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To whom it may concern

New Zealand Green Building Council - Submission on Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

- 1 This submission is made on behalf of the New Zealand Green Building Council (**NZGBC**). NZGBC is a not-for-profit industry organisation dedicated to a sustainable built environment. NZGBC achieves this by setting standards of best practice through green building rating tools; education and training for all areas of the building industry value chain; and providing access to networks, information and resources for our members to lead the market. Its vision is for all homes and buildings in Aotearoa to be green and sustainable, making healthier, happier New Zealanders.
- 2 We're a non-profit, that includes 520 companies and organisations amongst our members, including banks, energy companies, insurers, government departments, publicly listed property companies, project managers, manufacturers, construction companies, architects, developers, designers and tertiary education institutions. This includes many of the NZX50. These members have a combined market turnover of \$40bn. We also work with local government members, representing over 60% of Aotearoa New Zealand's population.

Summary

- 3 Under the current regime, Council's cannot require buildings to be constructed to a higher standard than that prescribed by the Building Code. Other incentives to promote higher building standards under territorial and regional plans are also tightly constrained. This has enabled the adoption of 'bare minimum' building practices and contributed to homes and workplaces being, cold, damp, unhealthy and energy inefficient. There are many reasons why New Zealand would benefit from requiring a better standard of buildings overall. These include:
 - (a) New Zealand has an energy equity problem. Too many households must spend high proportions of their incomes heating cold, inefficient homes. If New Zealand is serious about tackling poverty and improving the lives of all Kiwis, it should ensure its future housing stock does not shackle households to high energy bills.
 - (b) Forty percent of New Zealand's existing homes are damp and mouldy. According to OECD standards, New Zealand homes are poorly constructed and heated and standards are less stringent than those of many other OECD countries.

- (c) According to health statistics, 20 New Zealand children are dying every year, while another 30,000 are hospitalised from issues related to poor housing.¹ New Zealand cannot afford for its new building stock to become the cold, damp unhealthy homes of the future because of the inadequate Building Code.
- (d) New Zealand has a clear and legislated goal of achieving a net zero carbon economy by 2050. If New Zealand is to achieve its emissions reduction targets, it must make drastic improvements to energy efficiency in its homes and reducing carbon emissions related to the housing sector. Emissions from energy, industry and buildings currently 'contribute around 44% of long-lived gases in Aotearoa'.² The Climate Change Commission stated in its recent advice to the New Zealand Government that 'actions to improve the energy efficiency of buildings, alongside decarbonising the energy used for heating, hot water and cooking, will be important for meeting the 2050 targets'.³
- (e) The Commission included the development of 'a plan to transform buildings to be low emissions' as a key element for policy direction.⁴ It referred to submissions seeking 'better, healthier homes and workplaces that are more energy efficient' and the construction of buildings using designs and products that lower emissions'.⁵ It went on to provide:⁶

Aotearoa needs low emissions, energy-efficient, warm, healthy homes and workplaces. Buildings should be constructed using designs and products that lower emissions and improve New Zealanders' health and wellbeing. There must be standards and legislation to support this. Our advice recommends:

- Considered and continued upgrades of minimum Building Code requirements to overcome key barriers that lead to buildings that are not low emissions or as energy efficient and healthy as possible.
- Encouraging construction based on low-emissions designs and practices, because embodied emissions represent a significant proportion of building sector emissions.
- Scaling up energy efficiency assistance to low-income households, so that low-income households can benefit from lower emissions, lower energy costs and healthier buildings.
- Mandating participation in energy performance programmes for existing commercial and public buildings.

¹ 1 NZ Herald. Child deaths linked to unhealthy housing 'unacceptable' – health minister. 30 August, 2017 <https://www.nzherald.co.nz/nz/child-deaths-linked-to-unhealthy-housing-unacceptable-healthminister/YJ2MZ7Y4WT2FFI7FYSWQQFQKCY/>

² Climate Change Commission "Inaia tonu nei: a low emissions future for Aotearoa – Advice to the New Zealand Government on its first three emissions budgets and direction for its emissions reduction plan 2022 – 2025" (31 May 2021) at 274.

³ At 110.

⁴ At 14.

⁵ At 29.

⁶ At 275.

- (f) The housing sector represents a huge opportunity for improving energy efficiency and reducing the nation's energy demand. If New Zealand significantly improves energy efficiency in new homes, it will help to reduce peak demand, free up energy capacity for new technologies such as electric cars, and lessen the urgency for developing new energy generation.
 - (g) While there may be some initial challenges for builders, manufacturers and suppliers, lifting minimum building standards will create opportunities to provide the materials New Zealand needs to achieve better outcomes.
- 4 The proposed resource management reforms represent an opportunity for New Zealand to make buildings warmer, drier, healthier, more energy efficient and with a reduced carbon footprint.

