minister may give for the suspension.
    c. The timeframes for decision making are the same as those under the general consenting process.
    d. There is the ability for regulations to provide that the period to issue decisions on these applications may be extended under clause 326.
    e. In a departure from the process used for the COVID-19 Recovery (Fast-track Consenting) Act 2020, the procedure for this fast-track process requires notification of applications in accordance with the NPF or plan provisions. There is a risk that this mandatory notification may result in increased timeframes and a higher likelihood of a hearing taking place.

15. Our submission is that this "fast-track" process may not necessarily result in a more expedient outcome and could still lead to consenting delays and therefore increased costs. More time frames must be built into these provisions, particularly at the front end of the process, to give infrastructure providers certainty that this process is truly a fast-track process.

Existing use rights

16. Clause 26 of the Bill provides that certain existing uses are protected in relation to land. This is an

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[2] See page 144.

important provision and to some extent reflects section 10 of the RMA. However, our submission is that there appears to be a mistake with clause 26(1). Section 10(1)(b) of the RMA provides that land may be used in a manner that contravenes a rule in a district plan or proposed district plan if

i. **the use was lawfully established by way of a designation**; and
ii. the effects of the use are the same or similar in character, intensity, and scale to those which existed before the designation was removed,

17. However, in clause 26, there is no longer any reference to uses that were lawfully established by a designation. It is not obvious to us why the reference to designations has been excluded, and our submission is that section 10(1)(b) should be carried over to the NBE Bill. Existing use rights that protect activities authorised under historical designations should be continued. They are an important method to continue the conditions under which existing infrastructure operates.

18. We would also like to raise with the Committee, clauses 26(2) to (6) of the NBE Bill. In our view, these subclauses are unclear. Is it that in certain cases existing uses will need to comply with particular plan rules? Is it the national planning framework that must trigger the application of subclause 26(2) or is it the plan rules? Subclauses (3) and (4) appear to override subclause (2) but is this the intention? We submit that these clauses would be clearer if they were separated into two or more clauses.

Reverse sensitivity

19. Section 104 of the RMA requires decision makers considering applications for resource consent to have regard to "*any actual and potential effects on the environment of allowing the activity*". This is echoed in clause 223 of the NBE Bill. It is established law that the effects to be considered include reverse sensitivity effects on established land uses. As summarised by the Environment Court:

> *"Reverse sensitivity is the legal vulnerability of an established activity to complaint from a new land use. It arises when an established use is causing adverse environmental impact to nearby land, and a new, benign activity is proposed for the land. The "sensitivity" is this: if the new use is permitted, the established use may be required to restrict its operations or mitigate its effects so as not to adversely affect the new activity."*[3]

20. The protection of existing lawfully established land uses from inappropriate sensitive development is a central concept in the existing system that would benefit from recognition in legislation. It is submitted that reverse sensitivity could be provided for in the NBE Bill in either clause 6 and/or clause 223. The following amendment, or an amendment to similar effect, to clause 6 is sought:

> ***6 Decision-making principles***
> *(1) To assist in achieving the purpose of this Act, the Minister and every regional planning committee, in making decisions under the Act, must—*
> *(a) provide for the integrated management of the environment; and*
> *(b) actively promote the outcomes provided for under this Act; and*

[3] *Ngatarawa Development Trust Limited v The Hastings District Council* W017/2008 [2008] NZEnvC 100 (14 April 2008)

(c) recognise the positive effects of using and developing the environment to achieve the outcomes; and

(d) manage the effects of using and developing the environment in a way that achieves, and does not undermine, the outcomes; and

(e) manage the cumulative adverse effects of using and developing the environment; ***and***

(f) manage conflicts between incompatible land uses.

System outcomes

21. Clause 5 of the NBE Bill includes the outcomes the Minister and every regional planning committee must "*actively promote*". Understandably, ecological integrity is afforded "protection" or "restoration", however it is submitted that an opportunity is missed to recognise the importance of infrastructure provision in achieving both environmental and social goals with stronger wording in that respect. We ask the Committee to consider strengthening clause 500(i) of the Bill which currently refers to the ongoing and timely provision of infrastructure services to support the well-being of people and communities.

The relationship between designations and the National Planning Framework

22. Orion supports the proposed changes to the designation process insofar as the amendments allow greater flexibility in the timing of infrastructure provision through a lengthening of the lapse dates for designations.

23. Clause 92 of the NBE Bill echoes section 43D of the RMA in setting out the relationship of designations with rules in national direction. Both provisions provide that a rule in the National Planning Framework, or a National Environmental Standard, prevails over a designation. Given the very limited national direction that has been promulgated under the RMA this has not had a wide-ranging impact (with the exception perhaps of the National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health). However, the degree of national direction under the NBA Bill with the National Planning Framework is likely to increase considerably.

