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For Environment Committee

Submission on the Natural and Built Environment Bill

- 1 Boffa Miskell welcomes the opportunity to submit on the Natural and Built Environment Bill (*NBE Bill or Bill*).
- 2 Boffa Miskell supports the primary function of the NBE Bill, and the accompanying Spatial Planning Bill. In particular, the creation of an integrated framework for regulating environmental management and land use planning, and to provide for the development and implementation of long-term, strategic spatial planning across Aotearoa.¹
- 3 Boffa Miskell also supports the approach of identifying system outcomes to guide national direction, strategies and plans, which will in turn guide consideration of resource consent applications. While we agree with the outcomes identified in the NBE Bill,² Boffa Miskell considers that improved recognition of the features and characteristics that contribute to the *quality* of the urban environment and natural environment is also required.
- 4 Boffa Miskell's detailed submission in respect of this matter, and our proposal for how it might best be addressed through the NBE Bill, is included in **Appendix A**.
- 5 Boffa Miskell would be grateful for the opportunity to appear before the Environment Committee to speak to its submission, and is happy to answer any questions in advance of that.

Chris Ferguson

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¹ NBE Bill and Spatial Planning Bill explanatory notes.
² NBE Bill, cl 5.

Appendix A

1 Introduction

1.1 Boffa Miskell is a leading environmental planning and design consultancy firm with offices across Aotearoa. We work with a wide range of local and international, private and public sector clients in the areas of planning, urban design, landscape architecture, landscape planning, ecology, biosecurity, cultural heritage, graphics and mapping.

1.2 Boffa Miskell has been involved in the design and development of many of Aotearoa's largest projects in recent years, including, most notably:

(a) Dunedin Hospital – the new modern hospital situated across two blocks in central Dunedin. Boffa Miskell was engaged to provide planning services (including resolution of District Plan appeals, identification of consents, input into concept design, preparing and obtaining consent) and to provide visual assessments and Crime Prevention through Environmental Design assessments.

(b) Waterview Connection – the final motorway connection required to complete Auckland's Western Ring Route. It comprises twin 2.5km motorway tunnels plus associated connecting roading infrastructure and, at Great North Road in Waterview, a large interchange of ramps. The project involved wide community engagement and works within the affected communities, including open space / parks delivery and other infrastructure to offset the disruption and wider related adverse effects. Boffa Miskell was responsible for leading the delivery of landscape architecture and urban design outcomes.

(c) Project Onslow – a proposal for a pumped hydro scheme capable of providing at least 5 TWh of annual generation / storage, located north-east of the Mata-Au / Clutha River in Central Otago. We have been appointed as part of a consortium (Te Rōpū Matatau) to prepare a feasibility study into the technical, environmental, social, cultural and commercial considerations of a pumped hydro scheme.

1.3 Additionally, Boffa Miskell has been a key contributor to several recent publications on relevant guidance in the landscape and urban design space, including:

(a) Preparation of the 'Aotearoa urban street planning and design guide' for Waka Kotahi (2022).

(b) Contributing authors to 'Te Tangi a te Manu, Aotearoa New Zealand Landscape Assessment Guidelines' (2022).

(c) Preparation of the 'National medium density design guidelines' for the Ministry for the Environment (May 2022).

- 1.4 Boffa Miskell also works with councils across the country on the assessment of their areas of landscape and natural character, including studies for Banks Peninsula, Marlborough, Canterbury and Waikato.
- 1.5 Accordingly, Boffa Miskell has a keen interest in being involved in the conversation on resource management reform; particular as it affects the way in which high-quality built environments can be provided in Aotearoa.
- 1.6 Boffa Miskell are aware that a number of professional organisations, including those that our staff are members of, have prepared detailed submissions on the NBE Bill. This submission does not repeat the content of those submissions, but rather focuses on the key changes to the system outcomes that Boffa Miskell considers are required to meet the purpose of the Act and to provide improved direction on enhancing the features and characteristics that contribute to the quality of the urban and natural environment.
- 1.7 Boffa Miskell's submission is structured as follows:
 - (a) Background.
 - (b) Relevant Bill provisions.
 - (c) Identification of the potential for unintended consequences in the operation of the Bill provisions.
 - (d) Drafting suggestions.

