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Civil Contractors New Zealand submission to the Environment Committee on the Natural Environment Bill and the Planning Bill

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Introduction

Thank you for the opportunity to submit on the Natural Environment Bill and the Planning Bill. CCNZ wishes to appear before Select Committee to be heard on this submission.

CCNZ has prepared this submission:

- to support proposals which streamline the consenting system, leading to more functional and effective infrastructure construction for civil contractors and their clients,
- to suggest improvements for better workability of proposals
- to deliver better outcomes for contractors, communities and the environment

About CCNZ

Civil Contractors New Zealand is the industry association for horizontal construction in New Zealand. We represent more than 800 member businesses and organisations involved in horizontal infrastructure construction, including more than 550 large, medium-sized, and small businesses in civil engineering, construction, and general contracting. Our 300 associate members provide valuable products, support, and services to contractor members. We live and work in all communities across New Zealand.

Our members play a vital role in the development of our country, our economy, and our way of life. They are responsible for the physical construction and maintenance of NZ's transport networks, water networks that bring fresh water to houses and wastewater to treatment plants, cables that bring the internet to homes and businesses, ports, airports and private developments.

These are the services a modern and developed economy must have to compete efficiently in world markets and to deliver high living standards and wellbeing for all New Zealanders.

Hirepool Principal Business Partner

Because of the breadth of work environments, civil contractors have an extensive understanding of how the environment is protected, in practical terms. In addition to constructing roads, culverts and public spaces, they work to construct wetlands as part of projects, as well as maintaining riverbanks, seawalls, embankments, parks and great walks.

A major frustration for contractors is the time it takes to get resource consents, and the impact this has on the continuity of work as project start dates shift to accommodate the uncertainty and lack of continuity generated through consenting. It can take decades of dispute and disagreement between when a project is announced and when it is able to start construction, and a lot of project cost – documented by Te Waihanga New Zealand Infrastructure Commission as around 16 per cent of project cost for smaller projects – is spent on consenting. For this reason, the overwhelming feedback from contractors supports increasing the amount of permitted activities that don't require consent, and reducing the burden of cost, time and disagreement the current resource consenting system places on infrastructure.

In short, resource management is relevant to civil contractors because the construction and maintenance of infrastructure is a use of land and the environment. Civil contractors work for public benefit, to construct and maintain water, transport and other infrastructure networks. This infrastructure is necessary for public health and sets the foundation for other forms of construction. Contractors work to high standards of quality, environmental and health and safety performance, often measured under international standards and their systems are audited to ensure they deliver at a suitable level of quality and environmental protection.

CCNZ acknowledges the widely held view that the Resource Management Act 1991 (RMA) system as it stands is broken. The system has become litigious, expensive, and time consuming, for both resource consenting and planning. To fix the system, more clarity and simplicity is needed.

The current system creates significant cost, both for those seeking consent for development and those seeking environmental protection, because it lacks effective mechanisms for conflict resolution, often leading to a costly stalemate where development is sought, or incentivising ongoing dispute.

CCNZ submits on the Planning Bill and Natural Environment Bill in keeping with our overall approach to RMA reform. Our guiding principles are (as stated in previous CCNZ submissions on RMA reform):

- Consenting pathways that enable the construction, operation and maintenance of infrastructure and the built environment, for both large and small projects
- Efficient and effective and affordable consenting, planning and other regulatory processes, also to avoid unnecessary delays in regulatory processes
- The above to apply to civil construction at all scales, from small earthworks to multi-firm construction alliances for nationally significant projects
- Ability to manage trade-offs or conflicts between RM reform objectives, eg between protection of, and the use and development of the natural and built environment, to enable better outcomes for both the built and natural environments

- Effective mechanisms to balance the environmental cost of development against the benefits infrastructure delivers for our society
- Access to raw materials that support the infrastructure supply chain and enable infrastructure construction, such as aggregate, steel and concrete, and efficient repurposing of construction and demolition waste, whether through recycling or through identified sites for 'enabling infrastructure' - eg quarries, 'circular economy' materials recovery sites, or cleanfills, and recognition of the public benefit these facilities provide as necessary factors in infrastructure construction
- Upholding of property rights, including for existing infrastructure and buildings

This submission is structured as follows:

- Introduction
- Executive summary
- Detailed submissions

EXECUTIVE SUMMARY

1. CCNZ considers the consenting and compliance framework must be practical, proportionate, and workable if New Zealand is serious about delivering infrastructure efficiently and affordably.

2. CCNZ supports the overall approach of the Bills, and efforts to reduce consenting for standard civil works.

   Standard infrastructure works should be enabled through permitted activity rules supported by clear, nationally consistent standard conditions and good practice guidance, rather than bespoke consents that add cost, delay, and uncertainty without delivering better environmental outcomes.

3. CCNZ considers the Goals of both bills need to align well to resolve potential conflict. We understand there is deliberate separation between the bills, as each has its own purpose.

   While goals will be prioritised and provided for through subsequent national direction in the form of national policy statements and national environmental standards, there is risk of continuing an ongoing cycle of legislate-interpret-create case law, without the changes reaching the level of practical application (*clause 11 - NEB, clause 11 - PB*). This is a particular risk for policy, which could be clarified through case law, only to be changed as the government's priorities change.