Current regulatory hurdles to better buildings

- 5 The main hurdle to district plans including rules relating to standard of buildings is section 18 of the Building Act that says performance criteria cannot be more restrictive than the Building Code. Section 18 of the Building Act has been interpreted to mean that any additional restriction relating to internal (as opposed to external) effects is not lawful. For example, the Independent Hearings Panel considering the proposed Auckland Plan recommended that the references to the NZGBC rating tools be deleted from the proposed version of rules, because these were performance criteria more restrictive than that prescribed in the Building Code.⁷
- 6 This significantly constrains the use of RMA mechanisms to require a better standard of buildings in terms of internal performance, and instead leaves the main RMA regulatory lever in the realm of incentives, rather than prerequisites.

Feedback on the Exposure Draft and Parliamentary Paper on the Exposure Draft

- 7 The NZGBC understands that the Select Committee inquiry terms of reference includes providing feedback on the following matters in the Exposure Draft of the Natural and Built Environments Bill (**Exposure Draft**) relevant to the NZGBC's interests⁸:

Better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure

- 8 *Better prepare for adapting to climate change and risks from natural hazards, and better mitigate emissions contributing to climate change* The Exposure Draft does not sufficiently encourage or incentivise the construction of warm, dry, healthy, sustainable and efficient buildings.

⁷ Auckland Unitary Plan Independent Hearings Panel, Report to Auckland Council Overview of recommendations, 2016-07-22, pages 42-43; Auckland Unitary Plan Independent Hearing Panel, Report to Auckland Council Hearing topic 077, Sustainable Design, July 2017, page 5 "As set out in the Panel's Report to Auckland Council – Overview of recommendations July 2016, in section 5.3 on managing external effects, the Panel considers that controls on internal aspects of buildings under the Resource Management Act 1991, to the extent that they are appropriate at all, cannot exceed the requirements for such controls set by the Building Code".

⁸ Parliamentary Paper on Exposure Draft of the NBA, Appendix 1 Terms of Reference for the Select Committee Inquiry, page 80

- 9 The interpretation clause does not define key terms relating to buildings including 'built environment', 'housing supply', 'housing affordability' and 'housing choice'. It is unclear whether homes are included within the definition of infrastructure because this term has not yet been defined.
- 10 Healthy homes are critical to peoples' health and well-being. Warmer, drier and more energy efficient homes have significant health benefits and result in 'increased comfort, reduced time off work or school, fewer GP visits , fewer hospital admissions for circulatory and respiratory illnesses, fewer pharmaceutical costs, and reduced mortality'.⁹ One of the purposes of the Bill is to enable 'people and communities to use the environment in a way that supports the well-being of present generations without compromising the wellbeing of future generations.'¹⁰ Despite this, the Bill's environmental outcomes fail to incentivise the construction of healthy homes in order to promote peoples' well-being.
- 11 The Parliamentary Paper on the Exposure Draft (**Paper**) does not refer to the Building Act, the Building Code or propose to amend the minimum standards for housing in New Zealand, except to note that there are not substantive changes proposed for the Building Act 2004.¹¹.
- 12 The reform objectives discussed in the Paper propose to significantly improve housing supply, affordability and choice but are noticeably silent on key issues relating cold, damp, unhealthy, unsustainable and inefficient homes that are enabled by the Building Code.
- 13 NZGBC recommends the following changes to the Bill, with examples to implement the below set out in the **appendix** to this submission:
 - (a) Key terms relating to built environments such as 'built environment', 'housing supply', 'affordability' and 'choice' should be defined.
 - (b) The "environmental outcomes" should incorporate building quality including the promotion of warmer, drier, healthier, more sustainable and more energy efficient buildings;

Feedback for "list of ideas"

- 14 The NZGBC understands that the Select Committee inquiry terms of reference includes collation of a list of ideas for making the new system more efficient, more proportionate to the scale and/or risks associated with given activities, more affordable for the end user and less complex, compared to the current system, along with feedback on the Parliamentary Paper.
- 15 The NZGBC submits that the Select Committee recommend the following be addressed in its "list of ideas" that has been directed in the terms of reference of the inquiry, with examples to implement the below set out in the appendix to this submission:

⁹ Climate Change Commission at [162].