24. The NBE Bill confirms designations will only be available as a tool for projects that are "i*n the nature of a public good*"[i], delivering "*an identifiable public benefit outcome*"[4] which "*must include a social, cultural, or environmental benefit*"[5]. Orion frequently utilises designations to enable present and future security and flexibility in the provision of electricity distribution, and in particular its substations.

25. Given the clear recognition of the importance of works allowed by a designation, there is a strong case for strengthening the central role they play in infrastructure provision. It is Orion's concern, however, that the likely increase in the parameters of national direction under the NBE Bill will result in designations no longer providing the security and flexibility required.

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[4] NBE Bill, clause 500(5)

[5] NBE Bill, clause 500(6)

26. Orion seeks the relationship between designations and the National Planning Framework to be revisited to ensure that designations provide requiring authorities with the certainty necessary to provide public benefits in a timely manner particularly as they pertain to electricity distribution.

Integration of decision-makers

27. Orion is also concerned about the way in which the NBE Bill addresses integration between decision-makers where a number of consents are required. We acknowledge that the Bill allows for an integrated approach if there is a direct referral to the Environment Court, a proposal of national significance or the fast track consenting pathway is used. We also acknowledge that the Bill retains, from the RMA, the provision relating to joint hearings by two or more consent authorities of applications that relate to the same proposal.[6] However, Orion submits that real efficiencies can be gained by simplifying processes for more routine decision-making for infrastructure projects where multiple consents from multiple decisions-makers are required.

28. Currently under the RMA, an applicant may need to apply to both the territorial authority and the regional council for multiple consents to carry out an activity. This incurs time and increased costs even for relatively simple projects.

29. However, what is required are clear provisions in the Bill that allow for integration of decision-making for routine infrastructure projects. The applicant should not be required to apply for multiple consents to two or more decision-makers where it concerns a relatively simple and routine infrastructure project.

30. The briefing materials presented to the Environment Committee and released by the Committee in December 2022 state that an RMA problem is that "*multiple consents [are] required for the same activity where local authority functions (such as earthworks) are shared*." The briefing materials address this by stating that under the NBE Bill "*Plan provisions are integrated and rules assigned to one consenting authority*.[7]

31. Certainly, clause 117 of the Bill specifically provides that a plan must, in relation to a rule, assign responsibility for **administering** that rule to the regional council or to 1 or more territorial authorities, as appropriate. However, we do not see how this provision will work in practice. Local authority functions are still prescribed by virtue of clauses 644 and 646 of the Bill which set out the matters for which regional councils and unitary authorities are responsible and the matters for which territorial authorities and unitary authorities are responsible. An activity may still require multiple consents from different authorities, and we submit that clause 117 does not override clauses 644 or 646 of the Bill.

32. We note that clause 96 of the Bill provides that "t*he purpose of a plan is to further the purpose of this Act by providing for the integrated management of the natural and built environment in the region that the plan relates to*", however the Bill does not provide specifically for integrated decision-making as such

[6] See new clause 218, and section 102 of the RMA.
[7] See the Ministry for the Environment briefing materials dated 9 December 2022, titled "NBE Plans".

where regional councils and territorial authorities are the consent authorities for the same activity and they have their separate functions under clauses 644 and 646.

33. In the alternative of amending the Bill to make it clearer for integrated decision-making, we ask the Environment Committee to consider the recommendations of the Productivity Commission and the Resource Management Review Panel as to practical changes for the administration of the consenting regime under the new legislation. The Productivity Commission in 2017 noted that

> *"The integration of plans and processes needs to be looked at from the point of view not only of plan administrators but also the customers – the people or businesses who require authorisation for a land use development. A customer-unfriendly planning system would force applicants to "do the rounds" of multiple agencies and go through their separate yet often similar processes. The development can only proceed when all agencies have "ticked off" and consented to each stage. Empirical research demonstrates that these sorts of processes incur costs in time and project delays from dealing with large but fragmented organisations. Internally, teams within such organisations can hold different viewpoints and coordinate poorly (Grimes & Mitchell, 2015).*
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> *In a streamlined and integrated planning system, the customer should experience a single application process. While behind the scenes, several agencies may be involved, the applicant has an efficient "one-stop shop" experience. This may sound simple and sensible, but achieving it involves complex inter-agency cooperation and systems – both horizontally and vertically - that elude many government bureaucracies*."[8]

34. The same issue was also raised by the Resource Management Review Panel where the Panel proposed *"a single 'open portal' for lodging consents, which could simplify the applicant's experience and require local and regional authorities to coordinate more closely on related consents"*.[9]

Make up of Regional Planning Committees

35. The NBE Bill removes decision making for key planning decisions from individual regional and territorial authorities and places it in the hands of a regional planning committee. The make-up of regional planning committees is governed by clause 2 of Schedule 8 of the NBE Bill, which requires representatives from relevant territorial authorities, the regional council, members appointed by a Maori appointing body and a member appointed by the responsible Minister in respect of the committee's responsibilities under the proposed Spatial Planning Act 2022.