   Through the reform, it will be important to limit the volume of interpretation and national direction by considering what else can be included in the Bills rather than national direction. Legislation and national standards provide certainty, but overly flexible national policy can create interpretative churn, which is inefficient, confusing, and avoidable.|
   Significant mischief and delay has been caused through uncertain local authority interpretation and risk aversion around the application of National Policy Statements

and National Environmental Standards, particularly around freshwater and contaminated soils. For the sake of a functional system, this must be avoided in the development of future national direction.

4. CCNZ considers soil and sediment management regulations under the current system are not well applied, leading to significant cost escalation and poor environmental outcomes through risk aversion, a lack of support for soil re-use amongst authorities, and a lack of planning to support soil management sites in proximity to projects, leading to excessive cost and inefficient and wasteful cartage. This is escalating the country's infrastructure construction bill and reducing productivity. It is a key issue for members, and must be resolved in the course of RMA reform and replacement.

5. CCNZ supports the even footing demonstrated in the proposed framework of 'avoid - minimise – remedy approach'. At present, a considerable amount of time, effort, and cost is spent avoiding issues that are extremely unlikely to occur or exist. CCNZ also supports the use of environmental offsets and compensation, alongside other effects management approaches, and the flexibility to apply these in any order.

6. Potential issues may arise if a natural resource permit is obtained under the NEB, but land use or planning consent is not granted under the PB, or vice versa (e.g. for a subdivision).

   This is already a risk under the RMA, because land use consents are granted by district councils while water take, discharge etc consents are granted by regional councils. The lack of integration could get worse under the new system though (because of the simultaneous application and potential conflict between two Acts).

   This is because there are separate sets of decisions under separate Acts, rather than holistic decisions. This is a potentially major design flaw, and if it is not addressed adequately, it may result in ongoing stalemate, wasted effort, and unproductive cost.

7. The Bills should include definitions of infrastructure, such as that in the National Policy Statement for Infrastructure 2025. Projects are not conducted in isolation from their regions, and infrastructure supporting activities (as defined in the National Policy Statement for Infrastructure) should also be supported by the Bills, to ensure elements of the construction material supply chain, such as aggregates and cleanfills, are supported by the new system.

   This will greatly increase project efficiency, reduce the financial cost, reduce the environmental cost of cartage in the form of emissions, and reduce wear and tear on the transport network.

   A definition of infrastructure which includes these supporting activities will ensure that the Planning Bill goals require the government and councils to plan for and enable pathways for civil contractors to manage aggregate supply and surplus fill.

8. CCNZ seeks amendments to the definition of “less than minor” in relation to adverse effects, for clarity. In particular, CCNZ is concerned the definition ‘lowers the bar’ as compared to use of this term under the RMA, so a more limited range of effects will be considered “less than minor”. If the definition proceeds as currently stated, perhaps the bar should instead be set at ‘minor’ (where environmental effects are not cumulative).

9. CCNZ strongly supports proposed Schedule 5 of the Planning Bill, which handles designations. Designating authorities need to be given more trust and autonomy.

   They already have plans and systems in place, are working for public benefit, and have passed a test to become a designating authority. If they fail in that duty, they lose that status, so there are already structures in place to ensure they perform their roles as required by society. The proposals under Schedule 5 better support them to do this than the previous system.

10. As noted by Infrastructure New Zealand, the Ministry of Environment has indicated in Select Committee briefing papers, that environmental limits will be set by balancing the protection of human health and the life-supporting capacity of the natural environment with the ‘social and economic aspirations of communities’. That balancing intent is not currently reflected in the goals of the Natural Environment Bill. The Committee should consider its inclusion, if there is to be harmony between the bills, as intended.

11. National standards would help classify a wide range of infrastructure activities as permitted, including routine work, day-to-day tasks, and minor works, because their effects are less than minor, or they are predictable and manageable to achieve predictable and desirable outcomes. It is essential that contractors are involved in setting any standards or environmental limits to ensure they are practical and relevant.

    Currently, contractors’ practical, commercial and engineering knowledge about how physical works can be conducted efficiently while protecting the environment is not used to support the development of standards under the RMA.

    For example, current interpretation of RMA standards add cost and delay to the disposal of uncontaminated cleanfill material; this material also unnecessarily occupies space in landfills which are engineered to accommodate hazardous waste.

    CCNZ seeks amendments to the Bills so that civil engineering knowledge of good working practice (for instance dewatering for sediment control) can be used to develop and refine nationally consistent standards and limits. This will ensure clarity in standards and limits, and make sure any regulations are practical and able to be implemented efficiently for the benefit of project efficiency and the environment, as opposed to unrealistic and obstructive.

    Recent amendments to national direction have not gone far enough and many require bespoke hit-and-miss solutions each time. A considerable amount of national

direction remains unfit for purpose and does not acknowledge practical considerations. In short, the bills need to better provide for practice as well as theory.

12. CCNZ supports environmental limits (in principle), provided they are set in a scientific manner, and at a level that accommodates infrastructure activities.

    Nonetheless, it is inevitable in the case of civil contracting works that temporary or short-term breaches will occur, but with good management practices that manage any breaches or impacts, environmental attributes will return to within limits over time, often with significant improvements for communities or the environment.

13. To achieve the above, the use of adaptive management will be essential, as will national direction to enable, for example, temporary but manageable breaches for infrastructure construction that have no material impact.

    Such management methods should apply to *all* infrastructure to be useful. CCNZ supports the provisions in the Bills which enable these approaches. Some members indicated in discussion that decision making on such adaptive management proposals could be on the balance of probabilities.