¹⁰ Natural and Built Environments Bill Exposure Draft, cl 5 (1)(b)/

¹¹ Parliamentary Paper on Exposure Draft of the NBA, Appendix 1 Terms of Reference for the Select Committee Inquiry, page 11

- (a) Amendments to the Building Act and Building Code to enable the National Planning Framework and the Natural and Built Environment Plans to require buildings to be constructed to a higher standard than the building code; and
- (b) Amendments to the Local Government Act 2002 and Local Government (Rating) Act 2002 to better incentivise, through rates relief and discounted development contributions, construction of buildings certified in respect of key measures relevant to energy efficiency, carbon footprint and health.
- (c) Incorporate green building into the national planning framework under the Natural and Built Environment Act and make immediate changes to the Resource Management Act 1991 to give effect to green building policies and principles, in the intermediate period before this legislation is replaced.

16 The NZGBC wishes to be heard in respect of its submission.

Appendix - examples of amendments to legislation to give effect to relief sought

The following additions (shown as underlined are examples of changes to legislation that could give effect to the relief sought)

Natural and Built Environments Bill

3 Interpretation

...

Active transport means forms of transport that involve physical exercise, such as walking or cycling, and includes transport that may use a mobility aid such as a wheelchair

Well-functioning Urban Environment - Planning decisions contribute to well-functioning urban environments, which are urban environments that, as a minimum:

(a) have or enable a variety of homes that:

_____ (i) meet the needs, in terms of type, price, and location, of different households;

_____ (ii) Are encouraged to achieve Green Star Building (3 or higher) or Home Star (6 or higher) certifications (or equivalent certification) and / or otherwise seek to achieve warm, dry, healthy, sustainable and efficient buildings; and

_____ (iii) enable Māori to express their cultural traditions and norms; and

(b) support reductions in greenhouse gas emissions; and

(c) are resilient to the likely current and future effects of climate change.

Well functioning built environment - human-made environment that provides the setting for human activity, including homes, buildings, zoning, streets, sidewalks, open spaces, transportation options, which have a primary purpose and function to achieve resilient, energy efficient and sustainable housing and buildings.

Resilient Housing Market - Planning decisions contribute to a resilient housing market, which as a minimum, achieves:

_____ (a) An affordable and competitive local and national housing market;

_____ (b) achievement of specific goals, set at a regional level, with respect to demands for housing by Māori and different groups in the community (such as retired people, renters, homeowners, low-income households, visitors, and seasonal workers) are met, including the demand for different types and forms of housing (such as for lower-cost housing, papakāinga, and seasonal worker or student accommodation);

_____ (c) sufficient land and development capacity is provided in order to support choice and competitiveness in housing and business land markets.

Resilient Housing Supply - The flow of properties available at a given price in a given time period is in equilibrium with housing demand and where household incomes, housing prices, rents and price efficiency indicators are regularly monitored and includes a realisable Choice for consumers.

Choice - Planning decisions support choice and competitiveness in housing and business land markets by encouraging:

(a) A range of built form, housing typologies, density, and locations; and

(b) Homes and buildings which achieve Green Star Building (3 or higher) or Home Star (6 or higher) certifications (or equivalent certification)

environment means, as the context requires,—

(a) the natural environment:

(b) people and communities and the built environment and urban environment that they create:

(c) the social, economic, and cultural conditions that affect the matters stated in paragraphs (a) and (b) or that are affected by those matters

(5) Purpose of this Act

(1) The purpose of this Act is to enable—

(a) Te Oranga o te Taiao to be upheld, including by protecting and enhancing the natural environment; and

(b) people and communities to use and live within the environment in a way that supports the well-being, resiliency and sustainability of present generations without compromising the wellbeing of future generations.

8 Environmental outcomes

To assist in achieving the purpose of the Act, the national planning framework and all plans must promote the following environmental outcomes:

...

(k) Well Functioning urban areas and built environments that are ~~well-functioning and~~ responsive to growth and other changes, including by—

(i) enabling a range of economic, social, and cultural activities;

(ii) ensuring a resilient urban form with good transport links within and beyond the urban area; and

(iii) Encouraging Resilient Housing Supply, Resilient Housing Markets, and Choice

(l) a housing supply is developed to—

(i) provide choice to consumers; and

(ii) contribute to the affordability of housing; and

(iii) meet the diverse and changing needs of people and communities; and

(iv) support Māori housing aims; and

(v) Support Resilient Housing Supply, Resilient Housing Markets and Choice within Well Functioning Urban Areas

(m) in relation to rural areas, development is pursued that–

(i) enables a range of economic, social, and cultural activities; and

(ii) contributes to the development of adaptable and economically resilient communities; and

(iii) contributes to green field development which achieves the principles of Resilient Housing Markets, Choice and Well Functioning Urban Areas, where such development is required to achieve Resilient Housing Supply; and

(iv) promotes the protection of highly productive land from inappropriate subdivision, use, and development:

13 Topics that national planning framework must include

....

