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8 February 2023

New Zealand Government
Committee Staff
Environment Committee
Parliament Buildings
Wellington

Email: en@parliament.govt.nz

Dear Sir/Madam

Waikato Regional Council Submission on the Natural and Built Environment Bill

Thank you for the opportunity to submit on the Natural and Built Environment 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 Chairperson and Chief Executive under delegation on **8 February 2023**.

Should you have any queries regarding the content of this document please contact Lisette Balsom, Manager Strategic Policy Implementation directly on (07) 8590572 or by email Lisette.balsom@waikatoregion.govt.nz.

Regards,

Pamela Storey
Chair

Chris McLay
Chief Executive

Submission from Waikato Regional Council on the Natural and Built Environment Bill

Introduction

1. We appreciate the opportunity to make a submission on the Natural and Built Environment Bill.

2. While we support the five objectives of the reform, we have significant concerns with the Bill as drafted:
    a. It is very difficult to make informed comments on the proposals while so much critical foundation information is missing, such as the detailed contents of the National Planning Framework.
    b. The constrained timeframe we have had to consider such a long and complex Bill has been limiting.
    c. Additional processes have been included in the new system and we do not consider the system has been simplified.
    d. It is difficult to determine whether the reform objectives of efficiency and cost reduction will be met.
    e. In its current form, we do not consider the Bill will achieve the reform outcome of reducing system complexity, at least not for many years. It would take significant financial and time costs before this critical question is answered.

3. Our submission generally aligns with those of LGNZ, Te Uru Kahika, and Taituarā. We highlight in particular issues for regional councils, and our region.

4. We look forward to future consultation processes on resource management reform and would welcome the opportunity to comment further on any issues explored during their development.

High level comments

5. The size and quantum of change that will be experienced by communities, local government entities, and practitioners should not be underestimated by central government. Funding, assistance and guidance will be required from central government to support the already stretched capacity of councils, practitioners and iwi/hapū/Māori.

6. We understand that the transition period for the reform is likely to be more than a decade. We therefore stress the need for certainty and support for councils, practitioners and iwi/hapū/Māori who will operate within the two systems. This will ensure that we can continue to fulfil our responsibilities and serve our customers and communities.

7. Our submission is based on the following key concerns:
    a. Insufficient democratic accountability embedded into planning processes.
    b. The quantum of funding to support successful implementation of the Bill will be critical. Central government will need to ensure it has set sufficient funding aside, particularly for capacity and capability building of councils and Māori.
    c. The NBEB seems no less complex than the RMA and is unlikely to reduce the amount of statutory planning required.
    d. Given that a significant amount of direction and detail to support the system reform is not yet available we struggle to see how this proposal will achieve reform objectives.
    e. That complexity of, and realistic timeframes associated with, iwi representation and engagement are not well understood nor accounted for.
    f. That the reform is out of step with the outcomes sought through the Future for Local Government Review, with examples of clear conflict between the two becoming evident.
    g. That the three waters reform is not integrated with resource management reform and there is insufficient interface with Water Service Entities, particularly with the RPCs.
    h. That the proposed tranche approach to transition will not allow for sufficient time between tranches to share and take on board learnings from the new planning processes.

i. There is a potential conflict between the NBEB and other Acts under which regional councils have functions (for example: the Soil Conservation and Rivers Control Act, the Local Government Act, and the Land Drainage Act). The relationship between the new legislation and these Acts requires further close review and analysis.
j. That the bills do not provide sufficient certainty about the roles and responsibilities of councils in the new system. It seems likely that regional councils will be defaulted into a key role as host council and we seek certainty on this so it can be planned for.

The Waikato Region

8. Determining a composition for an RPC and developing a combined plan for the Waikato region will be significantly challenging with 12 local government authorities, over 40 iwi and more than 180 hapū with interests in the region. The complexity of and timing for the process to simply agree a composition of an RPC in our region, let alone its membership and the capacity of members to support its work, cannot be underestimated.

9. We see value in the Waikato region transitioning at the same time as UNISA partner regions (Auckland, Bay of Plenty and Northland) as collaboration between regions will be very important, particularly for matters such as:
    a. Hauraki Gulf (Auckland and Waikato)
    b. Ports
    c. Urban growth
    d. Marine farming
    e. Geothermal management (Waikato and Bay of Plenty)
    f. Cross-boundary matters.

