



26 January 2023

**Attention:** Committee Staff

Committee Staff  
Environment Committee  
Parliament Buildings  
Wellington

Tēnā koe

#### **Urban Task Force Tauranga's Submission on the Natural and Built Environment Bill**

1. The Urban Task Force (**UTF**) has been incorporated as a society with its purpose being to represent its members who are property professionals and funders, developers, Iwi and hapū, and owners and managers of properties in Tauranga City. The UTF seeks to provide strong and informed leadership to local authorities, promote and foster productive local networks around property and related issues, and to advocate for the property industry by making submissions to both central and local government.
2. Tauranga is a growing city. Our community is facing unprecedented challenges. The intent of UTF is to focus on the opportunities presented by growth and to unlock these opportunities by working collaboratively and innovatively across government, local government, and private sectors.
3. Tauranga has a severe shortage of zoned and serviced land to provide new homes for residents, and spaces for business to invest in. This has caused severe housing affordability issues. Tauranga City has an urgent need for required infrastructure and more affordable housing. Poor growth management has led to a failing city centre, a lack of essential community infrastructure and facilities, and a lack of investment in utilities infrastructure necessary to support growth. The UTF advocates for better connected thinking, connected planning, connected governments and strong leadership.

#### **Natural and Built Environment Bill– Overview Comments**

4. The Natural and Built Environment Bill's (**NBE Bill**) purpose is to enable the use, development, and protection of the environment in a way that (in short) supports the environment and gives effect to the Treaty of Waitangi. Although development is mentioned in the purpose of the NBE Bill, the overall tone and focus of the NBE Bill is on the environment and giving effect to the Treaty of Waitangi rather than urban development and the delivery of housing.
5. Development is included in the system outcomes sought, through the *promotion* of creating well-functioning urban and rural areas through various examples including "the ample supply of land for development." "Housing" is identified for the infrastructure fast-tracking process amongst communications, energy, transport, water, and other central or local government assets. However, subdivision in the NBE Bill is largely treated in the same way to what it is under the Resource Management Act 1991 (**RMA**).

6. UTF considers that changes are required to the NBE Bill to achieve the outcomes which the government seeks – namely that it needs to be “faster, cheaper and better” as Minister Parker said when announcing the Spatial Planning Bill and NBE Bill.
7. UTF’s particular submission points are produced in table format below.

**Table: UTF Submission**

Clauses	UTF submission
<b>Part 1 – Purpose and preliminary matters</b>	
<p><b>Clause 3 – Purpose</b> <i>Includes to recognise and uphold te Oranga o te Taiao</i></p>	<p>The term “te Oranga o te Taiao” could pose interpretation issues for decision makers and participants in the system (much like the term “Te Mana o te Wai” in the National Policy Statement for Freshwater Management 2020. It is defined to mean:</p> <p>(a) the health of the natural environment; and            (b) the essential relationship between the health of the natural environment and its capacity to sustain life; and            (c) the interconnectedness of all parts of the environment; and            (d) the intrinsic relationship between iwi and hapū and te Taiao</p> <p>UTF asks that consideration be given to whether this could be clearer.</p>
<p><b>Clause 5 – System outcomes</b></p>	<p>To assist in achieving the purpose of this Act, the national planning framework and all plans must provide for the following system outcomes:</p> <p>(c) well functioning urban and rural areas that are responsive to the diverse and changing needs of people and communities in a way that <b>promotes</b>—</p> <p style="padding-left: 40px;">(i) the use and development of land for a variety of activities, including for housing, business use, and primary production; and            (ii) the ample supply of land for development, to avoid inflated urban land prices; and            (ii) housing choice and affordability; and            (ii) an adaptable and resilient urban form with good accessibility for people and communities to social, economic, and cultural opportunities; and</p> <p>the ongoing and timely provision of infrastructure services to support the well-being of people and communities.</p> <p>UTF supports these system outcomes. However, they are two of a number of system outcomes within clause 5 and risk being read down in favour of other system outcomes such as the availability of highly productive land for land-based primary production. UTF seeks that the above outcomes (c) and (i) be made more directive in nature.</p>
<b>Part 2 – Duties and restrictions</b>	
<p><b>Clause 27 – When existing use rights may be lost</b></p>	<p>The period for losing existing use rights is proposed to reduce from 12 to 6 months. UTF considers that this is unreasonable and seeks that it be retained at 12 months.</p>
<b>Part 4 – Natural and built environment plans</b>	
<p><b>Clause 108 – Matters that must be disregarded when preparing or changing plans</b></p>	<p>When preparing or changing a plan, the Regional Planning Committee must disregard any adverse effect arising from the use of the land by–</p> <ul style="list-style-type: none"> <li>• people on low incomes; or</li> <li>• people with special housing needs; or</li> </ul>