14. It appears territorial authorities will use ‘action plans’ to manage or prevent breaches of one or more environmental limits; however, it is not clear whether this refers to common resources (e.g. water quality in a catchment), or specific activities (i.e. sediment content in construction site runoff at point of discharge).

    Clarification on this point would be useful and would better enable CCNZ to comment on implementation. It is also worth considering whether action plans should be forward thinking to proactively manage the risk of environmental limit breaches, as opposed to retrospective, which seems to be how they are considered at present in the legislation.

15. CCNZ asks, in the case of long-lived and renewable energy infrastructure, if there should be more flexibility in permit and consent durations, beyond 50 years for, e.g. roads, hydro dams. Should consented life match the design life?

16. CCNZ notes the penalties provisions in the Bills, and the removal of the ability to insure against fines, are rolled over from the 2025 RMA amendments.

    While the penalties are largely workable (if they are considered in proportion to the consequence of any breach), the removal of insurance cover represents a change in contracting risk profile that may significantly escalate costs. We propose a more reasonable approach than the blanket removal of insurance cover, which is the amendment of this rule barring insurability of penalties (cl. 287) to apply *only to serious or repeat offenders*.

17. CCNZ notes emergency management provisions have largely been rolled over from those in the RMA. These should provide for the ability to work under a state of emergency. However, they are often incorrectly interpreted, which results in

confusion, improper application, and threats of litigation for 'not providing X working days notice under consent conditions'.

Contractors are on the front lines in every natural disaster, and we consider there is a moral obligation to save lives and protect property in an emergency. Those with the knowledge and equipment to save lives and protect property should not be at risk of prosecution for fulfilling this moral obligation.

Our view is that the current legislation provides for this, but too often is subject to misinterpretation and unnecessary bureaucratic litigation.

We suggest a review and redrafting of the emergency response provisions in Part 6, Subpart 2 of the Natural Environment Bill may be necessary for clarity of interpretation to reinforce provisions enabling contractors to take action to save lives and property in the case of emergency, without fear of prosecution – particularly in circumstances where the emergency has arisen because of infrastructure malfunction or failure, or the imminent risk of this malfunction or failure (rather than only when there is an adverse effect on the natural environment).

The provisions should also better support recovery works, such as clearing slips, temporary water diversions and discharges, and installation of temporary bridges and culverts, which are necessary to re-establish infrastructure connections following an emergency.

Cases where this is particularly relevant include situations where contractors undertake necessary emergency works without clear or specific instruction from the council or other infrastructure provider (e.g. removing soil from a blocked road for emergency access), or contactors doing more than what is necessary at the most basic level to remove the cause of the emergency and remedy the situation (e.g. not just clearing a blocked culvert, but also clearing the channel leading to it so it does not block again).

This work is not just about minimising or removing adverse effects – there is judgment involved in preventing recurrence, and emergency works provisions should also be able to authorise works that build resilience.

It's also worth noting that many decisions are time-critical, to the moment. If a person or company can save a life or property through swift action, they should not be prosecuted or penalised for doing so. Emergency works provisions should provide for those working to save lives or properties, and they should support swift, proactive action in the case of a natural disaster, and there are cases where the window of time for action will mean this should not be conditional on approval.

Additionally, direction should be provided to agencies to provide guidance on how the emergency management provisions should be interpreted. While this may not be within Select Committee remit, it could be noted for further action.

Hirepool Principal Business Partner

18. CCNZ supports the transitional arrangements in the PB, pending the development of national direction, and planning instruments.

19. CCNZ supports the provisions that exclude certain amenity effects from consideration under the new system.

20. CCNZ proposes that process agreements for regional spatial planning include sector groups for engagement to optimise planning outcomes for infrastructure in regions and ensure regulations are practical and fit for purpose.

DETAILED SUBMISSIONS

Definitions

Certain types of infrastructure are essential to the functioning of the nation. The comprehensive definitions in the National Policy Statement for Infrastructure 2025 (NPS-I) include, for example, "resource recovery and waste disposal facilities", i.e. cleanfills and other classes of fill, transfer stations, and contaminated waste sites. While this category is included in Schedule 5, PB, this relates only to infrastructure covered under the designation provisions of Schedule 5.

The bills do not currently include definitions of infrastructure, except in relation to designations and 'infrastructure design solutions' under the *Water Services Act 2021*.

CCNZ seeks that the Bills *include the infrastructure definitions as in the NPS-I*, as written. The following definitions are particularly useful:

- Additional infrastructure – earthworks and land disturbance
- Infrastructure supporting activities – quarrying
- Stormwater network

This amendment would address the lack of any reference to quarries or quarrying in the NEB or PB, or, potentially, to quarried materials such as aggregate.

It would also create a foundation for the later creation of national direction relating to infrastructure. On that note, if quarrying is to be considered an infrastructure supporting activity, that should extend to other aspects of the construction materials supply chain, such as cement and concrete plants, and asphalt plants, which also provide necessary materials for infrastructure construction.

Less than minor adverse effect

Clause 15, NEB and PB, eliminates from consideration adverse effects that are "less than minor". This is defined as "an adverse effect that is acceptable and reasonable in the receiving environment with any change being slight or barely noticeable."

Hirepool Principal Business Partner

CCNZ supports this change, which will lead to better and more streamlined outcomes, but considers this definition is vague and will require interpretation by the courts. For instance, “any change” (positive or negative) is not the same thing as ‘any adverse effect’ (and perhaps the clause should use that wording instead).