2 **Background**

- 2.1 Planning practice has evolved within Aotearoa over generations through the adoption of a range of methods to manage urban growth. Examples include established urban limits, intensification within urban areas and subsequent protection of rural areas from sprawling development. These tools continue to deliver benefits for society through the creation of well-connected, more compact urban form resulting in better places to live, work and play. Managing growth in an appropriate way also benefits our non-urban areas by preserving the productivity and qualities of the rural landscape that surrounds many of our townships, cities and metropolitan areas.
- 2.2 While Boffa Miskell's work involves projects in a variety of landscapes and a range of forms across the country, within urban environments the focus of Boffa Miskell's multi-disciplinary team is large scale complex projects delivering higher density, quality development. Boffa Miskell regularly undertakes landscape and urban design assessments of such projects, informed by Part 2 of the Resource Management Act 1991 (*RMA*) and specifically sections:

- (a) 6(a): the preservation of the natural character of the coastal environment, wetlands, lakes and rivers;
- (b) 6(b): the protection of outstanding natural features and landscapes;
- (c) 7(c): the maintenance and enhancement of amenity values; and
- (d) 7(f): the maintenance and enhancement of the quality of the environment.

2.3 As the Committee will be well aware, these sections provide the overarching context for various national direction and regional and district planning documents; enabling consideration of these matters at the plan change and resource consent level. Critically, the recognition of the importance of maintaining and enhancing the quality of the environment under the existing RMA regime does not require the landscape to remain static, landscape is dynamic and constantly changing over time in both subtle and more dramatic transformational ways.

2.4 Relevantly, the existing regime has not, contrary to popular rhetoric, prevented large scale projects from being successfully delivered. The Waterview Connection project referred to above is an example of the delivery of positive landscape architecture and urban design outcomes notwithstanding the demonstrable change in landscape resulting from the construction of the project. For that transformative project, the overall objectives were achieved in partnership with the community, and included input not just into the design of all motorway structures and buildings, but to the rehabilitation of open spaces, creek rehabilitation and re-alignment works; ecological restoration work and planting; construction of pedestrian and road bridges, sports facilities, two skate parks, a large playground, and a BMX track; installation of public art, signage and way-finding systems; and recognition of heritage and cultural areas.

2.5 Careful assessment of both tangible and intangible matters has been required at each stage of planning and consenting for these large scale projects. However, importantly, quality landscape and urban design outcomes could be achieved in these projects, in part, because of the requirement and ability in the current legal and planning framework to consider how the quality of the environment could be maintained and enhanced in parallel with the construction of necessary regionally significant infrastructure. We acknowledge that attempting to achieve a balance between the various competing considerations will mean that some complexity remains within our resource management system; however in our submission that complexity remains preferable to a set of outcomes that fails to acknowledge the important contribution of landscape values to human well-being and to the environment as a whole.

3 Bill provisions

- 3.1 Clause 3 of the NBE Bill sets out the purpose of the Act, including promoting outcomes for the benefit of the environment and the management of adverse effects.
- 3.2 Clause 5 sets out the system outcomes that will assist in achieving the purpose of the Act. Comparing these outcomes to the elements of Part 2 of the RMA that currently guide landscape and urban design assessments (as set out above):
- (a) the protection of the natural character of the coastal environment, wetlands, lakes and rivers and of outstanding natural features and landscapes continues to be provided for, supported by the introduction of environmental limits and targets;³ and
 - (b) consideration of the maintenance and enhancement of amenity values and the quality of the environment is not provided for; however, provision of “well-functioning urban and rural areas” is required.⁴ ‘Amenity values’ are also proposed to be removed from the definition of ‘environment’ in the NBE Bill.⁵
- 3.3 With respect to the elements that are no longer provided for in the NBE Bill, Boffa Miskell understands and supports the intentional shift away from consideration of amenity values generally, given the focus on preservation of existing amenity in RMA processes by those seeking to maintain the ‘status quo’ as articulated in the Randerson report.⁶ We support this change as a continuation of the recognition in the National Policy Statement on Urban Development 2020 (*NPS-UD*) that planned urban built form may involve significant changes that may detract from amenity values appreciated by some people while improving the amenity values appreciated by others.⁷
- 3.4 However, the Randerson report also recommended that the new resource management system require “the features and characteristics that contribute to enhancing the quality of the natural and built environments to be specified in mandatory national direction”,⁸ i.e. some form of a carry-over of the requirement to maintain and enhance the quality of the environment (beyond the quantifiable captured by the introduction of environmental limits and targets) and a refocus from the highly subjective matters of amenity values to positive statements relating to the features and characteristics that contribute towards enhancing the natural and built environment.