10. However, as a result of regional complexity we do not seek to be included in the first tranche of regions. We highlight the spatial scale, diversity, and local variability of the Waikato Region, including a major city surrounded by numerous towns and large areas of rural land, all with varying infrastructure needs. The council manages significant water bodies such as the Waikato River and Lake Taupo, as well as significant wetlands, coastal areas, and geothermal areas. For Lake Taupo and the Waikato River, water (commonly the need for plan development and hearings processes) comes in from the Manawatu Wanganui region by virtue of the Tongariro Power Scheme, and is taken by Watercare to meet Auckland requirements - how will these interests be adequately represented on the RPC - and in plan development?

11. We also note that there are territorial authorities (such as Taupō District Council and Rotorua Lakes District Council in the Waikato region) with jurisdictions that cross regional boundaries. These councils will likely lack the capacity to be involved in multiple RPCs, as required by the proposed system.

<u>The Future Proof subregion</u>

12. Successful regional partnerships have been developed in the Waikato region. These include Future Proof[1] and the Hamilton-Waikato Metropolitan Spatial Plan. There is a concern that these partnerships will not be given appropriate weight in the RSS and NBA plan, given the whole-of-region focus that the RPC will be required to take. Additionally, Future Proof has proven to be an efficient arrangement in the Waikato region and we are concerned that the shift towards RSS and NBE plans could create uncertainty with associated funding.

13. At substantial staff time and direct cost, Waikato partners have recently been through essentially the new system process: the Hamilton-Auckland Metro Spatial Plan, which subsequently informed other statutory and non-statutory planning documents (the Future Proof Strategy and then the

[1] The Future Proof Implementation Committee comprises the Mayor/Chair and one councillor each from Waikato Regional Council, Hamilton City Council, Waipa District Council, Waikato District Council, Matamata-Piako District Council, central government representation, plus iwi representatives and an independent chair.

Waikato Regional Policy Statement update). This substantial investment, including by central government, should not be lost.

14. We recommend that there must be a path for significant partnerships such as Future Proof to be given effect in the RSS and NBE plans, in a way that ensures current arrangements and funding arrangements are preserved.

15. We have found success in these partnerships from input from multiple central government agencies as and where relevant. These representatives have the required level and mandate to commit their departments to partnership direction and work programmes.

16. A subregional committee for Future Proof could help address the issue of lesser direct democratic input- by preparing a subregional plan and/or recommending objectives and outcomes for the subregion to the RPC. Another more limited option could be for Future Proof to prepare a joint SREO/SCO for the subregion. Concerns here are:
    a. This just adds a planning layer back in, and there is a lack of clarity on whether community consultation could occur at subregional level.
    b. Future Proof governors would have to advocate to the RPC to be recognised as a subcommittee.
    c. A strength of Future Proof is the relevant breadth and level of central government involvement. We have concerns that a single central government representative on the RPC would not be able to cover and commit what representatives have been able to up until now in Future Proof.

Comments on key themes

Funding and costs

17. Funding for implementing the new system and for managing the various new responsibilities will be fundamental to the success of the reform. We strongly reiterate the need for central government funding for local government to implement the reforms.

18. The key issue for local government funding is the alignment of Local Government Act funding mechanisms and the ability to secure funding associated with the revised resource management system competing against the many other priorities of the council and our community. This needs to be reconciled, particularly considering there will be a degree of monetary dependency between local authorities within a region as they contribute to the RPC for RSS and NBE plan development and implementation.

19. With no provisions for central government funding in the NBEB, nor powers for RPCs to source financing, we understand that many costs will ultimately fall to local government, which we strongly oppose given the reduced role of local authorities in plan-making under the new system.

20. The funding mechanisms at local government's disposal are very limited – the main method being through rates. Ultimately, the priorities for this funding are determined through going out to consult through Annual Plan or LTP processes with our community. Implementation of this system will compete for funding with all other matters that local government has to manage. If implementation is to occur in the manner (and at the pace) that central government desires, then additional secured funding sources need to be available.

21. The supplementary economic report to the Bills does not acknowledge who the ultimate bearers of most costs will be under the current proposed system – resource users and ratepayers. We seek direction from central government on how costs will be managed to improve transparency of the process and to avoid setting false expectations.

22. Further, we strongly recommend:
    a. That funding of the RPC secretariat is shared with central government. The change to a planning committee represents a shift to a partnership model for the development of plans, with the Minister and mana whenua taking a key role. The funding of the secretariat should reflect this partnership model.

    b. Central government support in the early stages of reform for legal testing of provisions and terms in hearings and appeals – we are concerned that the RPC/local authorities alone will have to defend decisions made to comply with untested national direction.

    c. Central government clarifies if and how the new system will encourage use of economic instruments and funding tools. Whilst supporting information indicates that this may happen, the legislation itself remains relatively unclear on this matter.