CCNZ is also concerned that the definition could ‘lower the bar’, so that effects which are currently considered to be ‘less than minor’ under the RMA will not fall within the definition of this term in the NEB and PB. If the bar will be changed in this way through definition, this may diminish the intended impact of the reforms, and put the goal of improved efficiency in jeopardy. Perhaps the bar should instead be set at ‘minor’.

The overall concept is supported, subject to clarification, ideally by amending clause 15, alternatively, by providing later guidance in national direction.

Environmental offsets

Decisionmakers on a permit or consent application must consider “how adverse effects are to be avoided, minimised, or remedied, where practicable; or adverse effects are to be offset or compensated, where appropriate” (clause 15 (1), NEB).

However, the Bills are not definitive on whether offsetting or compensation can be used to manage breaches of environmental limits. CCNZ asks if statutory guidance on this will appear in future national direction, and proposes that offsetting or compensation will be appropriate for managing a breach of a limit in certain circumstances. This change will enable better outcomes and allow project initiators to better focus on creating benefit for communities and for the environment.

On a positive note, clause 15 (4) provides for the above methods to be applied in any order, which provides flexibility of approach - unless a national instrument determines otherwise (clause 15 (2)), i.e. specifies a hierarchy, or order in which effects are to be managed. CCNZ supports this more practical viewpoint, which should enable more efficiency in projects.

Note that pending the development of national direction, RMA national direction will continue to apply, and this is relevant for indigenous biodiversity and freshwater management. At issue is that the principles for offsetting and compensation set out in appendices of the National Policy Statement for Indigenous Biodiversity 2023 (updated in December 2025) are largely unworkable and require thorough review.

Furthermore, the principles do not prescribe how to calculate the size of an offset compared with the adverse effect, or the amount of compensation. It is accepted this is a challenging task, and CCNZ proposes the development of guidance on offset calculations, including a pathway for negotiation between the permit / consent authority and the applicant.

Classification of activities

CCNZ supports the reform’s intent to reduce the scope of consent and permit applications to focus on activities that genuinely warrant regulatory scrutiny. Many activities that currently require resource consent under the RMA will no longer (clause 32, NEB). Detailed guidance

on how to classify activities will appear in subsequent national direction, e.g. national standards.

An example is the construction of a culvert. In some cases, this may be a simple job with a very small environmental impact; however, in others, there may be significant adverse effects, which will need to be managed, either via a national standard (to be developed), or a permit / consent.

In the case of civil contracting, there is already guidance which CCNZ has prepared on standard good practices – refer to the [CCNZ Environmental Guide](). Examples of activities that lend themselves to being classified as permitted are:

- Temporary infrastructure construction activities (these are often provided for within the designation / road corridor, however, not outside of those areas, and designations do not authorise consents required from regional councils)
- Small gravel extraction activities (especially when located close to remote, or small maintenance tasks
- Disposal of surplus, non-contaminated soil from earthworks to land (cleanfill)
- Discharge of hydrovac material, where sourced from cleanfill sites and discharged on same site
- Temporary stockpiling of contaminated material, subject to appropriate conditions
- Temporary dewatering subject to water being reinjected or discharged back to land.
- Water takes from sediment retention devices (to use that water, for example for dust suppression)
- Water takes and discharges for construction activities, especially government infrastructure jobs, subject to appropriate conditions
- Water chemical treatment (e.g. flocculation) with a chemical treatment plan and consistent with guidelines (e.g. TP227)
- Use of airborne dust control polymers
- Discharges to air from large onsite generators (currently provided for in varying ways around the country)
- Air discharges (dust) from small infrastructure projects

A key issue that CCNZ members face is that they are subject to impractical standards that do not consider practicalities or meet their needs, that they have had little or no say in shaping, despite holding the very information that is needed to implement practical changes and shape good standards around protecting the environment when conducting earthworks or working in waterways. The Bills do not solve this problem for activities such as local pipe installations, and kerb and channel works, or culverts.

One avenue for solving the problem would be to regulate all infrastructure construction under national standards. CCNZ supports the possibility for this to occur under the Bills. However,

the key will be to start with civil engineering knowledge on environmental good practice, to consolidate this knowledge at a practical level.

Civil and environmental engineers should have opportunities to contribute to the drafting of the standards, comment on the proposed wording of the standards, and request changes to standards if their implementation becomes impractical, unnecessarily costly (including because of delay), or increases adverse environmental effects.

Environmental limits

The concept of environmental limits is something that requires close consideration. If implemented, these limits should be practical and based around managing material impacts. Issues like sediment control are problematic, as a whole region could be in breach of a sediment control limit during minor flooding events that are not declared to be 'emergencies'.

At issue is the challenge of setting limits around the country, especially for ecosystem health. For example, there are dozens of different types of waterways, with different natural levels of pH, suspended sediment (turbidity), average temperature, level of flow, speed of flow, geology of riverbeds, and so forth, in turn affecting the nature of in-stream fauna and flora.

That in turn affects how aquatic ecology indices are used to set limits. In the case of freshwater, the Government could draw on previous scientific work of the Land and Water Forum, set up during a previous National-led government, in 2008-2009.

The setting of ecosystem health limits (clause 50, NEB) for the other environmental domains – coastal water, land and soil, and indigenous biodiversity – will also be challenging, especially for smaller and less well-resourced regional councils, requiring the development of guidance for this purpose, e.g. via national direction. It is important that the setting of limits based on science but also considers economic impact. For that purpose, industry expertise on proposed limits should be considered before they are finalised. At present, this is often not the case, which has led to increased uncertainty and on occasion, significantly increased costs and created poor project outcomes.

