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Enquiries to: Katrina Andrews

Waikato
REGIONAL COUNCIL
Te Kaunihera ā Rohe o Waikato
Private Bag 3038
Waikato Mail Centre
Hamilton 3240, NZ

waikatoregion.govt.nz
0800 800 401

13 February 2025

New Zealand Parliament
Environment Committee

Email: en.legislation@parliament.govt.nz

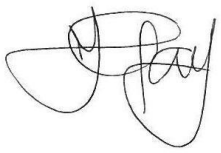
Dear Sir/Madam

Waikato Regional Council Submission to the Resource Management (Consenting and Other System Changes) Amendment Bill

Thank you for the opportunity to submit on the Resource Management (Consenting and Other System Changes) Amendment Bill. Please find attached the Waikato Regional Council's (the council's) submission regarding the Bill. The submission was formally endorsed by the council's Strategy and Policy Committee on 13 February 2025.

Should you have any queries regarding the content of this document please contact Katrina Andrews, Senior Policy Advisor, Strategic and Spatial Planning directly on (07) 8590929 or by email Katrina.Andrews@waikatoregion.govt.nz.

Regards,



Tracey May
Director Science, Policy and Information

Submission from Waikato Regional Council on the Resource Management (Consenting and Other System Changes) Amendment Bill

Introduction

1. We appreciate the opportunity to make a submission on the Resource Management (Consenting and Other System Changes) Amendment Bill.

2. Waikato Regional Council (the council) recognises that the focus of this Bill is on making targeted amendments to the Resource Management Act 1991 (RMA) and that it is intended to be followed by further steps in the government's resource management reform programme, including a suite of proposed changes to national directions instruments, and subsequently, full replacement of the RMA.

3. Overall, the council is generally supportive of the Bill. We make recommendations to address issues with the Bill as currently drafted, and to improve workability, clarity and certainty for local authorities.

4. We note that some of the amendments within the Bill will incur additional implementation costs for the council, which may need to be covered by ratepayers. Given the government's signalled reform to refocus local government, we recommend that the Select Committee considers the implementation costs of proposed amendments, particularly if these require councils to undertake activities outside of their current roles and responsibilities under the RMA.

5. We have grouped our feedback according to the key themes the Bill seeks to address; infrastructure and energy, housing, farming and the primary sector, natural hazards and emergencies, and system improvements (incorporating consenting and enforcement).

6. We provide a summary of our key recommendations below. This is followed by a table of specific submission points, which provides greater detail and recommended drafting changes.

7. We look forward to any future consultation processes on the Bill and would welcome the opportunity to comment on any issues explored during their development.

Submitter details

Waikato Regional Council
Private Bag 3038
Waikato Mail Centre
Hamilton 3240

Contact person:

Katrina Andrews
Senior Policy Advisor, Strategic and Spatial Planning
Email: Katrina.Andrews@waikatoregion.govt.nz
Phone: (07) 8590929

Summary of key points

Infrastructure and energy

Consent duration and related matters

8. We recommend amendments to the proposed definitions of “specified energy activity” and “wood processing activity”. To improve workability, we recommend that a definition also be added for "long-lived infrastructure activity".

9. We seek that local government flood defence and land drainage infrastructure be added to the definition of “long-lived infrastructure”. We consider that including this infrastructure within the 35-year default consent duration introduced under Clause 42 is important for providing certainty for investment in this infrastructure.

10. We seek amendments to Clause 29 (new section 88BA - Certain consents must be processed and decided no later than 1 year after lodgement) to address a number of issues with this clause, including circumstances where a one-year timeframe is unachievable for reasons outside of the consenting authority’s control.

11. We seek a number of amendments to Clause 42 (new section 123B - Duration of consent for renewable energy and long-lived infrastructure). We consider the proposed minimum 35-year consent duration to be problematic for geothermal energy given the complexity of geothermal resource management and therefore seek that an exception be added in relation to geothermal consent duration that provides for full discretion for the consenting authority to set a duration between 10 and 35 years.

Proposed amendments to RMA section 70 (Rules about discharges)

12. We support the general intent of the proposed changes to section of the RMA, however, we seek amendments to the proposed new section 70(3) to expand this from only incorporating effects under section 70(1)(g) (significant adverse effects on aquatic life), to also incorporate effects under sections 70(1)(d) (colour and visual clarity) and (f) (suitability for consumption by farm animals). We consider this change is necessary to ensure the workability of this clause.

13. We also seek specific changes to proposed section 70(3)(c) to address a range of difficulties with the proposed requirement for rules to specify a "period of time" by which reductions of effects are to occur, and to better recognise that a permitted activity rule in a plan is just a single instrument in an integrated suite of rules and methods which collectively seek to achieve the plan's objectives.

14. We note the difficulties with the proposed changes to section 70 identified in this submission also apply to the amendment to RMA section 107 introduced via the Resource Management (Freshwater and Other Matters) Amendment Act 2024. We therefore recommend associated amendments to section 107 to align with our recommended changes to section 70 and enable this section to be workable in practice.

Housing

15. We note that much of the detail on the housing-related changes will come in the proposed amendments to the National Policy Statement on Urban Development 2020 (NPS-UD), which are alluded to in the Bill. It is therefore difficult to provide full, integrated comments on the proposed changes relating to housing at this time when the revised NPS-UD is yet to be released for public consultation.

16. We recommend that an exemption be added to proposed section 77FA(4)(b) to enable specified territorial authorities to make minor amendments to the Medium Density Residential Standards (MDRS) within their district plan that will not reduce the planned housing capacity or negatively

impact on well-functioning urban environments. This would provide for a more efficient process while ensuring that any minor amendments to district plans continue to give effect to the objectives of the NPS-UD and associated provisions within the Waikato Regional Policy Statement (WRPS).

17. We request that changes related to heritage matters (under Clause 20) not be progressed as part of this Bill until further evidence is gathered and a suitable regulatory analysis is produced to support legislative changes. We also recommend an amendment to enable the listing of heritage buildings and structures to occur using the streamlined planning process, in addition to delisting as currently proposed under Clause 20. We consider that a consistent statutory approach that provides for both the removal and listing of heritage items will facilitate regulatory direction under the RMA and assist with meeting objectives under the WRPS relating to historic and cultural values.

18. We support the inclusion of natural hazards as a specific matter that Intensification Planning Instruments (IPIs) can amend or include provisions on.

19. We seek clarification on specific aspects of Clauses 22 and 24 in relation to IPIs. We also seek amendments to Clause 70(15) to improve consistency in changes relating to the streamlined planning process, including ensuring a process is provided for the local authority's alternative solutions to rejected recommendations to become operative.

20. We recommend that proposed Schedule 1 clause 83(2), which requires that elected members of a local authority cannot be appointed to a Streamlined Planning Process (SPP) panel, be deleted. The reason for this proposed change to SPP panels has not been identified.

Farming and the primary sector

Relationship between the RMA and Fisheries Act 1996

21. We seek that proposed section 32(2A) and Schedule 1 clause 4B be deleted, to recognise that regional councils do not hold information or expertise on the management of fisheries and impacts on the abilities of persons and local communities to fish. Requiring regional councils to undertake an additional assessment of the impact of proposed rules on fishing would incur undue implementation costs that would need to be covered by ratepayers.

Aquaculture

22. We support the proposed changes to sections 43A and 127 of the RMA and recommend full engagement with regional councils when developing any associated national environmental standard.

Freshwater farm plans

23. We are broadly supportive of the changes proposed in relation to the freshwater farm plan (FW-FP) system, subject to amendments. Our recommended amendments include:
    a. Retaining existing section 217H(3).
    b. Amendments to proposed section 217I(2), to support a more robust and credible system, including providing councils with the ability to address deficient FW-FPs.
    c. Multiple amendments to proposed new section 217KA. These include requiring that applications and associated decisions be made publicly available, and decisions to be made by a politically neutral central entity, as well as a number of amendments to improve clarity. We also recommend an associated change to section 217L of the RMA to clarify how section 217KA (and associated regulation) would work alongside similar regional plans requirements.
    d. Amendments to proposed section 217M(2A) to improve clarity and consistency.