<u>Regional Planning Committees (RPC) and secretariat</u>

23. We have significant concerns about the composition, process and role of RPCs. We discuss these concerns in detail below. In summary, we recommend:
    a. Central government support and guidance on resourcing for the RPCs, especially for the host local authority.
    b. Reviewing the composition of RPCs to better ensure democratic accountability and represent regional interests.
    c. Reviewing RPC membership in light of Treaty settlement legislation. By virtue of the Joint Management Agreements that exist with river iwi as outlined in the river settlement legislation (e.g. Te Ture Whaimana o te Awa o Waikato), we currently appoint people to hearings committees (for policy and consents) with the Waikato and Waipa catchments.
    d. Including specific guidance or principles for RPC members to ensure that the best outcomes for the *whole* region will prevail.
    e. Providing better clarity around committee members' responsibilities and constituencies.
    f. That SREOs are made mandatory and that RPCs must "give effect to" these statements, and report on how they have done so.
    g. To ensure that decisions on water continue to be made in an integrated manner, as a minimum, regional council staff should be in the secretariat for water decisions – whether these be consent or policy related.

24. Further, if hosting the secretariat and RPC are to fall to regional councils by default where agreement cannot be reached, we request instead that the legislation is made clearer and simply directs regional councils to take these responsibilities, and that they are adequately resourced to do so. While the Auckland combined plan model enjoyed success, our region has 12 local authorities rather than one and the current provisions will cause tensions in creating a competition for hosting and secretariat responsibilities, as well as potentially drawn out processes before numerous entities can agree. These tensions will filter through to negotiations on how the RPC and secretariat will be funded, with local authorities who do not agree with earlier decisions potentially becoming less willing to contribute their share. The proposed process as it stands will undo decades of relationship-building work between local authorities in our region.

Democratic input

25. We understand the rationale of RPCs being independent from local authorities for more enduring outcomes for the natural and built environment. However, the democratic decision-making of local authorities will be significantly reduced by the RPC taking on its proposed roles.

26. Accountability of the RPCs back to the community is key, particularly regarding funding. We are concerned that those who are elected by the community to spend/invest ratepayers' money wisely, are not accountable to (or for) the running and decision making of the RPCs. It is important that accountability back to the community that they are serving is embedded in the legislation –

and not through an MfE auditing process. Specific accountability at the local level, to the local community, will get lost in an aggregated report on effectiveness of RPCs.

27. It is unclear which institution will be accountable for the decisions made by the RPC: the members' institutions, all local authorities in the region (regardless of representation on the RPC) or the RPC itself. We strongly seek clarification on the accountability for the decisions made by the RPCs.

28. There is no requirement for the decisions of the RPC to be endorsed or ratified by the local authorities required to implement them. This is democratically problematic, particularly if not all local authorities opt to have a member on the RPC. We see little point in allowing councils the right to review and comment on plans without any power to change them. We consider the legislation needs to require RPCs to report back to local and iwi authorities for endorsement of RSSs and NBE plans.

29. We are concerned that both an independent regional planning committee and an Independent Hearings Panel will mean less democratic accountability than the current system.

30. We acknowledge that many local authorities and groups are recommending that the Bill clarify that the RPC must be made up of elected members to ensure a degree of democratic accountability. We see this as one potential option, and we urge the consideration of other options also.

31. Another option is for RPCs to be made up of independent members from each regional constituency appointed on the basis of expertise. The constituency approach would also assist in limiting the size of RPCs and enable consistency of RPC composition across the country.

Appointment and composition

32. We see the following potential issues with the current approach to composition of RPCs:
    a. Regional council RPC representatives may struggle to uphold their overarching regional interests which directly relate to the functions of regional councils if they are only one member on an RPC.
    b. The role of a territorial authority appointee to the RPC may conflict with the role they have been elected for, if they are a member of a local council.
    c. RPCs could become politically charged resulting in trading of local agendas, such as infrastructure priorities across districts. This could compromise the purpose of the combined plans.

33. Appointing bodies' appointment policies would have to be robust and monitored. We would assume an appointing body would choose someone they think could fairly and adequately represent *their* interests. If the appointing body thought this was not occurring, they could remove their appointee, potentially even if the appointee was acting collectively to achieve the purpose of the Act; there is a lot of discretion afforded to the appointing body to create and amend its appointment policy (schedule 8, clause 14(1)).