Avoiding breaches of environmental limit

The Bills stress the importance of avoiding breaching environmental limits. This direction can create a significant obstacle to moving projects forward; examples are groundwater availability in Canterbury, and air quality issues in the Mt Maunganui airshed (airborne salt is not avoidable, or a harmful pollutant with adverse consequences, but is considered to impact environmental limits for air quality past limits, causing confusion, delay and cost).

Having a greater ability to trade or share resources within environmental limits may be a way of dealing with this issue (e.g. enabling temporary 'trading' of water flows). Trading could occur within existing allocations, if information were to hand on holders of existing allocations.

Alternatively, appropriate activities could breach environmental limits in certain circumstances, including temporary breaches. There would be conditions: the breach is well

managed to restore relevant environmental attributes to within a limit over an acceptable timeframe, the impact on the community is not significant, and there are no long-term adverse consequences.

Clause 86 allows standards to establish a consenting pathway for ‘significant’ infrastructure activities to breach limits, but there is no certainty that any such standards will be created. In addition, the idea of a ‘significance’ threshold is problematic – a bridge or wastewater system could be significant and essential to a particular community, but still not be considered to deliver significant public benefits to New Zealand as a whole.

CCNZ considers that this exemption should apply to all infrastructure; any distinction between “significant” infrastructure and all other infrastructure is artificial. All infrastructure, from water pipes to seawalls, is important. The way the exceptions are currently structured could lead to complex exceptions for large projects only, with day-to-day work such as water pipeline or road renewals unable to proceed effectively or efficiently. The lack of infrastructure definitions in the Bills adds to this problem.

A mechanism to achieve better outcomes may be to set special and temporary maximum limits, e.g. for noise, for certain day-to-day activities, in national standards for activities, including permitted activities. Examples may include pipe works, resealing a road or tunnelling.

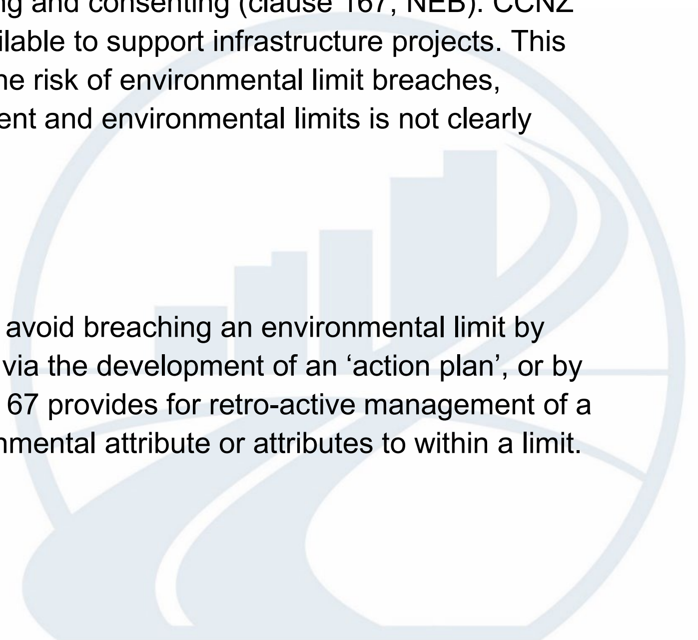
The point is that the best and most effective construction technique should be enabled because it is the appropriate and fit-for-purpose construction method, not because it breaches a limit, in many cases with no impact or lasting consequence.

By way of an example, an improperly applied environmental limits could effectively prohibit the installation of driven sheet piling when working below the water table, because it is noisy to construct, by setting a decibel limit so that activity does not breach the human health noise limit for noise. However, alternate techniques for working below the water table are much more expensive and time consuming. Noise can also be mitigated with noise-shielding barriers and other proven construction techniques, so an inability to breach a limit in this sense does not correspond with good practice.

Another way to manage this (and perhaps a more sensible alternative, is adaptive management provisions in relation to permitting and consenting (clause 167, NEB). CCNZ submits adaptive management should be available to support infrastructure projects. This provides an appropriate solution to handling the risk of environmental limit breaches, however the link between adaptive management and environmental limits is not clearly handled or explained in the Bills.

Action Plans

Clause 66, NEB, requires regional councils to avoid breaching an environmental limit by planning ahead for a likely future breach, e.g. via the development of an ‘action plan’, or by amending a natural environment plan. Clause 67 provides for retro-active management of a breach that has occurred to restore an environmental attribute or attributes to within a limit. Clause 64 covers both possibilities.



CCNZ assumes that clauses 66 and 67 apply to common resources, e.g. freshwater quality in a catchment or part of a catchment, rather than to specific activities. Consider the scenario of heavy rain in a region at below “emergency” levels where there is widespread surface flooding, with local bush tracks, farm paddocks and parklands temporarily breaching environmental limits for suspended sediment loads in water.

Who is responsible? We ask for clarity on this point, lest construction sites be penalised for impacts that are completely beyond their control or reasonable ability to manage.

Where exemptions are granted, the relevant regional council must currently develop an action plan (clause 67, NEB) to bring resource use or environmental quality back within the limit over a specified period. Interim milestones are required if the timeframe exceeds 10 years (clause 65, NEB). The willingness or resource to assess and approve action plans at a council level should be considered, as this may be similar to the current consenting process, but ‘lite’.