Natural hazards and emergencies

24. We support Clauses 25(1) and 46, which provide that rules relating natural hazards will have immediate legal effect upon notification.

25. We support the intent of Clause 37 to enable consent authorities to refuse land use consent based on assessment of risk from natural hazards, but seek that a definition of "significant risk" be added to the RMA. This would improve clarity and a provide a nationally consistent approach for the management of natural hazard risk. We also recommend the references to "material damage" in this clause be replaced with "consequences on people, property, critical infrastructure and the environment" to be more consistent with best practice risk methodologies.

System improvements

Consenting

26. We recommend amendments to Clauses 28 and 30 (which propose amendments to RMA sections 88 and 92), to improve clarity and consistency.

27. We support Clause 32 (new section 92AA inserted - Consequences of applicant's failure to respond to requests, etc), subject to amendments to address issues with the proposed reference to an "agreed date" and to better reflect current practice in terms of "returning" an application. We also recommend an associated change to section 88 of the RMA to align with this.

28. We note that Clause 34 (section 100 replaced - Obligation to hold a hearing) proposes a very significant change to the status quo as it relates to submitter rights. We have identified a large number of issues with this clause and, accordingly, seek that it be deleted from the Bill.

29. We support Clause 36 (section 104 amended - Consideration of applications) subject to amendments to improve consistency of wording and to further expand the scope of an applicant's compliance history that consenting authorities can consider, to also include non-compliance which has been the subject of any formal warning or infringement offence.

30. We support Clause 38 (new section 107G inserted - Review of draft conditions of consent) but seek clarification on two specific aspects.

Enforcement and other matters

31. We support Clause 63 (section 330A amended - Resource consents for emergency works) subject to amendments to require notification of emergency works to the appropriate consent authority within 7 days of the start of the works (rather than the completion of the works), while providing timing for application lodgement within 30 working days of completion of the works.

32. In relation to Clause 65 (section 339 amended – Penalties), we recommend that consideration be given to introducing minimum levels for fines.

33. We recommend that Clause 67 (section 352 amended - Service of documents) be deleted from the Bill, as it is unclear what problem this is trying to address and we consider the proposed amendments will not be effective in practice.

34. We recommend an additional amendment to provide for Clause 32 to be applied retrospectively. We consider this aligns with the government's objectives for improving efficiency of consenting processes, by assisting consenting authorities to clear backlogs of old applications.

Table of specific submission points - Waikato Regional Council submission on the Resource Management (Consenting and Other System Changes) Amendment Bill

Submission point	Clause	Submission	Amendments sought
Infrastructure and energy			
Consent duration and related matters			
35.	Clause 4 – Section 2 amended (Interpretation)	We support the proposed definition for "long-lived infrastructure", however seek that local government flood defence and land drainage infrastructure be added to the definition. As discussed in submission point 40, while there is a definition for "long-lived infrastructure" proposed in the Bill, there is no definition for a "long-lived infrastructure activity". This is problematic for implementation of proposed Clause 42, because not all "long-lived infrastructure activities" necessarily require long-term consents. It would not be in the interests of efficient resource management to have to issue 35-year consents for short-term activities associated with construction. We therefore suggest that a definition of "long-lived infrastructure activity" be added which excludes construction phase activities. A correction to the proposed definition of "specified energy activity" is required, to recognise that energy can't be created or destroyed but can be transferred between systems (known as the First Law of Thermodynamics, or law of conservation of energy). The activities intended to be covered by the definition do not produce energy, rather they convert it to a carrier for use and/or storage. We recommend the proposed definition of "wood processing activity" be amended to include clarification regarding the chemical treatment of wood (i.e. tanalising of timber products, particularly sawn timber), which we presume is intended to be included.	**Add** local government flood defence and land drainage infrastructure to the definition of "long-lived infrastructure". **Add** a new definition for "long-lived infrastructure activities". We suggest the following: "Any activity for the ongoing use, operation and maintenance of long-lived infrastructure and does not include construction phase activities." **Amend** the proposed definition of "specified energy activity" as follows: "(a) the establishment, operation, or maintenance of an activity that ~~produces~~ converts energy from solar, wind, geothermal, hydro, or biomass sources:..." This is based on the assumption that the definition of "specified energy activity" is intended to include energy sources of heat for direct use, not just electricity. If this is the case, a **consequential amendment** to the

			definition of “long-lived infrastructure” is also required, so that it includes the facilities for the direct use of renewable heat energy sources and their conveyance. **Amend** the proposed definition of “wood processing activity” as follows: "…(i) sawn timber, including chemically treated timber;…"
36.	Clause 11 – Section 37 amended (Power of waiver and extension of time limits)	We assume the intent of this clause is to prevent extension of the overall timeframes (one year, or in some circumstances, two years) provided for in proposed new section 88BA. However, the effect of Clause 11 is that it may also be interpreted to restrict any extension for any timebound processes "within" the overall process (e.g. the time for determining completeness under s88 or decision regarding notification etc). There is no need to restrict extensions of these processes if the overall timeframe is achieved. To avoid doubt as to the effect of this provision, we therefore suggest an amendment to limit the effect of Clause 11 to the maximum periods specified by proposed s88BA.	**Amend** proposed s37(1B) as follows: “(1B) A consent authority must not extend, under subsection (1)(a), the maximum time period specified under section 88BA(1) or (2) for processing and deciding an application for a resource consent for a wood processing activity or specified energy activity ~~(see section 88BA)~~.”
37.	Clause 15 – Section 70 amended (Rules about discharges)	We support the general intent of Clause 15, which responds to a recent Court determination regarding the proper interpretation of s107, and by implication, s70, in their current forms. However, we seek amendments to the proposed wording of new s70(3). Currently the scope of the amendment is limited to providing an exception only relating to s70(1)(g) - *"any significant adverse effects on aquatic life".* We acknowledge that some waterways, or parts thereof, in the Waikato region currently fail to meet this standard. However, while sub-section (1)(g) was the particular point of contention in the recent Court decision, the issues raised by the decision were potentially applicable to all/any of the water quality standards specified in sections 70 and 107. There is evidence that many Waikato region waterways, or parts thereof, also currently fail to meet the bottom line standards in ss70(1)(d) (relating to colour and	**Amend** proposed s70(3) as follows: “(3) A regional council may include in a regional plan a rule that allows as a permitted activity a discharge described in subsection (1)(a) or (b) that may allow the effects described in subsection (1)(d), (f) or (g) if— (a) the council is satisfied that there are already effects described in subsection (1)(d), (f) or (g) in the receiving waters; and (b) the rule includes standards for the permitted activity; and

		visual clarity) and (f) (relating to suitability for consumption by farm animals).[1] We expect that Waikato is not the only region where bottom line standards in s70 are currently unmet in some waterways, particularly those in areas of high intensity farming use. We therefore propose an amendment to expand the scope of the sub-section to accommodate standards (d) and (f). The drafting of proposed s70(3)(c) requires that standards be imposed in the rule and that the council is satisfied that "those standards" will contribute to a reduction of the effects in question. This drafting fails to acknowledge that a permitted activity rule in a plan is just a single instrument in an integrated suite of rules and methods which collectively seek to achieve the plan's objectives. We consider that this should be acknowledged more explicitly in the drafting. Proposed sub-section (3)(c) requires that the rule specify a "period of time" by which reductions of effects occur. This is problematic for three key reasons: 1. In many circumstances, there is a marked lag time between actions designed to improve water quality and the actual manifestation of improvements. For example, this is the case in relation to the effects of nitrogen in waterways where nitrogen losses to land from farming are the main contributor. It is not uncommon in these instances for the lag time for significant improvements in nitrogen in receiving waters to be measured in decades. 2. For similar reasons, any "period of time" specified in the rule is likely to be highly speculative, at best a "guesstimate" based on modelling. 3. The requirement for a "period of time" to be specified assumes that every location where s70 is currently breached will respond in the same way at the same time, which is almost certainly not going to be the case. The reality is much more complex and location-specific. We therefore consider that amendments to the wording are necessary. These should reflect that the council must still be satisfied that the standards will contribute to	(c) the council is satisfied that those standards will, in combination with other methods, contribute to a reduction of ~~the~~ those effects described in subsection (1)(d), (f) or (g) over ~~a period of~~ time ~~specified in the rule~~."

