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SUBMISSION::

NATURAL AND BUILT ENVIRONMENT BILL

To: **Committee Staff**
Environment Committee
Parliament Buildings
Wellington
en@parliament.govt.nz

This feedback is on behalf of the ***Institute of Cadastral Surveying*** (ICS).

The ICS is an organisation whose membership is actively engaged in cadastral surveying. This response represents the collective views of the ICS Executive Committee and is based on the experience and wisdom of our leadership team and membership who are located throughout urban and rural New Zealand.

Statement relevant to the submission:-
Surveyors are one of the many stakeholders involved in the land development process.

- We are particularly involved with land subdivision, resource management, and land tenure aspects.
- We coordinate many aspects of the development of land on behalf of our clients – the landowners.
- We interact with Councils, Iwi, architects, engineers, solicitors, and other professionals as well as contractors on the many phases of a land development project.
- We are conversant with district plans and planning rules.
- We endorse good urban design that provides pleasant built and living environments.
- We are often one of the few professional groups that contribute to a land development project from inception to completion.

All of these contributions – performed well – help deliver pleasant living environments and create legacies with land.

This response is also submitted in the best interests of landowners and the public - our clients.

We thank you for the opportunity to provide this submission on this Bill.

The ICS do not seek to be heard on this matter at this time.

Key Submission Points:

- *Surveyors are one of the stakeholders involved in the land development process;*
- *In principle we agree with the **intent** of the Natural and Built Environment Bill;*
- *The subdivision process **must be timely and cost efficient**;*
- *The subdivision provisions (Part 9) appear very similar to the RMA – which is appealing;*
- *We do not think the RMA is unworkable;*
- *The current process for subdividing land under the RMA **has become cumbersome** primarily due to excessive District Plan rules and the superfluous documentation required by Councils;*
- ***We are unconvinced** that the proposed Bill(s) will be able to facilitate cost effective and timely subdivision consent decisions;*
- *Planners, Consenting Lawyers, and the Environmental Court will continue to be ultimate beneficiaries from the new Bill as they become increasingly embroiled in the process;*
- *This ICS response is also submitted on behalf of and in the **best interests of landowners and the public** - our clients.*

1. General Statement

The Bill and its sibling components (the Spatial Planning Bill and Climate Adaptation Bill) are extremely comprehensive and complex sets of proposed legislation that are intended replace an equally comprehensive Act - the Resource Management Act 1991 (RMA).

In principle **we agree with the intent of the Natural and Built Environment Bill** – the purpose of which is to enable the use, development, and protection of the environment in a way that supports present and future generations; benefits the environment; manages adverse effects; and recognises Oranga o te Taiao (health and well-being of the environment).

Cadastral Surveyors undertaking land development subdivision projects will primarily interact with Parts 4, 5, and 9 of the Bill (plans; resource consenting; and subdivision respectively) as part of our land development work.

It would appear the subdivision provisions (Part 9) are very similar to the RMA. We do not think the existing mechanism (the RMA) is unworkable - so long as the process is timely and cost efficient. The biggest problem with the RMA are the associated complexities involved toward obtaining consent from local authorities in recent years.

It is true that the current process for subdividing land under the RMA has become cumbersome. A myriad of district plan rules that need addressing, and the requirement for extensive reporting and supporting documentation is necessary for even the simplest developments.

We remain concerned (and unconvinced) that the new regime would be capable of facilitating easier subdivision consenting at reasonable cost and within reasonable timeframes. We think, unfortunately, that council planners and consenting lawyers will see this as a greater opportunity to apply their

contributions within the assessment process, and not be encouraged to deliver a 'commercial' type lean, efficient – and cost effective – service.

Generally, any replacement legislation **must be** administratively efficient so that it is fit for the development purpose. This key aspect will contribute to the smooth progression of an application and the development project.

New legislation must support processes that:

- assess proposals and applications in pragmatic and practical terms;
- can be prepared and processed at a reasonable cost (for both local authority and professional fees);
- result in appropriate local authority processing times – less than 20 working days;
- deliver a faster project completion (compliance certifications and titles issue).

All of these factors will benefit the land development players – making less workload for Councils; triggering lower professional fees charges; enabling cheaper development costs for the landowner; and potentially reducing the cost of land and housing for the new property owners.

2. ICS Submission - Explanation

The ICS acknowledges that the proposed legislation reform is – and needs to be - comprehensive and detailed.

However, the time allocated within this submission period for stakeholders to consider all of the proposed sections of the bill and review in appropriate detail all of the supporting information and advice reports is extremely limited – especially noting that the submission period included the end of year holiday break.

It is for this reason that this ICS submission is deliberately reduced to an overall commentary on sections of the Bill that are relevant to aspects that we mainly interact with.

3. ICS Submission - Details

[The section numbers and section titles **in bold** relate to the respective sections of the Bill.
The following paragraph is the ICS main comment or response.
Further explanation details – where necessary to support our response - are noted in *italics*]

Part 4: Natural and built environment plans.

<u>Subpart 3 – Rules in plans</u>

<u>117 Purpose and effect of rules</u>

Since the implementation of the RMA in 1991, and over the ensuing years following, the requirements imposed by councils for resource consent applications to address a larger number of matters to be considered has increased significantly.

There needs to be a stated requirement or at least a level of policy or guidance included within the Act that requires councils to develop more permissive and less restrictive (natural and built environment) plans. That is, the tendency to include a multiplicity of rules and requirements within a plan that in turn need addressing within an application only generates additional processing effort and expense. A permissive plan that aligns with the purpose of the Act and accounts for local aspirations would reduce

the need to address many requirements that are intrinsically not applicable or have a less than minor effect.