³ NBE Bill, cl 5(a).

⁴ NBE Bill, cl 5(c).

⁵ NBE Bill, cl 7.

⁶ New Directions for Resource Management in New Zealand by the Resource Management Review Panel, paragraph 114.

⁷ NPS-UD, Policy 6(b).

⁸ New Directions for Resource Management in New Zealand by the Resource Management Review Panel, paragraph 114.

- 3.5 In making that recommendation, the authors of the Randerson report noted:⁹

It is important to ensure that short-term measures to address the current crisis meet environmental standards and do not compromise the ability to achieve our longer-term goals of enhancing the quality of the natural and built environments or the ability to meet agreed targets to address climate change.

- 3.6 Following the publication of the report, and when the NBE Bill was initially being discussed in the House, David Parker, Minister for the Environment articulated that:¹⁰

We agree that you can go too far with matters of taste rather than matters of environmental outcome. So we're trying to strip out the excessive reference to amenity, which doesn't mean to say that we want everything looking like Stalingrad. There is a place for decent urban form.

- 3.7 We therefore understand the intention in the legislation was to remove the requirement to consider certain effects that are highly subjective and have led to considerable uncertainty and litigation (i.e. amenity values) but to retain the requirement for quality urban environments to be achieved.

- 3.8 It appears that the specific drafting for inclusion of these elements recommended in the Randerson report was not carried over into the Bill itself as the concern was that this could "perpetuate subjective amenity values hindering development" and that while "urban design considerations contribute to well-functioning urban areas ... these matters are more appropriately addressed at a lower level in the NBA, such as through the National Planning Framework".¹¹

- 3.9 We disagree.

4 **Operation of the proposed provisions**

- 4.1 Boffa Miskell supports many elements of the proposed new legislation, including the recognition of te Oranga o te Taiao through meaningful partnerships; the focus on managing the effects of climate change; and the new directive for spatial planning to clearly identify the high level vision and priorities for shaping each of our regions. Boffa Miskell also supports the proposed shift to an outcomes, rather than effects based, approach.

- 4.2 Importantly, Boffa Miskell considers that those outcomes should recognise the value in protecting and enhancing everyday landscapes, as well as our most important landscapes that are specifically provided for. We support the ongoing protection of

⁹ New Directions for Resource Management in New Zealand by the Resource Management Review Panel, paragraph 67.

¹⁰ Hansard debate 11 May 2022, Hon David Parker (Minister for the Environment).

¹¹ Cabinet paper on Reforming the resource management system, published on the Ministry for the Environment's webpage on 1 February 2021.

places of national importance, including outstanding natural landscapes and outstanding natural features, and acknowledge the policy shift away from protection of 'amenity values' generally. Our primary submission seeks improved direction on enhancing the features and characteristics that contribute to the quality of the urban environment and natural environment as a whole; i.e. beyond those identified "outstanding" areas that have explicit recognition and protection in the Bill.