[1] With regard to visual clarity, monitoring demonstrates that, based on National Policy Statement for Freshwater Management (NPS-FM) banding, approximately 50% of monitored regional waterways were classified as moderate (C band) to substantial (D band) due to sediment impacts. With regard to suitability for stock drinking and based on the ANZECC 2000 guideline for livestock drinking water of 100 cfu/100ml for E. coli (faecal indicator bacteria, indicating pathogen and parasite risk), we approximate that 80% or more of our regional rivers would exceed that guideline.

		improvement "over time" but that specification of a time period is both fraught with difficulty and unnecessary. If proposed sub-section (3)(c) was retained as currently drafted, we consider it would be difficult to implement and would require more direction to be provided to regional councils regarding timeframes for reduction of effects. Additionally, we expect there would need to be an evidential basis that proposed rules would reduce effects, which we consider would be difficult to produce in practice. Accordingly, we seek amendments to proposed s70(3) to address all of the above issues. We note that any decisions in relation to discharges are subject to the requirement under s7(i) of the RMA to have particular regard to the effects of climate change. Temperature and flows of waterbodies are projected to change in response to modelled climate futures, which will affect the ability of waterbodies to receive and assimilate discharges containing contaminants. It will therefore become increasingly important to consider and address the ability of receiving waterbodies to cope with discharges into the future.	
38.	Associated change to RMA section 107	We consider that associated amendments to RMA s107 are required to align with our recommended changes to s70 above and enable this section to be workable in practice. The difficulties with the proposed changes to s70 discussed above also apply to the amendment to s107 introduced via the Resource Management (Freshwater and Other Matters) Amendment Act 2024. Section 107 was amended by the insertion of new section 107(2A). This provision similarly limited the exceptions to s107(1) requirements to water quality standard (1)(g) (significant adverse effects on aquatic life). Current breaches in water standards s107(1)(d) and (f) are not assisted by the new s107(2A). The result is that in locations where such breaches exist, the council will not have jurisdiction to grant consent where the discharge includes contaminants which are relevant to those standards, unless other "exceptions" in s107(2) apply. We	**Amend** RMA s107 as follows: "(2A) A consent authority may grant a discharge permit or a coastal permit to do something that would otherwise contravene section 15 or 15A that may allow the effects described in subsection (1)<u>(d), (f) or</u> (g) if the consent authority— (a) is satisfied that, at the time of granting, there are already effects described in subsection (1)<u>(d), (f) or</u> (g) in the receiving waters; and (b) imposes conditions on the permit; and

		consider this will almost certainly impact on farming-related and municipal discharge consents, among others.	(c) is satisfied that those conditions will contribute to a reduction of ~~the~~ those effects described in subsection (1)(d), (f) or (g) relevant to the discharge, over the duration of the permit."
39.	Clause 29 – New section 88BA inserted (Certain consents must be processed and decided no later than 1 year after lodgement)	While we are neutral in regard to the overall intent of Clause 29, we have identified a number of issues with this clause as currently drafted, including circumstances where a one-year timeframe is unachievable for reasons outside of the consenting authority's control. We also note that limiting consent processing timeframes may limit opportunities for iwi and hapū to voice concerns consistent with cultural values, and recommend that this be considered by the Select Committee in relation to this clause. There are circumstances which can arise during the processing of a consent that are initiated by the applicant or a third party, which can result in lengthy delays. These have the potential to cause or significantly contribute to a one-year timeframe being unachievable. The circumstances include (but are not limited to): • An applicant's right to suspend their application for up to 6 months under s91A or D. • An applicant's right to seek an order from the Environment Court revoking a determination under s91. • An applicant's right to lodge an objection to various process decisions including determination that an application is incomplete, or a requirement to pay additional fees. • A person's right to seek judicial review in respect of a decision on notification. • Other recourse to the judiciary in relation to process decisions (for example, in respect of the priority to be heard where that is contested). In all of these cases, none of which are within the control of the consenting authority, delays in consent processing will be inevitable. It is appropriate that the one-year maximum processing term for these consent applications accommodate such exceptions. We consider this matter could be addressed by the addition of a new sub-	**Add** a new sub-clause to proposed s88BA: "For the purpose of determining compliance with subsection (1), any period of time when the consent authority was unable to process the application for reasons outside its control, shall be disregarded." **Ensure** amendments made to this clause accommodate the provisions of RMA s88H including, but not limited to, that the "time period" in s88BA is subject to s88H and does not begin until the date on which payment is made for a charge fixed under section 36 which is payable when the application is lodged. However, this would not address scenarios where applicants are required to pay charges at the time of notification. In this scenario, a consent authority would essentially be compelled to continue processing an application despite non-payment of these charges. The current leverage available to the consenting authority –

		clause requiring that any period of time when the consent authority was unable to process the application for reasons outside its control shall be disregarded in determining compliance with proposed ss88BA(1). The clause as drafted also does not accommodate s88H (Excluded time periods relating to non-payment of administrative charges) which means that the council would have no leverage at all in terms of payment of fees. Applicants could ignore requests for payment indefinitely knowing the council is bound to continue processing the resource consent application. Additionally, we note that further extension must be granted if requested by a Treaty settlement entity, iwi authority, or a recognised customary rights group, with no discretion provided to the council. To ensure that this is not counter-productive to the intent of the clause in practice, we recommend there be some criteria added regarding the merits of the request.	to stop work – would not be feasible given the proposed new timeframes. We strongly urge amendments to proposed s88BA to address this concern.
40.	Clause 42 – New section 123B inserted (Duration of consent for renewable energy and long-lived infrastructure)	We have identified a number of issues with Clause 42, including specific concerns relating to geothermal resource management, and recommend changes to improve clarity and workability. <u>Geothermal resource management</u> The proposed 35-year consent duration is problematic in relation to geothermal energy activities. In greenfield geothermal development it is difficult to know what the long-term effects of abstraction will be without abstraction data. One way to manage the uncertainty is by granting shorter duration consents to test the system and examine impacts before granting longer duration consents. Existing adverse effects from excessive extraction include more than 15m of ground subsidence at Wairakei, inundation of large areas of land at Ohaaki, cold-water intrusion into the geothermal aquifer at Ohaaki (reducing the overall amount of energy that can be extracted), and at both Wairakei-Tauhara and Ohaaki, extinction of flowing geothermal features and increases of steaming ground. Unlike other renewable resources such as wind, solar, and hydro, the geothermal resource exists underground, is finite, and is very difficult to study and monitor due to its subsurface nature.	**Amend** proposed s123B(1) as follows: "<u>Except where section 123(a) or (b) applies, a</u> ~~A~~ resource consent authorising a renewable energy or long-lived infrastructure activity must specify the period for which it is granted." **Amend** proposed s123B(2)(c) as follows: "the consent authority decides to specify a shorter period after considering <u>the need, or</u> a request from a relevant group, for a shorter period for the purpose of managing any adverse effects on the environment." **Add** a new s123B(2)(d) which provides for full discretion on the part of the