(f) section 8(k) (Well-Functioning urban areas and Well-Functioning Built Environment); and

(g) section 8(l) (Resilient housing supply);

Amendments to the Building Act and Building Code¹²

Amendments to the Building Code which provide a tiered development pathway for buildings which achieve a higher standard of building efficiency. This tiered approach would then provide a platform for alternative RMA planning, rating, and development opportunities across other pieces of legislation. Changes are required in the Code to address:

- Better insulation requirements
- Inclusion of air tightness and thermal bridging standards
- Improved ventilation
- Requirements to mitigate overheating
- Efficiency standards for all energy uses
- Energy performance modelling and reporting

Building Act 2004

...

18 Building work not required to achieve performance criteria additional to or more restrictive than building code

(1) A person who carries out any building work is not required by this Act to–

- (a) achieve performance criteria that are additional to, or more restrictive than, the performance criteria prescribed in the building code in relation to that building work; or
- (b) take any action in respect of that building work if it complies with the building code.

(2) Subsection (1) is subject to any express provision to the contrary in any Act;

(3) Subsection (1) does not prevent any other Act requiring, encouraging or incentivising achievement of performance criteria that are additional to, or of a higher standard than, the performance criteria prescribed in the building code in relation to that building work;

¹² The term “Building Code” is used for the suite of documents that set the requirements for new homes. The detailed requirements are mostly contained in separate Acceptable Solutions documents that the general public thinks of these as the “Building Code”.

Amendments to Local Government Act 2002

(5) Interpretation

....

strategic asset, in relation to the assets held by a local authority, means an asset or group of assets that the local authority needs to retain if the local authority is to maintain the local authority's capacity to achieve or promote any outcome that the local authority determines to be important to the current or future well-being, resiliency and efficiency of the community; and includes–
(a) any asset or group of assets listed in accordance with section 76AA(3) by the local authority; and
(b) any land or building owned by the local authority and required to maintain the local authority's capacity to provide affordable housing, or Well-Functioning Built Environment, or Well-Functioning Urban Environment (as defined in the NBEA) as part of its social policy; and

community outcomes **means** the outcomes that a local authority aims to achieve in meeting the current and future needs of communities for good-quality local infrastructure, Well Functioning Urban Environments and Well Functioning Built Environments, local public services, and performance of regulatory functions

...

10 Purpose of local government

(1) The purpose of local government is–

(a) to enable democratic local decision-making and action by, and on behalf of, communities; and
(b) to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses;

(c) To assist in, and implement, measures and policies which achieve the principles of Resilient Housing Markets and Well-Functioning Urban Areas as set out in the NBEA.

(2) In this Act, **good-quality and well functioning**, in relation to local infrastructure, local public services, and performance of regulatory functions, means infrastructure, services, and performance that are–

(a) efficient; and

(b) effective; and

(c) resilient

(d) appropriate to present and anticipated future circumstances.

102 Funding and financial policies

(1) A local authority must, in order to provide predictability and certainty about sources and levels of funding, adopt the funding and financial policies listed in subsection (2).

(2) The policies are–

(a) a revenue and financing policy; and

(b) a liability management policy; and

(c) an investment policy; and

(d) a policy on development contributions or financial contributions; and

(e) a policy on the remission and postponement of rates on Māori freehold land; and

(f) a policy on the remission and postponement of rates with respect to any building or development which achieves Green Star Building (3 or higher) or Home Star (6 or higher)

certifications (or equivalent certification) and / or otherwise proves performance of a warm, dry, healthy, sustainable and efficient building ['Sustainable Building and Housing']; and

[xxxx] Policy on remission and postponement of rates on sustainable buildings and housing

If a policy adopted under section 10XX(1) provides for the remission of rates on Sustainable Building and Housing development, the policy must state–

- (a) the objectives sought to be achieved by the remission of rates; and
- (b) the conditions and criteria to be met in order for rates to be remitted.

(2) If a policy adopted under section 10XX(1) provides for the postponement of the requirement to pay rates on Sustainable Building and Housing development, the policy must state–

- (a) the objectives sought to be achieved by a postponement of the requirement to pay rates; and
- (b) the conditions and criteria to be met in order for the requirement to pay rates to be postponed.