34. We see significant value in alignment between the appointment processes for local authorities and iwi to the RPC. If iwi members are appointed and local authorities' members are elected there may be a level of disjoint across the RPC.

Resourcing

35. As discussed above, the Bills are silent on connections to the Local Government Act 2002 and councils' ability to raise funds to fund RPCs, without lines of accountability being clear.

36. The link to council strategy and its priorities through the Long Term Plan is lost. Under the NBEA regional councils continue to have functions to identify and manage significant resource

management issues of the region (or of a district or local community within our region) and manage the natural resources of the region. Without connection to the strategy functions of Councils under the Local Government Act (LGA) (focused broadly on environmental and community outcomes) and the narrower policy function proposed to be undertaken by RPCs, councils will no longer have control of the one of the most significant levers to address adverse environmental outcomes. The overall risk then is that regional councils adopt more of an administrative approach to their functions, leaving the environmental functions to the RPC, and not invest in the supporting functions such as land management, environmental education, and investment. Council management will be left in the difficult position of funding and resourcing a function, with limited oversight on how these functions are discharged. This potentially creates internal challenges and disconnects between the supporting functions such as science and policy.

37. Connection to the LGA is fundamental to ensuring success of the new system. Ultimately each local authority will make decisions to fund activities as part of the LTP or AP process. What happens if one or more local authorities choose not to fund the RPC as their community has told their elected members, through a legitimate special consultative process of the LGA, that there are more pressing community priorities than to fund an RPC?

38. A lack of reference to s 15 of the LGA around triennial agreements (i.e., how councils will work with one another) will also severely hamper councils' incentive to work collaboratively beyond the RPC.

39. More guidance is needed for the RPC's budget-setting process so local authorities can make alternative arrangements for resourcing the RPC/Secretariat (e.g., through secondments).

40. The flexibility afforded to RPCs could present challenges, for example if communities perceive that an RPC is operating with a greater focus on particular districts or areas over others within a region. This could potentially lead to tension between local authorities in agreeing joint funding and resourcing of the RPCs. It is unclear if costs will be shared for processes concerning only one local authority, such as for a local private plan change.

41. We note the following financial risks and impacts on the host local authority, which are of particular concern considering regional councils are the default host:

    a. It appears the host local authority must bear administrative and financial management costs before any agreement is reached by the RPC as to funding contributions, without any clear basis to seek contributions from the other local authorities.
    b. If an RPC exhausts its funding, it appears that the host local authority will have to pay any of the RPC's immediate expenses, and then seek to recover these from the other local authorities.
    c. It is not clear what the repercussions are if a local authority does not fund their share as per schedule 8, clause 36(6). This shortfall may fall on the host local authority.
    d. We understand the host local authority will remain the legal employer of the secretariat. It appears that the host local authority will retain legal responsibility for all employees, despite the director having all the rights, powers, and duties of an employer in relation to secretariat staff. The employment law implications of this approach could warrant further consideration. For example, which entity holds obligation for health and safety in employment?

SCOs and SREOs

42. Regional policy statements (RPS) have a key role in the current RMA system, providing policy direction to be implemented in district and regional plans. We consider that making SREOs mandatory and requiring RPCs to "give effect to" instead of having "particular regard to" them in plan making would help uphold regional concerns. The SREOs could play the role of an RPS; to this

effect, SREOs must be a more directive document being able to prescribe inclusion of certain matters in plans.

43. To show that RPC has given them due account, RPCs should have to report on how they have given effect to SREOs.

44. We recommend more general consideration of whether SCOs and SREOs should be mandatory, and/or whether an RPC should be able to direct SCOs and SREOs to be prepared by local authorities – for local authorities who might be reluctant to engage in the process.

45. There is currently no guidance on the scope and detail of these statements – this is needed so that consistent and sufficient statements are provided, and the expectations and intent of providing for these statements is clear.

46. We note there is currently no requirement for consultation on these statements. We request further guidance on whether consultation would have any effect on the weight of the statements.

47. Given SREOs would have to be given effect to under our proposal, and regional plans must also give effect to national direction, we would recommend that if there is a conflict between the two, national direction should prevail. Likewise, if there is any conflict with Te Ture Whaimana, the latter should prevail.