		We consider the impact of imposing 35-year minimum consent durations is that consenting authorities will be considerably more conservative (particularly for greenfield developments) in the volume and nature of consented takes, which is a perverse outcome. In reality, the existing situation works well. No geothermal power development in New Zealand in the last 25 years has taken more than a year to process if it was heard by the regional council, most taking around 6 months. No such consents have been declined. Many geothermal power stations in New Zealand are Ormat binary plants, which are modular and scalable, so stepped development is easily accomplished. Stepped development has been very successful at Mokai, Rotokawa, Tauhara and Ngā Tamariki. Earlier non-stepped development at Wairakei and Ohaaki led to significant adverse effects and great cost. Once a geothermal resource is proven to have strong potential and sufficient information, the developer may apply to build a turbine-driven power station to add to the binary plant, as has occurred at Rotokawa and Tauhara. Given the complexity of geothermal resource management, we recommend the addition of a new s123B(2)(d) which provides for full discretion on the part of the consenting authority regarding geothermal consent duration between 10 and 35 years. <u>Flood defence and land drainage infrastructure</u> As stated in submission point 35 above, we seek that local government flood defence and land drainage infrastructure be added to the proposed definition of “long-lived infrastructure”. We consider that including this infrastructure within the 35-year default consent duration introduced under Clause 42 is important for providing certainty for investment in this infrastructure. Any discussion around consent duration should take into account the lifetime of the asset; a consistent approach to this is likely to result in a higher degree of certainty for infrastructure owners.	consenting authority regarding geothermal consent duration between 10 years and 35 years. **Add** a definition of "long-lived infrastructure activity" as sought in submission point 35 above, which excludes construction phase activities. **Amend** proposed s123B(5) as follows: “In this section, relevant group means a group who <u>is recognised as having the right</u> ~~may be or is required~~ to ~~be involved~~ <u>participate</u> in <u>decision making in resource consent</u> processes<u>,</u> <u>including in a hearing if one is held,</u> ~~under this Act that relate to planning documents or resource consents by virtue of~~ <u>in</u> any Treaty settlement, the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, or the Marine and Coastal Area (Takutai Moana) Act 2011. <u>For the avoidance of doubt, a group is a relevant group in this section whether or not a hearing is held to decide an application.</u>”

		<u>Recommended technical amendments</u> As drafted, proposed section 123B restricts the duration of associated land use or subdivision consents that might otherwise be granted an unlimited term via RMA s123 (a) or (b). We consider it illogical that proposed s123B(2)(c) provides for discretion to impose a shorter term where others request it for managing adverse effects on the environment but excludes the consent authority doing so itself for the same reason. We therefore recommend an amendment to enable this. As identified in submission point 35, while there is a definition for "long-lived infrastructure" proposed in the Bill, there is no definition for a "long-lived infrastructure activity". This is problematic because not all "long-lived infrastructure activities" necessarily require long-term consents. It would not be in the interests of efficient resource management to have to issue 35-year consents for short-term activities such as those associated with construction. We therefore suggest that a definition of "long-lived infrastructure activity" be added which excludes construction phase activities. The “relevant group” concept proposed to be introduced in s123B(5) acknowledges Māori rights and interests in consenting processes but risks ambiguity around which groups requests to limit the consent duration may come from. Refining the definition would provide clarity and help ensure tikanga and cultural values are respected while supporting the benefits of long-term consent durations that align with environmental and cultural safeguards.	
Housing			
41.	Clause 17 – New sections 77FA and 77FB inserted	We note that under proposed s77FA(4), any proposal by a specified territorial authority to alter the MDRS in its district plan, must also “make any changes necessary to give effect to the revised NPS-UD”. As the proposed amendments to the NPS-UD have not yet been released for public consultation, it is difficult to provide comment on this clause. However, we note that under this clause as currently drafted, no process is provided for a territorial authority to make minor amendments to any of the MDRS within its	**Add** an exemption to proposed s77FA(4)(b) to enable specified territorial authorities to make minor amendments to the MDRS in their district plans that will not reduce the planned housing capacity or negatively impact on well-functioning urban environments.

		district plan (for example, amendments to setback or height in relation to boundary standards to improve built environment outcomes), without also "making the changes necessary to give effect to the revised NPS-UD". We recommend that an exemption be provided from this requirement to enable minor amendments to the MDRS that do not reduce the planned housing capacity or negatively impact on well-functioning urban environments. This will provide for a more efficient process while ensuring that any minor amendments to district plans continue to give effect to the objectives of the NPS-UD and associated urban form and development provisions within the WRPS.	
42.	Clause 20 – Section 80C amended (Application to responsible Minister for discretion)	We highlight the following note from the historic heritage regulatory impact statement (RIS) on quality assurance for the impact analysis: *"Better managing outcomes for historic heritage was reviewed by a panel from the Ministry for Culture and Heritage and the Ministry for the Environment. The team has assessed that the RIS does not meet the standards required to demonstrate robust regulatory analysis of the objective, problem and options put forward; and that more time would be required to enable the analysis in the RIS to be further developed. Currently there is a lack of clarity on the problems, little evidence supporting the problems and their impacts other than anecdotes, and a lack of connection between the outcomes of the preferred option and the Government's objectives".*[2] We consider that the lack of a robust regulatory analysis should be addressed by the Select Committee. We recommend an amendment to proposed s80C(2)(ea) to also enable the listing of heritage buildings and structures using the streamlined planning process. We consider our proposed wording better aligns with the intention of the Bill. The supporting regulatory analysis for the Bill (refer to the *housing growth* section of the explanatory note) states that it provides for buildings and structures to be listed or delisted using simplified planning processes. Under the RMA, the protection of historic and cultural heritage from inappropriate use, subdivision and development is a matter of national importance.	**We request** that changes related to heritage matters not be progressed as part of this Bill until further evidence is gathered and a suitable regulatory analysis is produced to support legislative changes. **Amend** proposed s80C(2)(ea) to also include the listing of heritage buildings or structures in a heritage list in a district plan.

[2] RIS-Better-managing-outcomes-for-historic-heritage.pdf

		A consistent statutory approach that provides for both the removal and listing of heritage items will facilitate regulatory direction under the RMA and meeting objectives under the WRPS relating to historic and cultural values. Both regional and district councils have responsibilities to manage effects of activities on cultural and historic heritage under the RMA. We also highlight that it is important iwi and hapū are provided opportunity to participate in the process for proposals to delist heritage buildings and structures and identify cultural impacts.	
43.	Clause 22 – Section 80E amended (Meaning of intensification planning instrument)	We support inclusion of natural hazards as a specific matter that Intensification Planning Instruments (IPIs) can amend or include provisions on (in proposed section 80E(2)(h)). We consider the meaning of proposed section 80E(2)(j) - *"matters relating to increasing or reducing the ability to develop a site (which may or may not be due to a requirement to recognise and provide for matters of national importance)"* to be unclear and seek that this be clarified. We are unclear whether this proposed sub-section would include matters relating to cumulative effects of increased impermeable surfaces associated with housing intensification. Cumulative increases in impermeable surfaces within a catchment can lead to a range of adverse effects relating to catchment hydrology, effects on aquatic life, increased flood hazards, stormwater infrastructure servicing and impacts on downstream properties. We consider it important that IPIs are able to include provisions that reduce the ability to develop a site where needed to address these effects.	**Retain** proposed section 80E(2)(h). **Clarify** the meaning of proposed section 80E(2)(j). **Ensure** that IPIs can include provisions to address cumulative adverse effects of increased impermeable surfaces.
44.	Clause 24 – New section 80GA inserted (Request for approval to withdraw intensification planning instrument)	We seek clarification on the meaning and purpose of proposed s80GA(2)(b) - *"describe the extent to which policy 3(a), (b), and (c) of the NPS-UD has been given effect by the IPI being made operative".* This proposed section applies to IPIs that have not yet been made operative, so the wording "has been given effect to by the IPI being made operative" is confusing in this context. We are unsure whether the intent is for the specified territorial authority to describe the extent to which the IPI proposed to be withdrawn would give effect to NPS-UD Policy 3(a), (b), and (c), or alternatively, whether it means the extent to which the relevant policies will still be given effect to if the IPI is withdrawn.	**Amend** wording of proposed s80GA(2)(b) to improve clarity.