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	<ul style="list-style-type: none"> <li>• people whose disabilities mean that they need support or supervision in their housing.</li> </ul> <p>UTF is concerned that this clause would prevent the consideration of a concentration of emergency housing facilities as has been the experience of Rotorua in recent times. UTF seeks that the clause be amended to that it does not preclude consideration of these land uses where they give rise to cumulative effects.</p>
<b>Part 5 – Resource consenting and proposals of national significance</b>	
<b>Clause 153 – How activities are categorised</b>	<p>UTF supports the rationalisation of categories of consent activity status from 6 to 4. However, UTF seeks that controlled activity status be retained in its present form – i.e. that controlled activity consents <i>must</i> be granted.</p> <p>The controlled activity status proposed (decline only in accordance with the relevant provisions of the national planning framework or plan (whichever applies) and the limited discretion conferred by those provisions) is essentially the current restricted discretionary activity status. This could be dispensed with in favour of discretionary activity status only.</p>
<b>Subpart 4 – Notification of applications for resource consent</b>	<p>UTF supports the idea that questions of notification will only fall to the consent authority if the National Planning Framework (<b>NPF</b>) or Natural and Built Environment Plans (<b>NBE Plan</b>) do not deal with notification. But these instruments (the NPF/an NBE Plan) <i>require</i> public notification in some circumstances (clause 205(2)) including where there are “relevant concerns from the community”. This is broad and unreasonable and will be difficult to implement.</p> <p>UTF supports the presumptions (clauses 203, 204) that:</p> <ul style="list-style-type: none"> <li>• For discretionary activities, there will be public notification unless the NPF or NBE Plan state that no public/limited notification is required.</li> <li>• For controlled activities, there will be no public notification unless the NPF or NBE Plan state otherwise.</li> </ul> <p>While UTF understands that the idea of having non-notification decisions reviewed by the Environment Court instead of the High Court is intended to be more <i>accessible</i> (clause 696), UTF is concerned that it will be more lengthy and costly (and risk delving into the merits). UTF seeks that non-notification decisions should remain within the judicial review jurisdiction of the High Court.</p>
<b>Clause 223 - Consideration of resource consent application</b>  <i>Specific considerations</i>	<p>When considering resource consent applications, the consent authority must disregard any adverse effect arising from the use of the land by–</p> <ul style="list-style-type: none"> <li>• people on low incomes; or</li> <li>• people with special housing needs; or</li> <li>• people whose disabilities mean that they need support or supervision in their housing.</li> </ul> <p>UTF is concerned that this clause would prevent the consideration of a concentration of emergency housing facilities as has been the experience of Rotorua in recent times. UTF seeks that the clause be amended to that it does not preclude consideration of these land uses where they give rise to cumulative effects.</p>

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<b>Clause 277 – Circumstances when consent conditions can be reviewed</b>	<p>The proposed circumstances for review of resource consents, including land use consents (and including duration) in exceptional circumstances are unreasonable and create uncertainty for consent holders who have invested in the consent process and delivery of projects.</p> <p>The exceptional circumstances include where it is necessary to adapt to the effects of climate change or to reduce risks from natural hazards – which is particularly unreasonable given the climate change/natural hazard requirements that developments are now required to meet.</p>
<b>Subpart 8 – Specified housing and infrastructure fast-track consenting process</b>	<p>UTF supports the carry over of the fast-track consenting process.</p> <p>For housing, an ‘eligible activity’ is defined as:</p> <p>a housing development that—</p> <ul style="list-style-type: none"> <li>(i) supports well functioning urban environment outcomes; and</li> <li>(ii) is located in an urban area defined in a regional spatial strategy, a plan, or district plan under the Resource Management Act 1991 or located on whenua Māori; and</li> <li>(iii) contributes significantly to addressing the demand or need for housing in a region, including by scale or type of housing (for example, affordable housing):</li> </ul> <p>UTF supports this.</p>
<b>Part 8 – Matters relevant to natural and built environment plans</b>	
<b>Clause 512 – Recommendation by regional planning committee</b>	<p>When considering a requirement and any submissions received, a regional planning committee must not have regard to—</p> <ul style="list-style-type: none"> <li>(a) any effect on scenic views from private properties or land transport assets that are not stopping places; or</li> <li>(b) any effect on the visibility of commercial signage and advertising; or</li> <li>(c) any adverse effect arising from the use of the land by— <ul style="list-style-type: none"> <li>(i) people on low incomes; or</li> <li>(ii) people with special housing needs; or</li> <li>(iii) people whose disabilities mean that they need support or supervision in their housing; or</li> </ul> </li> </ul> <p>UTF is concerned that this clause would prevent the consideration of a concentration of emergency housing facilities as has been the experience of Rotorua in recent times. UTF seeks that the clause be amended to that it does not preclude consideration of these land uses where they give rise to cumulative effects.</p>
<b>Part 9 – Subdivision and reclamation</b>	
<b>Clause 569 – Meaning of subdivision of land</b>	<p>The definition of subdivision of land has been carried over from the RMA.</p> <p>UTF considers that the territorial authority should be able to consider any particular methodology to divide ownership of a freehold title to be a subdivision to ensure good design, planning and outcomes. UTF therefore seeks that the clause be amended to include “<i>the disposition, by any other means or instrument, of the fee simple to part of the allotment</i>”.</p>
<b>Clause 583 – Requirement for consent if land will vest in territorial authority or the Crown</b>	<p>The NBE Bill brings over the requirement for specific consent to be provided where land will vest in a territorial authority or the Crown.</p> <p>UTF seeks that the requirement for consent from every registered owner that has covenants or encumbrances over the area be removed. This is an</p>