Placing responsibility for corrective action plans with regional councils is workable in principle, but only if it is backed by robust national direction and adequate resourcing.

Without robust central government guidance, there is a real risk that different councils will apply very different criteria and expectations when preparing and approving action plans. This could mean the same type of activity or breach is managed quite differently from one region to another, creating uncertainty and inconsistency for contractors and infrastructure providers operating across multiple areas.

To avoid that, central government should provide clear, detailed guidance and/or national instruments that:

- Set common minimum requirements for when action plans are needed, what they must contain, and how timeframes and milestones (including the 10-year+ milestones) should be set
- Clarify roles and responsibilities – what is a council’s job versus what sits with consent holders or infrastructure operators.
- Give clear policy direction on how temporary or managed breaches (for example, construction-related noise, dust or sediment in heavy rain) should be dealt with, so councils do not adopt inconsistent or overly restrictive approaches.

At the same time, good action plans rely on local and regional knowledge – understanding local catchments, communities, and the practical realities of construction such as ground conditions in that area, and whether a site is on sand, loam or bedrock. Regional councils are well placed to bring that context, but many already struggle with staffing and technical capacity under the current system, and risk aversion is a very real issue.

If corrective action plans effectively become a “consenting-lite” process, but no extra funding, staff, tools or technical support is provided to support this process, there is a real risk councils will not have the resources to implement the regime in a timely and consistent way.

In short, councils can reasonably lead corrective action planning for environmental impacts, but this will only work if:

- central government sets clear, nationally consistent rules of engagement;
- councils are properly resourced to do the work; and
- the framework still allows councils to use their local knowledge to tailor action plans to regional circumstances in a practical and proportionate way.

Adaptive management

CCNZ supports the option to apply "adaptive management" in planning, and in relation to permits / consents. This is welcome for the flexibility it offers operators. It supports "learning by doing", or adjusting operations while operating, to ensure compliance with permit / consent conditions.

Adaptive management is particularly useful when permit authorities apply the "precautionary principle" to a decision on an application – to "favour caution and environmental protection if the information available to determine the application is uncertain or inadequate" (clause 166, NEB).

The permit applicant can propose adaptive management to avoid their application being declined. The detail on how to apply adaptive management set out in clause 167 looks suitable.

Permitted activity rules

Clauses 39 and 202, NEB, require a person wishing to carry out a permitted activity to notify a permit authority, which has 10 days to respond. The relevant clauses in the PB are clauses 38 and 180.

CCNZ does not support a registration process for all permitted activities. The sheer volume of permitted activities renders this unworkable. One large civil contracting company, for example, may undertake hundreds of permitted activities a day in the Canterbury region alone. These activities are already well managed, however the range of these activities is such that notifying them is likely to result in wasted effort and inefficiency – not just for contractors. For example, most people rely on permitted activity rules to authorise residential use of their house, gardening which complies with earthworks limits, and commercial activities in offices across our cities. There is no reason why councils should be notified every time someone wants to rely on these permitted activity rules.

In practice, the timeframes for notification will be impossible for both contractors and councils. The administrative imposition alone of all the notifications, presumably with fees to be paid, sounds excessive, unworkable, and contra to the stated purpose of the reforms, which are to create a more efficient and workable system.

As these rules around notifying permitted activities will not be practical or possible to implement as written, they must be reconsidered. If the intent is to capture activities that are 'controlled' activities under the RMA, this should be clarified.

If notification of permitted activities is considered necessary, CCNZ members have indicated support for a two-tier approach to the notifications – with only high-risk activities needing to be notified. There are plenty of rules that already work like this, so councils should be familiar with this concept.

Consent and permit durations

The NEB provides for consent and permit durations of no more than 35 years (clause 178), and no more than 50 years for renewable energy infrastructure activities, and long-lived infrastructure activities (clause 179). CCNZ supports the increased duration for renewable energy infrastructure and long-lived infrastructure, as compared to the 35-year maximum duration for these activities in the RMA.

Yet, the design life of long-lived infrastructure such as a road, fill site, seawall or dam may be longer than 50 years. The Planning Bill provides that most planning consents can granted for an unlimited duration. CCNZ proposes flexibility in setting the duration of consents and permits for design life for long-lived and renewable energy infrastructure.

Territorial authority responsibilities

Clause 221, NEB, looks thorough. However, it omits waste and its management, which is an important community and regional resource having a beneficial purpose, e.g. the reuse, repurposing and disposal of surplus soil from earthworks, and related planning for various classes of fill. The same applies to clause 184, PB.

Soil management

At present it is projected that $4.5 – 7.5 million tonnes of excess soil from earthworks around New Zealand are disposed of in landfills, either because of the lack of other types of fill within reasonable distance, or because it is too complex to seek resource consent for reusing, or repurposing this soil.

The Bills and subsequent national direction could ensure territorial authorities are explicitly responsible to plan adequately for class 1-5 fills in their regions, and ease the permitting / consenting burden for infrastructure providers when constructing fills, and when placing material in those fills. At the same time, practical solutions such as sites for de-watering and repurposing soil and aggregate from hydro-excavation is often prevented as local authorities do not support the need for such sites, despite clear economic and environmental need.