45.	Clause 70(15) – Schedule 1 amended	We note that proposed Schedule 1 clause 83(2) requires that elected members of a local authority cannot be appointed to a Streamlined Planning Process (SPP) panel. The reason for this proposed change has not been identified and we consider it has potential to reduce the current community input through those elected members sitting as accredited commissioners. We therefore recommend that this proposed clause be deleted. Proposed Schedule 1 clause 86 provides for recommendations accepted by the local authority to become operative, however there does not appear to be a process provided for the local authority's alternative solutions to rejected recommendations to become operative. We note the Bill provides, in Clause 70(15), that clauses 83 – 87 of Schedule 1 are to be replaced but replacements are only provided for clauses 83-86 (there is no proposed clause 87 in the Bill), so we are unsure whether the missing replacement clause 87 is intended to provide the process for rejected recommendations becoming operative. Existing Schedule 1 clauses 88(1) and (2) refer to decisions being made by the Minister under clause 84. However, the proposed replacement clause 84 no longer relates to the Minister making a decision.	**Delete** proposed Schedule 1 clause 83(2). **Provide** proposed replacement Schedule 1 clause 87. **Add** a process for the local authority's alternative solutions to rejected recommendations to become operative. **Update** existing Schedule 1 clauses 88(1) and (2) to align with proposed clause 84.
46.	New clause	We anticipate issues with the fast-track consented urban development that has an underlying rural zone in a district plan. While the subdivision is consented under the Fast-track Approvals Act, each individual house is likely to need a resource consent due to being unable comply with rules in district plans for rural zones such as setbacks, site coverage etc.	**Insert** new provision to give fast-track consented urban developments on rural land the ability to apply relevant urban zone rules rather than rural zone rules in the relevant district plan.
Farming and the primary sector			
Relationship between RMA and Fisheries Act 1996			
47.	Clause 8 – Section 32 amended (Requirements for preparing and publishing evaluation reports)	The Proposed Waikato Regional Coastal Plan does not propose any rules to control fishing. However, we consider it inappropriate to also require regional councils to include an assessment of the impact of proposed rules on fishing as per proposed section 32(2A).	**Delete** proposed s32(2A) requiring regional councils to also include an assessment of the impacts of proposed rules on fishing and consequently, **delete** proposed Schedule 1 clause 4B.

	and Clause 70(1) - Schedule 1 amended	We note that the proposed assessment reflects the requirements of the Undue Adverse Effects test required under the Fisheries Act 1996 to assess the effects of aquaculture on fishing, but regional councils do not hold the information required to make this assessment, especially records of quota management fisheries effort, nor expertise on the management of fisheries and the abilities of persons and local communities to fish. We consider the assessment proposed under Clause 8 should not sit with regional councils, rather it should sit squarely with the agencies that hold this information, such as the Ministry for Primary Industries, as it holds the relevant information that regional councils do not have in terms of where and how much fishing occurs. Regional councils have a role in the governance of biodiversity; a rule to control fishing in a coastal plan would be in response to the impacts from fisheries on biodiversity. Therefore, if there is a need for a regional council to propose a rule to control fishing, the assessment and evaluation made by the regional council should be focused on the effects of the activity on biodiversity. We recommend having better alignment with the *Motiti Decision*[3] when addressing the relationship between the Fisheries Act 1996 and RMA. The controls placed on regional councils by the Motiti Decision are not specifically for the management of fishing activities. Coastal plans can control the disturbance of the foreshore or the removal of marine biodiversity, for the protection of biodiversity, but cannot single out fishing methods for specific control. We note that requiring regional councils to undertake an additional assessment of the impact of proposed rules on fishing would not align with the government's signaled reform to refocus local authorities on delivering essential services and core infrastructure. Undertaking this assessment would incur undue implementation costs that would need to be covered by ratepayers. Furthermore, the majority of regional coastal plans with controls on activities that adversely affect biodiversity, including fishing activities, had these inserted by court	

[3] *Attorney-General v Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532

		decisions rather than proposed in a draft coastal plan. It is unclear whether this new clause would be triggered in these cases.	
Aquaculture			
48.	Clause 13 – Section 43A amended (Contents of national environmental standards) and Clause 44 – Section 127 amended (Change or cancellation of consent condition on application by consent holder)	We support the proposed changes to sections 43A and 127 as we consider that there are instances where a controlled or restricted discretionary activity status for changes to consent conditions would be appropriate. However, we consider it important for the council to be given the opportunity to comment on any proposed changes to any applicable National Environmental Standards (NES) or other national direction guiding on-farm regulation. We have in the past supported options setting out more lenient activity status for specific types of on-farm changes. Additionally, we consider it important to guarantee the protection of cultural relationships with marine resources, while providing for the protection of taonga and ensuring future provisions align with tikanga Māori. It is important that any proposed changes to national direction are consulted on, to enable consideration of cultural impacts.	We **support** the proposed changes to RMA sections 43A and 127 and **recommend** full engagement with regional councils when developing the associated NES.
Freshwater farm plans			
49.	Clause 54 – Section 217B amended (Interpretation)	We support the inclusion of the proposed definition for "approved industry organisation".	**Retain** proposed definition.
50.	Clause 55 – Section 217H amended (Audit of farm for compliance with certified freshwater farm plan)	We support some aspects of this clause, but seek that others be amended. Section 217H is significantly narrowed by this proposed change, which occurs without explanation, although we believe this is to align with the certification process, the detail of which largely sits within regulations. In absence of any assurance that an opportunity will be afforded to the council to submit on detail contained in regulations, our general preference is that this detail be retained in the primary legislation to support design of a credible and robust audit system. The removal of an explicit requirement for provision of an up-to-date farm plan presupposes one will be volunteered by the farmer to the auditor, but there is no ability to require this information of the farmer (unless future regulations state such). We therefore suggest that existing RMA s217H(3) be retained.	**Retain** existing RMA s217H(3). **Support removal** of existing RMA ss217H(4) and (5) conditional on these matters being addressed through regulations.

		Likewise, without provisions that provide for a response from the farmer prior to the audit being completed (as was previously provided for in s217H(4-5)), its absence could lead to a 'gap' in the development of future regulations. However, we support the removal of sub sections (4) and (5) on the understanding that these procedural matters will be addressed through amendments to the regulations as provided for by the inclusion of s217M(1)(g). If not, we suggest replacement with a simplified clause requiring the auditor provide both the farm operation and council with an audit report.	
51.	Clause 56 – Section 217I amended (Functions of regional councils)	We support some aspects of this clause, but seek that others be amended: • We support proposed ss217I(1)(a) and 217I(2)(a). We also support s217I(1)(e) in principle but seek that cost recovery provision be included in s36 of the RMA to support this function. • We oppose proposed s217I(2)(b) and (c) as currently drafted. We seek amendments to proposed sub section (2) to support a more robust and credible system, including providing councils with the ability to address deficient freshwater farm plans (FW-FPs), as detailed below. Even with the ability to request information, there is no corresponding expectation that the approved industry organisation (AIO) must provide the information. We suggest that, in proposed s217I(2)(b), the term "request" be replaced with "require", and that the farm operator be required to provide, in addition to the certified FW-FP, a copy of the audit report (including related notification) to the council (upon request) to better support compliance and enforcement functions. Currently, should inappropriately certified FW-FPs be identified, councils have limited recourse through the appointment process for certifiers and AIOs, leaving deficient farm plans in effect. The amendment in proposed s217I(2)(c) enables councils to notify the Minister of persistent concerns regarding the performance of an AIO but does not allow councils to address these directly. This becomes more consequential should FW-FPs see increased use as an alternative pathway to resource consents through regional and national planning instruments. To support a FW-FP system that is sufficiently credible and robust for this use, we suggest that proposed s217I(2) includes a subclause (d) to the effect of: "*revoke*	We support clause (1)(e) in principle, but seek that an associated cost recovery provision **be added to s36** of the RMA. **Amend** proposed s217I(2)(b) by replacing "request" with "require". We **recommend amending** proposed s217I(2) to better enable rectifying inappropriately certified FW-FPs, by adding an additional sub-clause to proposed s217I(2) to the effect of: "<u>(d) revoke certification of a freshwater farm plan where it has been relied upon to comply with a specified instrument and the council is not satisfied certification has occurred in accordance with the manner prescribed in regulations</u>."