(3) For the avoidance of doubt, a policy adopted under section 102(1) is not required to provide for the remission of, or postponement of the requirement to pay, rates on Māori freehold land.

(4) In determining a policy under section 102(1), the local authority must consider the matters set out in Schedule XX.

(4A) A policy adopted under section 102(1) must be reviewed at least once every 6 years using a consultation process that gives effect to the requirements of section 82.

Schedule xx - Matters relating to rates relief for Sustainable Building and Housing development

The matters that the local authority must consider under section XXX)are–

- (a) the desirability and importance within the district of each of the objectives in clause 2; and
- (b) whether, and to what extent, the attainment of any of those objectives could be prejudicially affected if there is no remission of rates or postponement of the requirement to pay rates on Sustainable Building and Housing development; and
- (c) whether, and to what extent, the attainment of those objectives is likely to be facilitated by the remission of rates or postponement of the requirement to pay rates on Sustainable Building and Housing development; and
- (d) the extent to which different criteria and conditions for rates relief may contribute to different objectives.

2The objectives referred to in clause 1 are–

- (a) supporting the objective for people to live in warm, dry, sustainable homes;
- (b) facilitating new building and replacement of existing buildings with Sustainable Building and Housing development;
- (c) recognising and taking account of the contribution of Sustainable Building and Housing development to reduce greenhouse gas emissions and reliance on other Council Infrastructure;
- (d) recognising the importance of Sustainable Building and Housing development in providing positive social outcomes and Well Functioning Built Environments

Local Government Rating Act

[xxx] Remission of rates on Sustainable Building and Housing development generally

(1) A local authority may remit all or part of the rates (including penalties for unpaid rates) on Sustainable Building and Housing development if-

(a) its policy on the remission and postponement of rates on Sustainable Building and Housing development adopted under section 10XX) of the Local Government Act 2002 includes provision for the remission of the rates; and

(b) the local authority is satisfied that the conditions and criteria in the policy are met.

...

Amendments to national planning framework under the Natural and Built Environment Act and immediate changes to the Resource Management Act 1991 to give effect to green building policies and principles, in the intermediate period before this legislation is replaced.

National Policy Statement Urban Development 2020

Definitions...

Well-Functioning Urban Environment [has the same meaning as the National and built Environment Act]

Well functioning built environment - [has the same meaning as the National and built Environment Act]

Resilient Housing Market- [has the same meaning as the National and built Environment Act]

Resilient Housing Market - [has the same meaning as the National and built Environment Act]

Resilient Housing Supply - [has the same meaning as the National and built Environment Act]

Choice - [has the same meaning as the National and built Environment Act]

Objective [xx]: Well-functioning urban and built environments incorporate high standards of building efficiency and resilience through encouraging Choice and delivering a Resilient Housing Market

Objective [xxx] Planning Decisions incentivise greenfield development and brownfield redevelopment to achieve Green Star Building (3 or higher) or Home Star (6 or higher) certifications (or equivalent certification) and / or otherwise proves performance of a warm, dry, healthy, sustainable and efficient building ['Sustainable Building and Housing'];

Resource Management Act 1991

Definitions...

[Incorporate the above definitions from the NBEA into the RMA]

68 Regional Rules

...

(2B) Rules may be made under this section to achieve Sustainable Building and Housing development [as defined], and in accordance with section 18(3) Building Code.

75 District Rules

(2B) Rules may be made under this section to achieve Sustainable Building and Housing development [as defined], and in accordance with section 18(3) Building Code.

108 Conditions of resource consent

In this section, financial contribution means a contribution of–

(a) money; or

(b) land, including an esplanade reserve or esplanade strip (other than in relation to a subdivision consent), but excluding Maori land within the meaning of Te Ture Whenua Maori Act 1993 unless that Act provides otherwise; or

(c) a combination of money and land.

(10) A consent authority must not include a condition in a resource consent requiring a financial contribution unless–

(a) the condition is imposed in accordance with the purposes specified in the plan or proposed plan (including the purpose of ensuring positive effects on the environment to offset any adverse effect); and

(b) the level of contribution is determined in the manner described in the plan or proposed plan;

(11) A consent authority may choose to remit or reduce the whole or any part of an applicable financial contribution in the case of any Sustainable Building and Housing development [as defined] and having regard to Section XX and Schedule XX of the Local Government Act 2002 (Matters relating to rates relief for Sustainable Building and Housing development)

Nga mihi nui



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