Soil usage and re-use on and off site needs more attention in the Bills and other legislation, as described in an October 2025 paper from CCNZ on New Zealand's current soil management crisis – *Resolving Wastage in NZ's Soil Management Approach*. Soil should be able to be re-used where possible, but it is currently required to be disposed to landfill by authorities. This issue is critical for efficient infrastructure delivery must be solved through

RMA reform, or subsequent national direction.

Providing more thorough definitions of infrastructure in the Bills would combat risk aversion in the country's soil management approach, provide a more solid, evidence-based approach around human and environmental health, and assist with recognising the value of waste and cleanfill resources.

CCNZ calls on the committee to end this wastefulness and resolve the issue through more effective reform of the RMA.

Penalties for infringements and offences

The new Bills introduce much higher penalties, set out in clause 280, NEB, rolled over from 2025 amendments to the RMA. The removal of the ability to insure against having to pay fines (Clause 287, NEB, also rolled over from the RMA) means that smaller contractors could go out of business if faced with a $10 million fine for an offence committed. (See also clause 256, PB).

One issue is that civil infrastructure construction contracts can be complex. Often all parties (client, consultant and contractor / sub-contractor) will be penalised in the event of a breach of a permit or consent, even if one or more of them are not at fault. This provides a strong incentive on contractors to structure contracts with care, which can introduce aversion to certain contract risks, as well as cost escalation and delay. Ultimately, it can raise the cost of infrastructure.

CCNZ proposes a review of the uninsurable penalties provisions, in light of the above concerns around the possibility for vulnerable businesses or people to be put in the situation where they suffer these penalties.

Removal of insurance cover

It is now prohibited to take insurance for payment of environmental fines and penalties. This means companies and individuals must bear the full cost of any penalties incurred, removing a previous practice where fines might be covered by insurance.

While the Natural Environment Bill and related RMA amendments now prohibit insurance for the payment of environmental fines and penalties, there is scope for a more balanced, industry-driven approach that still deters breaches, but doesn't impose penalties so severe that contractors can no longer get finance or stay in business.

This could be regulated through the insurance industry, or insurers could be required (or guided through industry standards) to:

- **Refuse or heavily restrict cover for repeat or serious offenders**
  Underwriting criteria could explicitly incorporate verified compliance history (including prosecutions, infringement notices and enforcement orders). Where a pattern of non-compliance emerges, insurers could:
    - Decline related environmental liability and project risk covers; or

- Impose very low limits, high excesses and strict conditions.

In practice, this would render serious or repeat offenders effectively **uninsurable for ancillary environmental risks**, reinforcing the deterrent purpose of uninsurable penalties.

- **Maintain carefully scoped cover for one-off or no-fault events**
  For contractors with good records, insurers could still provide cover for:
    - Investigation and defence costs
    - Clean-up, remediation and restoration costs
    - Business interruption and project delay losses arising from enforcement action

Policies would be drafted so they **do not indemnify the fines or penalties themselves**, but do protect contractors from insolvency due to associated costs where:

- The breach was an isolated event; and/or
- The contractor was not primarily at fault (for example, where design, consent conditions or client directions were the underlying cause).

This approach would align with the intent of the un-insurability provisions (keeping penalties as a personal or corporate deterrent), while still allowing a functioning insurance market that supports compliant contractors and avoids disproportionate consequences for one-off or low-fault incidents.

Strict liability
In earlier times liability for certain matters under contractual dispute was shared between the principal (the infrastructure client) and the agent (the contractor doing the works). Clause 281, NEB, separates the responsibilities of the principal from the agent, and clause 282 introduces "strict liability", both rolled over from the RMA.

Under this scheme, the contractor could end up being liable for any legislative breaches arising from day-to-day operations, in which the client could well argue they had no knowledge of the contractor's doings.

This is a particular risk for contractual arrangements such as PPPs, which often restrict the ability of the principal to direct the contractor and pass responsibility for consent compliance on to the contractor. As infrastructure projects, and the contracts which govern them, become more complex, it is not always appropriate for both the contractor and principal to bear the risk of non-compliance.

Emergency works
Provisions for emergency works are set out in clauses 301 to 306, NEB, and provide for an immediate response to an emergency, without the prior need for any regulatory approvals. The provisions are largely rolled over from the RMA, sections 330 – 331AB.

CCNZ notes the drafting of the provisions could be reviewed and improved for clarity, with the goal of enabling better efficiency, and protecting those who work to save lives, protect and restore property from prosecution through not meeting rules such as 'notification in a certain amount of working days…'.

The provisions should also better support recovery works, such as clearing slips, temporary water diversions and discharges, and installation of temporary bridges and culverts, which are necessary to re-establish infrastructure connections following an emergency.

Transitional arrangements

The NEB and PB create the framework for the new system, while its operation in practice will rely on the later gazetting of national instruments, and sitting below that, the combined regional plans. As to what happens in the meantime, the RMA will continue to apply (as per Schedule 1, clause 2, PB). This is a logical solution, which CCNZ supports in most settings.

Effects outside the scope of this Act

Clause 14, PB, excludes from consideration under the PB matters such as: views from private property, and the effects on a landscape. This will make it more difficult for local residents to complain about, say, a windfarm project on the basis of its visual impacts, which has held up the delivery of renewable electricity generation infrastructure in the past. In the interests of addressing New Zealand's substantial infrastructure deficit, this is a necessary approach to take.