		certification of a freshwater farm plan where it has been relied upon to comply with a specified instrument and the council is not satisfied certification has occurred in accordance with the manner prescribed in regulations". The regulations would prescribe the process by which certification and associated revocation occur for this purpose.	
52.	Clause 57 – Section 217KA replaced (Regional council may approve industry organisation to provide certification of audit services) and associated change to RMA s217L	We oppose this clause as currently drafted and seek amendments as discussed below. Providing that the content of regulations governing the AIO process is sufficiently robust, decisions (approval/rejection) are transparent, and the common expectations of AIOs (reporting, data sharing etc) are sufficiently clear, it should not matter whether approval is provided at a central or regional level. However, if not sufficiently credible and robust, we consider public trust in the FW-FP system may be undermined. Decisions associated with the approval/revocation of an AIO should be merits-based and avoid any perception of political influence. We would support the inclusion of provisions in s217KA that require any application and associated decision to be publicly available, and that decisions be made by a politically neutral central entity. The proposed clause includes prior consultation with "relevant" councils. It is unclear what would constitute "relevant" regional councils in the context of this process (given that AIOs could potentially operate anywhere in New Zealand), and whether approval will be limited to those regions consulted. If not limited, our preference is that the term "relevant" is removed, and individual councils are afforded the opportunity to decide on the extent of their interest/involvement. Proposed s217KA(5) implies that the ongoing appointment of individual certifiers and auditors for an AIO is subject to ongoing approval of that AIO. It follows that these individuals are restricted in their certification and audit activities to those AIOs that have approved them (i.e. cannot certify/audit farm plans outside of a particular AIO unless also approved). If this is the case, it should be clarified in s217KA(2). It is also unclear how this section (and associated regulations) would work alongside regional plans, such as Proposed Plan Change 1 to the Waikato Regional Plan, that require sector schemes, broadly equivalent to AIO, to be approved by the council chief	**Amend** s217KA by including proactive public release of all applications and associated decisions, and replacing the Minister as decisionmaker with a politically neutral central entity (although our submission does not specify who this should be). **Amend** proposed s217KA(2) as follows: "An approved industry organisation may appoint certifiers or auditors <u>to its approved industry organisation</u> if it is satisfied that the applicable requirements have been met as prescribed in regulations". **Amend** proposed s217KA(1)(b) and (3)(b) by deleting the term "relevant". **Amend** RMA s217L clarifying that, in relation to the appointment of industry approved organisations under s217KA and associated regulations prepared in accordance with s217M, where these provisions are inconsistent with a regional plan, the requirement of the relevant regional plan prevails.

		executive (subject to requirements). We seek that this be clarified in s217L and submit that regional requirements prevail where inconsistent with Part 9A and associated regulations.	
53.	Clause 58 – Section 217M amended (Regulations relating to freshwater farm plans)	We support the following aspects of this clause: • s217M(1)(fa) • s217M(1)(g) • s217M(1)(g)(iii) • s217M(1)(g)(iv) • s217M(1)(g)(va). The inclusion of the term "generally" in proposed s217M(2A) makes the meaning of a certifier and auditor ambiguous in this context. This provision appears to intend to provide for different standards (or no standards) to be applied to certifiers and auditors under an AIO as compared with those appointed by councils. If so, it risks undermining the credibility of the certification and audit process. We favour a consistent set of requirements.	**Amend** proposed s217M(2A) by **deleting** "…to all certifiers or auditors generally, or may…" and **replacing** "or" with "and".
Natural hazards and emergencies			
54.	Clause 25 – Section 86B amended (When rules in proposed plans have legal effect)	We support clause 25(1), which provides that rules relating to natural hazards in a proposed plan will have immediate legal effect. We note that consideration should be given to any interaction between RMA plan preparation and the Local Government Official Information and Meetings Act 1987, in the context of the recent amendment and regulation for Land Information Memoranda (to come into force in July 2025).	**Retain** proposed s86B(3)(f).
55.	Clause 37 – New section 106A inserted (Consent authority may refuse land use consent in certain circumstances)	We support the intent of clause 37 to enable consent authorities to refuse land use consent based on assessment of risk from natural hazards. To improve clarity and consistency of implementation, we seek that a definition be added for the term "significant risk", which is used throughout this clause and existing RMA s106. Having a clear statutory definition of what is considered significant risk will set a clear threshold for consenting authorities to determine where a more stringent assessment is required and where the use of section 106 and proposed section 106A would be appropriate. This will also provide a nationally consistent approach for the management of natural hazard risk.	**Add** a definition of "significant risk" to RMA section 2 (Interpretation). **Amend** proposed s106A(2) by replacing references to "material damage" with "consequences on people, property, critical infrastructure and the environment".

		We recommend following a similar approach to the definition of "significant hazard" in the Health and Safety at Work Act 2015 (s184(3)): *"In this section and in section 185, significant hazard means a hazard that is an actual or a potential cause or source of—* *(a) death; or* *(b) notifiable injury or illness the severity of whose effects on any person depends (entirely or among other things) on the extent or frequency of the person's exposure to the hazard; or* *(c) notifiable injury or illness that does not usually occur, or usually is not easily detectable, until a significant time after exposure to the hazard."* We also consider the term "material damage" used in proposed s106A(2) to be a narrow lens for the assessment of risk from natural hazards. We recommend this be replaced with "consequences on people, property, critical infrastructure and the environment", to be more consistent with best practice risk methodologies.	
56.	Clause 46 – Section 149N amended (Process if section 149M applies or proposed plan or change not yet prepared)	We support this clause, which provides that rules relating to natural hazards have legal effect upon public notice being given of them by the EPA.	**Retain** proposed s149N(8)(a)(v).
57.	Clause 64 – New section 331AA inserted (Emergency response regulations)	We are generally supportive of this clause. We note, however, that emergency regulation-making powers have potential to bypass tikanga and undermine long-term cultural and environmental sustainability. We recommend consideration of how tikanga-based principles can be incorporated into emergency planning, to ensure alignment with sustainable and collective values.	**Consider** how tikanga-based principles can be incorporated into emergency planning,
58.	New Part 8 inserted into Schedule 12	We are unsure whether proposed Schedule 12 Part 8 clause 59 means that the amendments to include natural hazards apply to plan changes that have already been notified.	**Clarify** what 'on commencement' means in proposed Schedule 12 Part 8 clause 59.

System improvements			
Consenting			
59.	Clause 27 – Section 87A amended (Classes of activities)	We support this clause, which recognises the proposed new section 106A.	Retain.
60.	Clause 28 – Section 88 amended (Making an application)	We support this clause, subject to amendments. Proposed new s88(2AA) requires information to be provided at a level of detail that is "proportionate to the...significance of the activity." We consider it is unclear what "significance of the activity" means in this context. This could be interpreted as synonymous with the "importance" of the activity, which we assume is not intended. We assume that the "proportionality" test intended here is in relation to nature and scale of the activity, along with its actual and potential adverse effects. We also note that the intent and wording of proposed new sub-sections (2AA) and (2AB) is very similar to (but not the same as) Schedule 4.2(3)(c). This requires that an assessment of environmental effects "includes such detail as corresponds with the scale and significance of the effects that the activity may have on the environment." We consider that it would be appropriate to align the wording of sub-sections (2AA) and (2AB) with Schedule 4.2(3)(c).	**Amend** proposed ss88(2AA) and (2AB) as follows: "(2AA) An applicant must ensure that the information required by subsection (2)(b) is provided at a level of detail that ~~is proportionate to~~ corresponds with the nature, scale and significance of the activity, including the effects that the activity may have on the environment. (2AB) A consent authority may accept an application that does not fully comply with subsection (2)(b) if the authority is satisfied that the information provided by the applicant ~~is proportionate to~~ corresponds with the nature, scale and significance of the activity, including the effects that the activity may have on the environment."
61.	Clause 30 – Section 92 amended (Further information, or agreement, may be request)	We support this clause subject to an amendment. The reference in proposed sub-section (2B)(c) to the "nature and significance of the proposal" omits to include any direct reference to effects, which are arguably the most important factor in determining the need for further information, and for determining what is appropriate information to request. We seek that the clause be amended to reflect this and that "proportionate to…the proposal" is replaced with "corresponds with... the activity" for consistency with Schedule 4.2(3(c) and the relief sought for amendment of section 88.	**Amend** proposed s92(2B)(c) as follows: "any information that it seeks ~~is proportionate to~~ corresponds with the nature and significance of the ~~proposal~~ activity, including the effects the activity may have on the environment."