48. Related to this, the legislation needs to be specific about what activities regional councils must undertake to lay the foundation for the RPCs, and their subsequent decisions. Regional Councils have undertaken significant work over many years on many aspects of the natural and physical environment and this information must be taken into account by the RPCs. RPCs should be required to have prepared for them, before they are formed, an evidence base that will be the foundation of their work – this should ideally come from the respective regional councils.

Other concerns

49. As plan administrators, local authorities can appeal an RPC decision, because the latter has separate legal status. However, in reality, the costs fall to them since they also fund the RPC. This would prompt self-interest in the RPC process to head-off appeals costs- further incentivising local authorities/their RPC representative to advocate for their local interests in the RSS and NBE Plans.

50. It is still unclear how RPCs will link to existing co-governance committees, catchment committees and iwi catchment authorities which have separate governance processes and responsibilities. We request greater clarity as to which existing committees and bodies are to be retained, and further, how their functions and powers are to be rationalised with those of RPCs, particularly where there may be overlapping functions and powers.

<u>Iwi, hapū, Māori</u>

51. We support the specific provision (clause 35) on Te Ture Whaimana and that it prevails over any inconsistent provision in the NPF and must be included in and given effect to in any plan that affects the Waikato or Waipā River or activities within the catchment of the river. This preserves the hierarchy of the importance of this legislation.

52. We are supportive of the principle of Te Oranga o te Taiao, and the direction signalled to restore and protect the mana and mauri of the environment in clause 5. This aligns with the direction of Te Ture Whaimana. We are also supportive of the proposed integrated suite of national direction. We see this as a positive change that should provide certainty and avoid the confusion that has occurred in the past under the current system which has seen to the staggered release of separate pieces of national direction.

53. Despite this, we have identified several key concerns relating to the NBE bill and its implications for iwi and hapū in the wider Waikato region. We note that the submission points below offer an insight but are not representative of the views of iwi and hapū in the Waikato region. These will be expressed independently by iwi and hapū through their own expression of mana motuhake.

'Giving effect' to the principles of Te Tiriti o Waitangi

54. Additional guidance and direction are required regarding 'giving effect' to the principles of Te Tiriti o Waitangi (section 4) and what the principles are. This is vital for informing how local authorities will implement the NBE Bill and will assist in avoiding additional time delays and costs associated with litigation and case law. We are concerned about different interpretations of the key provisions related to Te Tiriti and consider the government needs to ensure all parties are agreed on interpretation of concepts and processes. This subject cannot be addressed by this Bill only: in particular, there needs to be a nationwide discussion to clearly agree the principles. There are opposing views and the government needs to reconcile these before we can have that clarity.

Funding and support

55. The size and quantum of change that will be experienced as a result of this Bill will require a commensurate level of support, assistance and guidance from central government. This support will be required by both local government (for example, in funding the RPC secretariat) and iwi and hapū. Specifically, we query who will fund the capability-building of mana whenua, acknowledging that iwi and hapū in our region often express that they are not resourced or do not have capacity to respond to ongoing requests for input from both local and central government. We consider that Post Settlement Governance entities should also be included in ongoing funding for iwi and hapū.

Fair representation and overlapping functions and powers

56. We note the high complexities associated with the role of the RPC secretariat. We maintain that the secretariat will need to fairly represent all of the communities that it covers, including mana whenua and Post Settlement Governance Entities. Limited capacity within local authorities is a key barrier to ensuring this.

Iwi and hapū committees

57. Greater clarity and direction are necessary regarding the proposed iwi and hapū committees. We query who will initiate and facilitate the establishment of the committee. We also query whether certain iwi and hapū will be expected to approach local authorities collectively, and if local authorities will be required to establish a joint group to engage with all iwi and hapū across the region. This has not been specified and therefore leaves ambiguity around who makes this decision and how. These matters are of significant concern to WRC, given that we have over 40 iwi and over 180 hapū with areas of interest within our regional boundaries.

58. While we support increased representation and engagement, we are concerned about the complexity of these tasks. We need a clear understanding of time needed to support increased iwi representation and engagement that is provided for in the new system. We ask that the government have realistic expectations about what can be delivered (and more importantly when it can be delivered) in this space.

59. Also, unlike the Māori appointed members of the RPC, the iwi and hapū committees and Māori appointing bodies are not provided with clear funding avenues through the NBE Bill.