- 4.3 The NBE Bill explicitly recognises the importance of well-*functioning* urban and rural areas – reflecting the definition of "environment" which comprises (amongst other things) people and communities and the built environment they create. However, there is an inherent absence of direction in the Bill (particularly in the system outcomes which must be provided for in the National Planning Framework and all subordinate plans) in respect of the important characteristics and landscape values which support human well-being within those environments.
- 4.4 Boffa Miskell understands that the government's intention is to enable the consideration of the quality of rural and urban areas, including landscape values, in future NBE processes as established by the Bill. We support this objective.
- 4.5 However, as currently drafted, Boffa Miskell does not consider that the Bill adequately reflects that intention and there is the potential for unintended, adverse, consequences to result:
- (a) At a macro level, landscape values and urban design considerations are matters that would fall under the purpose clause of the NBE Bill as currently drafted.
 - (b) However, because they are not specifically provided for within any of the identified system outcomes that set the direction for how to achieve the purpose of the Act, there is a risk that, notwithstanding the government's intention that the National Planning Framework (*NPF*) provide for consideration of these matters, they will be overlooked. That risk is compounded when the preparation of the NPF requires that it must include content that provides direction "for the resolution of conflicts about environmental matters, including those between or among the system outcomes".¹² Boffa Miskell understands that this drafting responds to the identification in the Randerson report of the tensions in existing planning documents between important resource management issues,¹³ and supports the need to identify how tensions are managed; however the risk is that matters not specifically identified in the system outcomes will be disregarded when preparing the NPF in future, particularly second generation NPF.

¹² NBE Bill, cl 57(1)(b).

¹³ New Directions for Resource Management in New Zealand by the Resource Management Review Panel, paragraphs 36 – 38.

- (c) Clause 5(c) of the NBE Bill proposes to recognise the need to provide for well-functioning urban and rural areas including supporting the need to create increased housing choice and resilient urban form, and the creation of a framework for supporting a planned approach to additional housing development for the changing needs of people and communities, especially for those responding to the demands of climate change. Boffa Miskell supports this draft clause; however, we are concerned that the system outcomes provide a basis for actively promoting unplanned development of rural areas, thereby undermining the legacy of growth management within our towns and cities and degrading the quality of both the natural and built environment.
- (d) Clause 6 directs decision makers to manage the effects of using and developing the environment in a way that achieves, and does not undermine, the system outcomes.¹⁴ As currently drafted, a decision could be made under clause 6 to enable proposals that will degrade the quality of living environments for people and communities, but were otherwise well-functioning in accordance with the description in clause 5, as that would not undermine the present description of a 'well-functioning' urban area in the relevant system outcome. Enhancing the qualities and features that contribute towards the quality of our built environments whilst continually adapting to change is important to community wellbeing and a range of other community outcomes such as access to transport, open space / recreation, biodiversity and climate adaptation (avoidance of heat islands etc).
- (e) There is a clear gap in how the purpose of the Act will be given effect to with respect to the management of urban design and landscape values. The direction in the NPS-UD enabled more compact, diverse urban environments to establish; while consideration of landscape values and the quality of those urban environments was still required under the relevant district plans. In a similar way, the NBE Bill should be amended to ensure the quality of the environment is relevant to planning and consenting decisions generally to avoid this matter being overlooked when plans are drafted and when decisions are made under clause 6.

5 Drafting suggestions

- 5.1 Boffa Miskell considers the drafting suggestions made within the Randerson report represent an elegant solution to address the concerns raised regarding the shortfalls within the system outcomes relating to natural and built environments in this submission.
- 5.2 Largely adopting the Randerson drafting, amended to acknowledge the absence of hierarchy in the system outcomes, we propose the insertion of new clause 5(a) as below:

¹⁴ NBE Bill, cl 6(1)(d).

(a) Enhancement of features and characteristics that contribute to the quality of the natural and built environment to support the well-being of people and communities.

- 5.3 Boffa Miskell considers that the above drafting would appropriately give effect to the purpose of the NBE Bill to promote outcomes for the benefit of the environment and to manage adverse effects.
- 5.4 Boffa Miskell understands that the Committee has already discussed the potential for inclusion of a new clause that addresses these matters with members of the Urban Design Forum who presented to the Committee earlier this month.

6 Conclusion

- 6.1 Boffa Miskell supports the approach of identifying system outcomes to guide national direction, strategies and plans, which will in turn guide consideration of resource consent applications in the NBE Bill.
- 6.2 While we agree with the outcomes identified, in order to meet the purpose of the Act, Boffa Miskell considers that improved direction on enhancing the features and characteristics that contribute to the quality of the urban environment and natural environment is required.
- 6.3 We look forward to the opportunity to discuss our submission and proposed drafting, and any other consequential or alternative drafting that the Select Committee considers appropriate, to address the matters raised.