62.	Clause 32 – New section 92AA inserted (Consequences of applicant's failure to respond to requests, etc)	We support this clause, subject to amendments to address the below issues. We consider the reference to an "agreed date" in proposed s92AA(1)(a) is problematic because: • The applicant could subvert the intention of this provision by simply refusing to agree a date. • The requirement to "agree" a date conflicts with the existing provisions of ss92 - 92B. Section 92A(2)(a) provides for timeframes for provision of further information to be "set" by the council - this has to be "reasonable" but it does not require agreement. Section 92B(1) sets a 15 working day period for the applicant to respond to a notice of intent to commission a report under s92(2). The reference to an "agreed date" conflicts with this statutory timeframe. • Dates for payment of additional charges are generally "set" by the council. There is no incentive for an applicant to necessarily agree to any date. This proposed section requires the council to advise its intention to "return the application" if agreed dates are not met. It is not entirely clear what "returning an application" means in practice nowadays when almost all applications are lodged electronically. Whilst the application documents lodged can physically be sent back to the applicant, there seems little point in this given they will inevitably have copies of what was sent. While we assume that the language of proposed s92AA is deliberately aligned with s88(3A) (a section which also addresses "completeness"), we consider it would make more sense to adjust the wording to refer to the **council's decision** that the application is incomplete.	**Amend** proposed s92AA(1)(a) as follows: "the applicant was required to provide one of the following responses by a date set by the consent authority, or an agreed date:…" **Replace** proposed s92AA(1)(b), (2), (3) and (4) with the following: "(1)(b) 3 months after the set or agreed date, the applicant has not provided the required response. (2) A consent authority must notify the applicant of its decision determining that the application is incomplete by writing to the email address that is used by the applicant and may include written reasons for the determination. (3) If, after an application has been determined as incomplete and the applicant notified of the decision under this section, that application is lodged again with the consent authority, that application is to be treated as a new application..."
63.	Associated change to RMA section 88	We recommend changes to RMA ss88(3A) and (4) to align with our suggested wording of s92AA, to not include having to "return" an application. This is for the same reason as discussed in submission point 62 above in relation to s92AA; as applications are provided electronically these days, currently "returning" them is an electronic link – which is a bit meaningless. We recommend combining current ss88(3A) and (4) to require notification of the decision (that may include reasons) but leave out wording for returning.	**Replace** RMA s88(3A) and (4) with: "(3A) The consent authority must immediately notify the applicant of its decision to determine the application incomplete, with written reasons for the determination. (4) If, after an application has been determined as incomplete, that application is lodged again with the

			consent authority, that application is to be treated as a new application."
64.	Clause 33 – Section 92B amended (Responses to notification)	We support this clause.	Retain.
65.	Clause 34 – Section 100 replaced (Obligation to hold a hearing)	We oppose this clause in principle. This is a very significant change to the status quo as it relates to submitter rights. Currently, a hearing must be held if a submitter wishes to be heard. The right to a hearing would be overturned by this clause and would instead be determined by the council solely on the basis of whether it determines that further information is needed. This is a fundamental change to the purpose of a hearing, which would significantly reduce the opportunities for submitters and applicants to participate in decision-making, as currently occurs. This is likely to lead to more appeals and objections. We consider that Clause 34 is problematic on a number of levels: • The clause is premised on the assumption that the primary benefit of hearings is to obtain information. However, hearings are not generally held in order to obtain further information, in fact, we would generally regard it as undesirable to proceed to a hearing without sufficient information to make a decision. The primary purpose of hearings is more about assessing and testing that information along with any conflicting information, to enable balanced resource management conclusions to be drawn and appropriate conditions to manage effects to be imposed. Other purposes include that hearings provide an opportunity for applicants to contest proposed consent duration and conditions (including for non-notified applications). We consider it is inevitable that the removal of hearing rights will lead to more objections and appeals to the council's decision. This is not in the interests of efficiency. It will also shift costs away from users in that under objections and appeals there is no ability to recover costs from applicants. Instead, rates would	**Delete** Clause 34. If this clause it is to be retained, redraft to address the issues identified in this submission point, including amendments so that a consent authority "may" utilise it in circumstances it considers appropriate, rather than it being compulsory to not hold a hearing when there is sufficient information.

		fund council costs associated with objection or appeal processes; costs which would otherwise generally be recovered from an applicant via a hearing. • It would remove rights of participation for submitters generally (except as enabled by proposed sub-section (3)), thereby denying the right of natural justice/fair hearing to persons potentially affected by proposals. This is likely to lead to more appeals on decisions. • Whether a hearing is held will turn on the opinion of the council as to the "sufficiency" of information. "Sufficiency" is an inherently subjective threshold; and sometimes councils "don't know what they don't know." • We consider that having sufficient information "to decide the application" is the wrong test in any event. The lack of a hearing in these circumstances potentially eliminates opportunities for setting of conditions which may not be essential to "deciding" the application, but which nevertheless significantly improve the safeguards and mitigations which may otherwise eventuate, particularly as they relate to minimisation of effects on those who have made submissions and would otherwise have been heard. • Under this clause as currently proposed, most applicants will be able to avoid a hearing by simply ensuring that they respond to all information requests until the council has everything it asks for. At that point it could be argued that the council has "sufficient" information and that no hearing is able to be held. Should the clause be retained, we also wish to highlight the following issues that we consider would require amendments, in addition to amendments to address the issues above. • It would be more practical to provide this section as a tool that a consent authority "may" use in circumstances it considers appropriate where a hearing can be avoided, rather than being compulsory to not hold a hearing when there is sufficient information. Sub-sections (2) and (3) would then only apply if the consent authority choses to use the section.	

		• In proposed s100(3) the term "participate" is ambiguous, as a number of parties with different roles "participate" in a hearing. Clarity should be provided. It is assumed this clause was intended to refer to treaty settlements that recognise the right of participation in decision making in a hearing. We therefore suggest amending this to "participate in decision making in a hearing…" We note that this process would affect significant areas of the Waikato region where Joint Management Agreements are in place which give iwi partners opportunity to nominate commissioners. Consulting with relevant iwi or other Māori groups (potentially multiple) in relation to making a determination on whether there is sufficient information will add additional administrative and regulatory process and time. In situations where the relevant iwi or group is also a submitter this is likely to strongly influence views and decision making on whether information is sufficient. • This clause does not provide timeframe management provisions for the situation where initially a hearing would be required and then, at a later point sufficient information is provided such that a hearing then must not be held. Processing timeframes for applications with and without hearings are different and the timeframes relating to 'no hearing' may pass prior to sufficient information being obtained by the consent authority. This clause needs a mechanism whereby the consent authority is not penalised under the Discount Regulations by this situation. Amendment to the definition of "excluded days" in the Discount Regulations is suggested. The amendment should provide for timeframes to not be counted as being exceeded and the Discount Regulations to not apply if a hearing must not be held due to sufficient information but the timeframe is within that required for having a hearing if one were able to be held. • We also note that without a hearing, a council's ability under RMA s41D to strikeout all or part of a submission in certain circumstances is also removed, as that provision only applies when a hearing is held. The ability to strike out all or part of a submission can be important or useful in some cases as it also means the struck out submission, or part of submission, may not be the subject of an appeal. The ability to strike out all or part of a submission as per RMA s41D	

		should be retained if a hearing cannot be held solely on the basis that there is sufficient information.	
66.	Clause 35 – New section 103BA inserted (Requirement to provide report or other evidence if hearing not held)	We oppose this clause, given it is a consequential addition based on Clause 34. We also query the reference in proposed sub-section (b) to "briefs of evidence" as, if no hearing is held, it is not clear how "briefs of evidence" would arise. Where there is no hearing, the consenting authority has no power to require "evidence" as such, as opposed to "information" which it can request under s92.	**Delete** Clause 35. If this clause is retained, **clarify** the reference to "briefs of evidence" in proposed s103BA(b).
67.	Clause 36 – Section 104 amended (Consideration of applications)	We support this clause subject to the following amendments: • Amendment to align with the language of RMA s104 of "have regard to" (rather than "take account of", as currently proposed). • Amendment to expand the scope to also include reference to non-compliance which has been the subject of any formal warning or infringement offence.	**Amend** this clause by: • Replacing the words "take account of" with "have regard to" in proposed s104(2EA); and • Expanding the scope by adding reference to non-compliance which has been the subject of any formal warning, abatement notice and infringement offences as follows: "(2EA) When considering a resource consent application, a consent authority may ~~take account of~~ <u>have regard to</u> any previous or current <u>formal warnings,</u> abatement notices, enforcement orders, infringement notices<u>, or infringement offences</u> or convictions under this Act received by the applicant."
68.	Clause 38 – New section 107G inserted (Review of draft conditions of consent)	We support this clause but seek clarification, as the meaning of "suspend" in proposed s107G(2)(a) is not clear, and seek deletion of subsection (4). We query whether a suspension under this proposed section is to be treated as a suspension under s91A or 91D, or whether it is a new, stand-alone power? If the former, we consider that should be made clear in the drafting and appropriate cross-referencing to ss91A and D should be specified. If it is the latter (which we assume is	**Clarify** the meaning of "suspend" in proposed s107G(2)(a) and make necessary **amendments** and cross-references as identified in this submission point.