173 How to apply for resource consent

It should be possible for an average person (including a layperson) to submit a subdivision application and have it processed with a minimum of fuss and expense.

Part 5: Resource consenting and proposals of national significance.

183 Further information, or agreement, may be requested

This section must not be used by councils as a tactic to seek additional time to process the application.

It is our experience that during periods of high-volume applications, councils have been requesting further information close to the end of the 20-working day processing period (non-notified consent), primarily to prolong their compliance with processing times.

187 Processing time frames

In many instances relating to the subdivision of land, time is critical. Delays must be limited. Delays are cost the landowner. There should be some level of processing cost recovery that can accrue to the benefit of the applicant when the processing time is delayed by poor local authority performance – by way of a reduction in processing fees that are charged by council when application processing exceeds the maximum processing time frames.

We suggest the discounting of the final charges by 10% for each and every 5 working days beyond the maximum time frame.

266 Duration of consent

It appears that the proposed maximum period for subdivision consents is unlimited unless the consent sets a duration or 5 years if no duration is set. The is the same as the current RMA.

We suggest the consent duration be clearly stated in the application and confirmed in the decision. This will enable any desired long-consent periods to be time focussed, rather than open-ended.

274 Minor changes to subdivision conditions

The act needs to make it clear that minor changes to the execution of a resource consent do not require a variation to the original conditions.

For example, there are situations where it happens that once the survey is started it is apparent that for technical cadastral reasons it becomes impractical to show two parcels as one lot (perhaps one parcel is limited as to parcels, and it is uneconomic to remove limitations). It should be possible to make those changes without having to apply for a variation to the original consent.

Another example is when a subdivision is split into stages following the issue of the consent. This can often be done without affecting the changing the conditions of the subdivision they can implemented in each stage. The variation process just adds unnecessary time and expense.

Part 9: Subdivision and reclamation.

569 Meaning of subdivision of land; and

570 Meaning of allotment

Amalgamation Conditions: It would be helpful to clarify that the extinguishment of amalgamation conditions is a subdivision and that if two allotments held together by amalgamation covenant (so they are in different titles) then separating them is also a subdivision.

In section 571 a survey plan is defined as a survey dataset. So, what could happen is that if the intention is to cancel an amalgamation condition (or covenant) and re-amalgamate one of the affected parcels with another parcel of land then this could be done by a dataset with a 223 certificate and no graphical depiction of the land affected.
At present to do this we prepare a survey plan showing one parcel exactly as it is currently shown on a survey plan just so we can have a s223 RMA 1991 certificate with an amalgamation condition on it to achieve the desired result.

Boundary adjustments: Boundary adjustments of a minor nature should be treated as permitted activities.

For example, a "minor boundary adjustment" would be changing the boundary between to rural properties so that the new boundary follows an old fence line. It has no effects and tidies up an existing situation without the time and expense of a subdivision consent.

569 Meaning of subdivision of land

570 Meaning of allotment

584 Requirement for certificate of compliance with building code requirements

Cross leases: It would be efficient if the Act treated changes to the footprint of a cross lease as a permitted activity or specifically excluded it from the definition of a subdivision altogether.

This would also reduce the processing workload for councils, in that a cross lease update would not need the full subdivision assessment review and reporting.
The council would still be required to issue a certificate under s584 (if this is this the same as a s224(f) RMA 1991 certificate). So that if a lease area structure is altered and a code compliance certificate is issued for the alteration, then the issue of a new title effectively is much simpler.

Also changing a cross lease into a fee-simple title (cross lease conversion) should also become a permitted activity, with a stream-lined or simplified subdivision assessment review process by Council.

This idea has been the subject of many proposals over many years and would make the land tenure change from cross lease to freehold titles – which is currently common - much easier.
It is also noted that the Law Commission recommended the abolition of cross-leasing as a form of land title in 1999 (https://www.lawcom.govt.nz/our-projects/shared-ownership)
Councils around the country appear to address cross lease conversions with variable levels of scrutiny and conditions – mostly there is an acceptance that a conversion is positive and so that action is supported by Councils.

There is no definition of a certificate of code compliance in the Act that really explains what it is or what it encompasses. Which just makes things more difficult to comply with.

A clause closer to Section 224(f) RMA 1991 would be more useful. As it is, Section 7 refers to Section 568, which refers to Section 584, which doesn't really explain what it is to certify.

578 Requirements if subdivided land includes river or lakebed or is in the coastal marine area.
This section vests land in the council that is a stream bed adjoining an esplanade reserve that vests in the council.

We consider that there just be a note on the survey plan that there is a presumptive ownership from the centre or the stream instead of showing a separate lot.

583 Requirement for consent if land will vest in territorial authority or the Crown
587 Vesting of Roads
Road's vest free of interests and encumbrances without the necessity of an instrument of release or discharge instrument (the same as the s238 RMA 1991), and s583 requires the consent of every registered owner of an interest in the land (same as s224b RMA 1991).

We consider that the requirement of having the consent of those having covenants or easements over the land to vest as road be done away with, or only allowed to continue in certain circumstances.

For example, if there is a no-build covenant over land to vest as road, the covenant could remain or be extinguished because it's unlikely that the road would be built on. (With the exception of power poles and transformers etc). If it is an easement for access, then the land becoming road achieves the same outcome.

628 Consent notices
It would be useful if it were possible to impose consent notices on land use consents as well as subdivisions so that future landowners would be aware of any responsibilities or obligations they may have without the need for a covenant document.

For example, say a building requires a land use consent and one of the councils' conditions is for screen planting. This could be simply specified within a consent notice required as part of the subdivision conditions.

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