<u>System outcomes</u>

60. We believe in the Strong Sustainability model, in that the natural environment is integral to the success of everything else. The system outcomes listed in clause 5 are vague and lack clarity on how the outcomes will be balanced to manage conflict. We are concerned that the absence of a hierarchy will lead to confusion, ultimately resulting in conflicts not being resolved at the

appropriate level. If RPCs must arbitrarily prioritise outcomes on a case-by-case basis, potential trade-offs of outcomes will occur. This could lead to appeal processes, causing delays and increasing costs in planning processes. We strongly recommend an outcome hierarchy in clause 5 or requiring the NPF to provide guidance and direction on prioritising outcomes in the NBA plans.

61. Further clarification is needed addressing how the outcomes framework will interact with Te Mana o Te Wai (TMOTW). We recommend that TMOTW should be considered and included in the outcomes framework.

62. The Council owns and operates flood protection schemes across the region. We consider that the lack of hierarchy between the system outcomes could lead to undesired outcomes, such as regional councils not being able to establish, operate and maintain flood protection schemes. In the absence of the NPF, we consider it important that flood protection infrastructure is recognised and protected in the NBEB. We often find that where conflicts exist between environmental outcomes and development pressures, the latter tends to prevail.

National Planning framework (NPF)

63. We impress upon the government that the NPF needs to provide guidance and direction on prioritising outcomes to the lower order documents, rather than these being left to define it for themselves.

64. The NPF will have increased requirements for policy documents and consenting decisions to clearly reflect and have 'line of sight' to national direction – therefore we need clear guidance on this.

65. A key focus has been signalled on implementation and effectiveness of the NPF, with accompanying additional monitoring required of local government. We note the need for associated funding and capacity building to do so.

66. We strongly support the intention of the NPF but note the difficulty in understanding how many of the provisions of the NBEB will work without having seen the first NPF. Preparing and agreeing on the NPF through a Board of Inquiry process is better than the method used for preparing national direction under RMA.

67. We support the direction to set limits and targets. However, we note that national direction under the RMA had been at times absent and inconsistently released. We are concerned that some environmental limits may take longer than necessary through the NPF (particularly if a staggered approach is taken). We have concerns that this will result in inconsistent environmental outcomes for different matters – such as is the case for the highly anticipated National Policy Statement for Indigenous Biodiversity and the National Policy Statement on Natural Hazards (which has likewise been highly discussed).

68. There is a concern that the NPF may be too rigid and may prevent addressing regionally significant issues. Bespoke direction for managing environmental pressures is not the best approach. A good example was the issue of applying bespoke direction from the National Environmental Standards on Freshwater (NES-F) to coastal wetlands. In this case coastal wetlands would be better managed under the coastal plans, as the national direction would restrict many relatively benign permitted activities in the coastal marine area. We support that the NPF must provide strategic direction at the national level, especially on resolving conflicts between the key system outcomes. However, the NPF should provide a framework that is enabling, flexible and responsive to regional and local issues.

69. Input from local government and communities will be critical in developing the first NPF. Central government must enable public participation and ensure that the NPF provides for legitimacy, sustainability and workability. Sufficient time to consider and understand the ramifications of the NPF must be accounted for.

70. We would like to confirm our understanding that there will be two versions of national direction during the transition period: one for operating under the RMA; the other for those regions who have transitioned and are working under the SPA and NBEA.

71. We recommend that the three freshwater allocation principles (equity, efficiency, and sustainability) are clearly defined in the NPF, at this stage these 'can' be defined not 'must' be defined. It is critical for every consequential part of the process that definition of terms is provided in the highest order document.

72. It is important that the new infrastructure section of the NPF takes into account drainage and flood infrastructure managed by regional councils.

73. We support that climate change direction from the National Adaptation Plan and Emissions Reduction Plan is integrated in the NPF and will be consulted on through a board of inquiry process.

Natural and Built Environment Plans (NBE plans)

74. Our primary concern with NBE plans is that there is not sufficient opportunity for communities to provide meaningful input into essentially what should be their 'own' plans.

75. We support the requirement to develop engagement agreements with iwi, but it must be recognised that the time to prepare the engagement agreements can be lengthy. These are just the agreements and not the actual engagement themselves, which is also a lengthy process as evidenced by ongoing engagement processes for freshwater plan changes.

76. A logical order for engagement would be that the engagement policy is decided upon first, then engagement agreements with iwi, and then the register for other interested parties.

77. We support the "frontloading" of the plan development process and appreciate that the provision of evidence early in the process, rather than at the hearing stage could provide advantages in terms of the timeframe, but we are concerned that lay-submitters may be discouraged from entering into the process at all. It is critically imperative that those who are not professionals, nor well acquainted with planning and policy systems, are provided with sufficient opportunity, and time to realise that opportunity, in order to obtain this important community input. We do not consider that this is provided for in the process at present.