36. There have been repeated calls for infrastructure sector representation on regional planning committees[10] and Orion strongly supports these calls. It is imperative that regional planning committees have the benefit of a member representing the infrastructure sector generally, or the electricity sector in particular. An insight into the realities of how plan provisions affect infrastructure providers on a day

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[8] New Zealand Productivity Commission (2017) Better urban planning: Final report Date: February 2017, see page 10

[9] See the Report of the Resource Management Review Panel 2020 "New Directions for Resource Management in New Zealand", pages 272 and 287.

[10] Submission to the Ministry for the Environment on the discussion document*, Our Future resource management system: Materials for discussion*, 3 March 2022, paragraph 4.2

to day basis will be invaluable in the decision-making process.

37. Regional planning committees are tasked with creating a regional spatial plan that, among other things, "*must support a co-ordinated approach to infrastructure funding and investment by central government, local authorities, and other infrastructure providers*". To be able to effectively create such a strategy, infrastructure providers must be in the room and part of the conversation from the outset. The intricacies of infrastructure development and how it is able to be built and maintained efficiently within the new framework requires experienced and specialist input.

Length of the Bill

38. Whilst we welcome the reforms to the RMA, we want to raise with the Committee the accessibility and usability of this proposed legislation. The current NBE Bill is 807 pages (excluding the explanatory note) and consists of 861 sections and 15 Schedules. It also needs to be read together with the Spatial Planning Bill. Navigating through 800+ pages is a daunting task for any reader.

39. We ask the Committee to investigate whether the NBE Bill can be arranged in another way or split into more than one Bill. We think this will improve the overall usability and accessibility of the legislation. We suggest that Part 7 – Coastal Matters could be a separate Bill. Parts 11 and 12 could also be in a separate Bill dealing with administration, compliance and enforcement. Alternatively, the Committee could also consider grouping the provisions about the national planning framework, spatial planning and natural and built environment plans in one Bill. Smaller bills with appropriate linkages will be easier to navigate.

40. We also submit that the Committee consider using legislative examples in the Bill. Whist the Bill occasionally uses the words "for example", the Bill does not include any actual examples. Legislative examples are helpful and improve accessibility (such as were used in the Water Services Act 2021). The NBE Bill would benefit from their inclusion.

Implementation of the Bill

41. Finally, Orion is concerned about the time it will take to implement the NBE Bill and the Spatial Planning Bill. As has been indicated, it is likely to be a 10-year process as we wait for the National Policy Framework to be developed, regional planning committees to be appointed, regional spatial strategies to be drafted and finally NBE plans to be prepared. All of this will be a staged approach as not all regions will start together. It is anticipated that three regions will start first, and 12 months later another group of regions will follow.

42. We appreciate that the timetable is driven by the need to ensure that the hierarchy of direction and guidance from the National Planning Framework to the regional spatial strategies to NBE plans is achieved. We also acknowledge that further work needs to be completed in terms of te Tiriti o Waitangi settlements and ensuring that these are properly provided for under the new system. However, our concern is that a 10-year implementation process is simply too long. The RMA will continue to apply in the meantime. What this means is that the challenges in the current system that have been identified

by the Ministry for the Environment will likely continue for another 10 years. These challenges are[11]

- cumulative environmental effects not being well managed;
- resource management plans have restricted housing and infrastructure needed in response to population growth;
- the lack of integration across the system, resulting in inefficiencies and delays;
- insufficient recognition of te Tiriti o Waitangi and lack of support for Māori participation; and
- the need to urgently reduce carbon emissions and adapt to climate change.

43. On this basis, our strong submission is to ask the Environment Committee to expedite this reform. We do not think we have the luxury to wait approximately 10 years to see the benefit of RMA reforms.

Concluding remarks

44. Thank you for the opportunity to provide this submission. We wish to be heard in support of this submission.

45. We do not consider that any part of this submission is confidential. If you have any questions about this submission please contact Vivienne Wilson, Policy Lead, Orion New Zealand Ltd at vivienne.wilson@oriongroup.co.nz .

Yours sincerely

Dayle Parris
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[11] See https://environment.govt.nz/publications/our-future-resource-management-system-overview/