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	unnecessary impediment to vesting critical infrastructure in Council and UTF considers that the requirement is time consuming and costly.
<b>Clause 596 – Agreement to sell land or building before deposit of survey plan</b>	<p>This clause provides the right to cancel an agreement to sell land or a building:</p> <p>(a) Any time within 14 days of the agreement being signed; or</p> <p>(b) If the survey plan is not supported to Council for approval within the later of:</p> <p style="padding-left: 40px;">(i) 2 years of subdivision consent; or</p> <p style="padding-left: 40px;">(ii) 1 year after the agreement is signed.</p> <p>UTF opposes the inclusion this clause as it places a restriction on the parties' ability to negotiate a contract and is not relevant to the purposes of the NBE Bill, namely environmental protection.</p>
<b>Clause 620 – Requirement to consult Registrar-General of Land before imposing condition about Amalgamation</b>	<p>Before granting a subdivision consent that includes a condition about amalgamation, the consent authority must consult the Registrar-General of Land about the practicality of the condition.</p> <p>UTF opposes the inclusion of this clause as it is concerned that by including additional approval requirements the consenting process will be inefficient and time consuming. UTF considers that these decisions are able to be made by the local authority without further approval.</p>
<b>Part 11 – Compliance and enforcement</b>	
<b>Part 11 generally</b>	<p>This part of the NBE Bill raises significant concerns for urban and housing development, where developers rely on contractors for the construction and operation of stormwater ponds. UTF understands (and supports) greater emphasis on compliance, but with some of the changes akin to the health &amp; safety compliance regime, namely:</p> <ul style="list-style-type: none"> <li>• New maximum penalties (\$10M for companies)</li> <li>• No insurance/contractual indemnification for fines</li> <li>• New civil penalties</li> <li>• Profit stripping provisions</li> <li>• Enforceable undertakings</li> <li>• Adverse publicity orders</li> <li>• Clearer vicarious liability</li> </ul> <p>UTF is concerned that it will become even more expensive to deliver urban development. UTF seeks that the proportionality of the compliance, monitoring and enforcement provisions be reviewed.</p>
<b>Schedule 6 - Preparation, change and review of natural and built environment framework</b>	
<b>Clause 19 – What the Board must consider</b>	<p>In making its recommendations, the board must not have regard to—</p> <p>(a) any effect on scenic views from private properties or land transport assets that are not stopping places; or</p> <p>(b) any effect on the visibility of commercial signage or advertising; or</p> <p>(c) any adverse effect arising from the use of the land by—</p> <p style="padding-left: 40px;">(i) people on low incomes; or</p> <p style="padding-left: 40px;">(ii) people with special housing needs; or</p> <p style="padding-left: 40px;">(iii) people whose disabilities mean that they need support or supervision in their housing.</p> <p>UTF is concerned that this clause would prevent the consideration of a concentration of emergency housing facilities as has been the experience of Rotorua in recent times. UTF seeks that the clause be amended to that it</p>

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	does not preclude consideration of these land uses where they give rise to cumulative effects.
<b>Schedule 7 – Preparation, change and review of natural and built environment plans</b>	
<b>Clause 69 – Independent plan change requests</b>	UTF notes that no person may request an independent plan change that affects the “strategic content” of a plan. It is not clear what this is, but could be urban boundaries. UTF seeks that this restriction be removed.
<b>Clause 126 – Matters that affect recommendations</b>	<p>However, the IHP, in formulating its recommendations, must not have regard to—</p> <ul style="list-style-type: none"> <li>(a) any effect on scenic views from private properties or land transport assets that are not stopping places; or</li> <li>(b) any effect on the visibility of commercial signage and advertising; or</li> <li>(c) any adverse effect arising from the use of the land by— <ul style="list-style-type: none"> <li>(i) people on low incomes; or</li> <li>(ii) people with special housing needs; or</li> <li>(iii) people whose disabilities mean that they need support or supervision in their housing.</li> </ul> </li> </ul> <p>UTF is concerned that this clause would prevent the consideration of a concentration of emergency housing facilities as has been the experience of Rotorua in recent times. UTF seeks that the clause be amended to that it does not preclude consideration of these land uses where they give rise to cumulative effects.</p>
<b>Clause 137 – rights of appeal</b>	The NBE Bill precludes merits appeal rights in some circumstances. While UTF acknowledges the intent of this, UTF seeks that full merits appeals be provided for on NBE Plans.

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