78. Another key concern with the plan development process is the timeframe, particularly for the initial plan for each region, which is unrealistic and heavily underestimates the time required.

79. To achieve the milestones of notification of regional policy issues, and notification of a full regional plan, we understand that drafting the plan would occur at the same time engagement is being undertaken. This is not considered to be best practice and is unlikely to result in good outcomes.

80. It is also not clear whether the two-year requirement to notify the first plan in each region starts before or after the engagement agreements are in place.

81. The Bill also underestimates the time required in administration, ensuring availability of documents in an electronic format and committee meeting cycles. Given the intended outcome

is to reduce time and cost at the resource consent end of the process, it is vitally important to get the front end of the process right. We suggest at least an extra year in the process, allowing for at least five years to complete a wholly new regional plan.

82. Other concerns include:
    a. It appears the Independent Hearings Panel can make recommendations on matters that are not within scope of submissions.
    b. RPCs will need to balance issues and objectives to ensure they are not diluted to a point where they are too high level to be usable.
    c. The review timeframes proposed in the NBEB will create a cyclical churn of plan reviews if the NPF is reviewed every 9 years, right when regions have just finished their NBE plans. We query whether the long-term timeframes are practical.
    d. We question the use of enduring submissions in the plan development process. There appears to be little benefit for a submitter and an extra layer of administration for the RPC. It is also unclear whether an enduring submission is superseded in the event a primary submission is made. Notification of the full plan may resolve issues raised in an enduring submission and those issues may no longer be relevant.
    e. If a structure plan or town concept plan or resource consent for that matter does not give sufficient weight to an RSS or NBEA Plan, we request clarity on which entity would oversee/provide the check on that. Under the RMA, regional council staff review district planning for alignment with the RPS; would the RPC do this for NBEA plans?

<u>Consenting</u>

83. The notification regime is a significant departure from the RMA's approach. The Bill imposes sweeping mandatory requirements for when the NPF or NBE Plans must either require public notification (cl 205), require limited notification (cl 206) or preclude any notification (cl 207); and requires that the NPF or NBE Plans either set the notification status of an activity or provide for the consent authority to determine the notification status. We consider that predetermining the notification status of discretionary activities will generally be impracticable simply because the range of circumstances and variables that characterise individual applications is almost limitless. As a result, it would seem likely (but contrary to the reform's "efficiency" objectives) that the NPF and Plans will default to a conservative approach and require full notification for discretionary activities. In our view, the notification provisions would substantially improve if consent authorities were provided with discretion to make a notification decision in relation to discretionary activities. This may avoid needless notification of discretionary activities simply on the basis that the NPF or NBE Plan had not provided for their limited notification or non-notification. It may also reduce a negative perception being associated with discretionary activities as compared with controlled activities.

84. We note that a part of the success of the NBEA rests on the assumption that the NPF or plans will be able to minimise the number of activities that fall into the discretionary and controlled consenting categories. We consider it will be challenging for the NPF or plans to specify rules at the level of detail required to achieve this intention. From experience, we understand that for a given activity, it is usually possible to describe a low level/low impact version of the activity which can be permitted or controlled (i.e. allowed as of right or consent which must be granted). However, the remaining falls into a default discretionary category.

85. We consider that a similar number of activities will require consent with a minor proportion being controlled activities (which can now be declined so will be more complex to process than at present) but most will be discretionary because it will not be possible for the NPF or a plan to be satisfied that, in every case, public notification is not required. There is a chance that in most cases public notification will apply under clause 204. We are concerned this will have a significant additional burden on both applicants and consent authorities compared with the status quo, noting that only about 3-5% of applications are currently publicly notified. There is a risk that this

approach will make consenting processes slower, which is contrary to central government's intention of streamlining planning processes, and bringing more efficiency and certainty for plan users.

86. We note that there will be challenges with implementing the Permitted Activities Notices (PAN) process. For instance, there is no ability for councils to seek further information from applicants, so decisions will be made relying only on the initial application and so far, it is unclear what constitutes a complete application. Further, there are no appeal or objection rights from the council's decision and, while the consent authority has the power to issue or decline to issue a PAN, there are no criteria in the Bill for making that decision. Added to that, this is another form of "authorisation" for permitted activities on top of "waivers" under clause 157 and Certificates of Compliance (CoCs) under clause 294, which will need to be specifically accommodated in every regional council consents database. We recommend having detailed guidance around all permitted activities pathways. Further, we urge central government to simplify the new processes for consenting authorities; we are quite concerned in terms of the extra pressures that the new system will inflict on councils.