		more likely), then s88E should be amended to reflect the ability to exclude suspension time from processing times. We query the purpose of a consent authority taking account of only those comments that relate to technical or minor matters. It is not clear what the problem is that this clause is trying to prevent. The proposed sub-section (4) implies that the consent authority retains discretion over what changes (if any) are made to conditions when taking comments into account, so it would be more useful for it to state that.	**Delete** proposed s107G(4), or replace it with the following: "A consent authority may take any comments received into account when making changes (if any) to draft conditions before issuing a decision or providing a report in accordance with section 42A(3)."
69.	Clause 39 – Section 108 amended (Conditions of resource consents)	We support this clause.	Retain.
70.	Clause 40 – Section 108AA amended (Requirements for conditions of resource consents)	We support this clause.	Retain.
71.	Clause 45 – Section 128 amended (Circumstances when consent conditions can be reviewed)	We support this clause.	Retain.
72.	Clause 71 – Schedule 4 amended	We support this clause.	Retain.
Enforcement and other matters			
73.	Clause 10 – Section 36 amended (Administrative charges)	We support this clause.	Retain.
74.	Clause 59 – New section 314A inserted	We support this clause.	Retain.

	(Environment Court may revoke or suspend resource consent)		
75.	Clause 60 – Section 322 amended (Scope of abatement notice)	We support this clause.	Retain.
76.	Clause 62 – Section 330 amended (Emergency works and power to take preventative or remedial action)	We support this clause.	Retain.
77.	Clause 63 – Section 330A amended (Resource consents for emergency works)	We support this clause, subject to amendments. We support the extension of the timeframe in which applications are required to be submitted to local authorities, on the basis that the additional time provides for applicants to prepare a robust application. Emergency works, such as emergency roading repairs for example, often takes days, sometimes weeks, to complete. However, currently under RMA s330A, the timeframe for both notification of the activity and the timeframe for requiring an application, is counted from the completion of the emergency works. In practice, the person undertaking the emergency works will usually give informal notification of the works to the council as soon as possible at the start of the works, sometimes prior to starting. This is useful for both the person undertaking the emergency works and the consenting authority, for managing communications during emergency situations, being able to provide advice or have discussion on what may be needed to comply with s330/330A, and the nature of consents that may or may not be required for activities that continue. Knowing an activity is emergency work at the start of the works means that the consenting authority is aware of works being	We **recommend amending** RMA s330A as follows: "(1) Where an activity is undertaken under section 330, the person (other than the occupier), authority, network utility operator, or lifeline utility who or which undertook the activity shall advise the appropriate consent authority, within 7 days <u>of the start of the activity,</u> that the activity has been undertaken. (2) Where such an activity, but for section 330, contravenes any of sections 9, 12, 13, 14, and 15 and the adverse effects of the activity continue, then the person (other than the occupier), authority, network utility operator, or lifeline utility who or

		undertaken that do not have or need consent to proceed and can manage internal and public enquiries accordingly. We therefore recommend that notification is required within 7 days <u>of the start</u> of the works, while providing timing for application lodgement within 30 working days of <u>completion of</u> the emergency works.	which undertook the activity shall apply in writing to the appropriate consent authority for any necessary resource consents required in respect of the activity within ~~20~~ <u>30</u> working days of the ~~notification~~ <u>completion of the activity notified</u> under subsection (1)…"
78.	Clause 65 – Section 339 amended (Penalties)	We understand that this proposed clause is trying to achieve higher penalties for environmental offending. However, we note that the problem doesn't lie with the amounts able to be imposed under the law, but with the actual fines being imposed in practice, which are generally for amounts far below what the legislation currently provides for. We therefore suggest a solution for raising the fine amounts imposed, would be to consider introducing minimum levels for fines. We support the proposed reduction in the imprisonment term under this clause.	**Consider** introducing minimum levels for fines, being cognisant of the normal practice around assessing the ability of the defendant to pay the fine.
79.	Clause 66 – New section 342A inserted (Insurance against fines unlawful)	We acknowledge there are strong views that insurance to cover fines and infringement fees imposed under the RMA should be prohibited. However, there are potential pitfalls in this approach that should be considered. We understand the intention of this clause is to not diminish the financial penalty on those prosecuted. It is perceived that the punishment is significantly lessened if an insurance company pays the fine for the defendant. We consider this overstates the downside of insuring against financial penalties and that there is a corresponding downside to prohibiting insurance that must be understood. Positive aspects of defendant insurance are that any fine that is imposed is generally paid promptly, and in full, to the Ministry of Justice who is responsible for fine collection. The Ministry, in turn, passes on 90 percent of the fine to the respective prosecuting council. This has the positive effect of immediately offsetting the cost of investigation and prosecution, which otherwise would be borne by the ratepayer. In the Waikato region that money goes directly into funding investigations and prosecutions.	Ensure the positive aspects of defendant insurance are also considered in relation to this clause.

		There have been notable occasions when convicted (uninsured) defendants have simply never paid their fines and those fines have been remitted, in other words wiped from the court system. That means that 100 per cent of the cost of the investigation and prosecution was borne by the ratepayer in those cases. Had those defendants been insured that would not have happened. In some cases, fines are allowed to be paid off over many months, if not years, by uninsured defendants. Again, the Ministry of Justice manages this. Until such time as that payment is complete, costs continue to be solely borne by the ratepayer. This clause also suggests that the fine is the substantive part of the penalty. In our view, it is not. A fine can be paid off. A conviction remains forever. It is our experience that the conviction, and the subsequent public naming and shaming associated with the conviction, is a far greater consequence than the fine, and far more likely to drive behaviour change both with the individual and generally in the respective industry.	
80.	Clause 67 – Section 352 amended (Service of documents)	We oppose this clause; it is unclear what problem it is seeking to fix. The proposed replacement section removes the ability of persons to specify an address for service to which documents must be sent and have confidence that they will, in fact, be sent there. For the sender, sending documents to the place specified by the intended recipient, would become optional. Instead, the proposed amendment substitutes a menu of options for service, all/any of which comply. While this would certainly make it easier for bodies who are required to serve notice, it is likely to be less effective in ensuring that the person actually receives the document (and is certainly less customer friendly). This also runs counter to trends in proceedings where increasingly, the Court has found that it is not sufficient that compliance with s352 be demonstrated, rather the Court has required that receipt/knowledge of the document is the relevant test. The proposed amendment runs counter to the advancement of this practical problem.	**Delete** Clause 67.
81.	Clause 72 – Schedule 12 amended	We support this clause subject to amendment. We consider that proposed new Part 8 of Schedule 12 should provide for Clause 32 to be applied retrospectively, i.e. to applications lodged prior to the commencement of the Act. This will help consent authorities to clear backlogs of old applications that have been inactive without having to initiate other processes that would otherwise	**Insert** the following directly after proposed Schedule 12 Part 8 clause 49: <u>"Section 92AA applies to an application that is lodged before commencement if the consent authority has not, before</u>

		cause unwarranted time for consent authorities or cost to applicants to assess an application for notification and/or substantive decision, in the absence of information and which may lead to a decision to decline. This is consistent with the government's resource management direction of seeking consent processing to be timely, efficient and lower cost.	commencement, served notice of its decision on the application."