Duty to avoid unreasonable noise

The PB imposes a duty to avoid unreasonable noise and requires the "best practicable option" to ensure emissions do not exceed a reasonable level (clause 24, PB). Clause 247, PB, defines "excessive noise", while clauses 248 and 249 provide for enforcement action, and immediate compliance. That said, clause 24 (2) (b) does provide for conditions on noise in a planning consent, which, potentially, would provide flexibility for, e.g. short-term infrastructure construction where maximum noise levels are exceeded. It is not clear to CCNZ that clause 24 (2) (b) could be used for the purpose described above.

Regional spatial plan

CCNZ supports the purpose of regional spatial plans (clause 27, PB), which includes to "support a co-ordinated approach to infrastructure funding and investment by central government, local authorities, and other infrastructure providers".

Note that individual civil contracting companies may not always have the time or resources to participate in regional spatial planning process; this is where CCNZ can play a role as a "sector group" (clause 69 (g), PB), on behalf of, and in consultation with our members. CCNZ proposes that when regional councils set up "process agreements" that they include CCNZ among stakeholders they engage with.

RECOMMENDATIONS

CCNZ recommends the Environment Committee to consider the following recommendations, either to retain in the Bills, or to improve the Bills, to meet the Government's intent for resource management reform:

a) Note CCNZ's general support for the Bills, as positive for infrastructure development while safeguarding the environment

b) Insert into clause 3 of both Bills definitions of infrastructure which are similar to those in the National Policy Statement for Infrastructure 2025

c) Amend clause 15 (5), NEB, to better define "less than minor" in relation to adverse effects for clarity

d) Note CCNZ's support for the consideration of effects management tools listed in clause 15 (1), NEB, in any order (clause 15 (4), which provides flexibility for effectiveness and efficiency

e) Note CCNZ's support for reducing the permit and consent burden via the classification of more activities as permitted

f) Note CCNZ's support for infrastructure construction activities to be classified as permitted (subject to appropriate conditions), using national standards

g) Note CCNZ's support for environmental limits, in principle, provided they are based on science and stakeholders have multiple opportunities to contribute to their development and review

h) Note the need to provide for temporary breaches of one or more environmental limits for all infrastructure, providing for good management of the breach

i) Agree that solutions to the above include the enabling of trading of allocations of resources such as air or water quality with other parties within limits

j) Agree that national standards could be used to set temporary maximum limits, e.g. for noise in relation to, say, pipe works, resealing a road, tunnelling

k) Clarify the policy intent of clause 66, NEB, and related clauses concerning breaches of environmental limits as to whether these provisions apply to common resources, or to specific activities

l) Amend clause 86, NEB, to provide a consenting or permitting pathway for all infrastructure activities that may breach one or more environmental limits, while retaining provisions to restore environmental attributes to within limits over time

m) Note CCNZ's support for the application of adaptive management everywhere the management approach appears in the Bills, including when applying the precautionary principle (clause 166, NEB)

n) Consider amending clause 179 to provide more flexibility in consent / permit durations for renewable energy infrastructure activities, and long-lived infrastructure activities

o) Insert into clause 221, NEB (and clause 184, PB) the management of waste and facilities for the recovery, recycling, reuse, repurposing and disposal of waste among regional council responsibilities, or address this issue by including these activities in new definitions for infrastructure

p) Review and amend the emergency works provisions (clauses 301 to 306, NEB) for clarity, to better recognise and provide for first responders working to save lives and protect property

q) Note CCNZ's support for the transitional arrangements in the new system for the new system (Schedule 1, clause 2, PB)

r) Note CCNZ's support for clause 14, PB, which excludes certain matters from consideration for more effective and efficient delivery of infrastructure

s) Clarify that clause 24 (2) (b), PB, may be used to provide for temporary exceedances of noise limits in the case of certain infrastructure works, e.g. via national standards

t) Include within a co-ordinated approach to regional spatial planning (clauses 27 and 69 (g), PB) engagement with sector groups such as CCNZ for better planning outcomes

u) Clauses 39 and 202, NEB, and clauses 38 and 180, PB requiring a person wishing to carry out a permitted activity to notify a permit authority should be reassessed for practicality

v) update Natural Environment Bill goals to balancing the protection of human health and the life-supporting capacity of the natural environment with the 'social and economic aspirations of communities'

w) Note CCNZ support for Schedule 5 – Designations

x) Ensure civil engineering knowledge of good working practice is included early so any standards or limits created are practical and able to be implemented efficiently.

y) Look to limit the volume of interpretation and national direction by considering what else can be included in the Bills rather than national policy

z) If regional councils are tasked with corrective action plans (cl. 67, NEB), these must be backed with common and standardised minimum requirements, clear roles and responsibilities and clear policy direction on how temporary or managed breaches should be handled efficiently

aa) We propose Cl 287, NEB around the un-insurability of breaches be amended to apply only to serious or repeat offenders. This approach would align with the intent of the un-insurability provisions (keeping penalties as a personal or corporate deterrent), while still allowing a functioning insurance market that supports compliant contractors and avoids disproportionate consequences for one-off or low-fault incidents.

CONCLUSION

Thank you for your time in reading this submission.

As indicated in the introductory paragraphs, CCNZ is happy to appear before Select Committee to further discuss the needs of the country's civil construction industry in relation to this legislation.

Through this consultation process, and prior to it, several of our members have advised us of the significant issues their businesses face due to the existing legislation, and what they think would be required to overcome these issues. We can arrange for them to present also, if you would like to hear their concerns directly.

Kind regards,

Alan Pollard
Chief Executive
Civil Contractors New Zealand Inc.