87. The potential need to obtain regulatory consents or PANs for activities associated with vital flood protection infrastructure will potentially mean a rise to costs for regional councils that will result in less resources for more positive contributions for the environment and communities. We recommend having permitted activity status for activities that are necessary for the operation, maintenance, and upgrades of flood protection infrastructure.

88. We recommend having enabling provisions for activities associated with flood protection structures. Requirements for monitoring flood protection activities should be proportional to the effects of the activity. As an example, there are 119 pump stations in the lower Waikato and Hauraki areas. The monitoring of all pump stations if required would represent a substantial increase in the resources required to operate the schemes, including council staff, consultants, and other costs. The option of ceasing schemes because they are no longer affordable would have substantial economic impacts on the region, including negative impacts on the environment, individuals and communities.

89. We consider that in this modern, pandemic-affected work environment, timeframes are not workable and are disadvantageous particularly to those who have dependents or do not work the standard 40-hour week. The timeframes affect the ability of organisations to be good employers and provide flexibility to allow for part-time employees.

<u>Compliance, monitoring and enforcement</u>

90. The changes to the enforcement provisions are generally supported but we highlight that clear implementation guidance is required for effective CME. However, we note that councils are in many cases also consent holders and there is a significant increase in fines in the new system. The increase in financial penalties (and pecuniary penalties) for offences in the Bill will heavily incentivise compliance and lead to a reduction in environmental harm. However, while councils try to act in an exemplary fashion with regard to environmental compliance, there is always a question of exposure to legal risk where the law is unclear and this could expose councils to significant fine(s) and reputational issues.

91. We are still unsure of the reasoning behind prohibiting using insurance for prosecution and infringement fines. We recommend enabling offenders to use insurance for prosecution, infringement fines and pecuniary penalties under the NBEB. WRC's submission on the *Our Future Resource Management System discussion* document lodged on 22 February 2022 stated:

92. *'There are ramifications of prohibiting insurance for prosecution and infringement fines, including potential financial burden on the ratepayer in some instances. WRC uses a circular "polluter pays"*

model so that any recovered fines are directed into financing current investigations and prosecutions to offset the burden to the ratepayer. We know from experience that when defendants are insured, their fines tend to get paid promptly, and in full. When there is no insurance in place there have been instances of fines simply not being paid, being 'drip fed' over a long period of time, and in some cases, remitted or wiped altogether. Lack of insurance also means offenders are more likely to continue a litigious process rather than settle. The unintended consequences of this must be well understood before any changes to the existing provisions are made. Council would like to understand what evidence, or conversations with councils, this matter has been based on. This proposal may well have a counter-intuitive impact if it is not fully investigated and analysed.'

93. We consider this is an excellent opportunity to codify the use of formal warnings into legislation to enable a consistent and robust approach to their use as a recognised way of dealing with environmental non-compliance. Formal warnings are an excellent tool for a regulator to establish a history of non-compliance when there is lesser offending or to get record noncompliance if other enforcement tools are not available. Currently we rely upon case law to issue formal warnings under the RMA, however there is some confusion with other regulators and enforcement agencies as to their use.

94. We note that there was an issue with the RMA when it was enacted that must be addressed to avoid the same problem from occurring again in the NBEB. All offending under the RMA (post introduction of infringement regime, circa 2000) could be preceded against by way of infringement notice. However, the Summary Proceedings Act prescribes that convictions cannot be entered for infringement offences. This issue was the subject of a series of hearings through various RMA prosecutions actions until the issue was finally resolved by the Supreme Court.[2] If this decision did not favour the regulator, it would mean that all RMA convictions that had been issued against offenders since the infringement regime was introduced were potentially unlawful and could be overturned.

95. We recommend having guidance regarding CME implementation for training purposes before implementing the new system; this should include direction on how to deal with previously non-complying activities.

<u>Transition</u>

96. As above, we understand the transition period for the reform is likely to be more than a decade, and stress the need for certainty and support to operate within the two systems, to ensure we can continue to meet our responsibilities and serve our customers and communities.

97. This process will also be highly costly, considering the consolidation of information and IT systems. As an example, the Three Waters' IT system is currently expected to cost $659 million. A technology project of that scale in the NZ government sector is going to have an impact on resource and skills availability for the rest of NZ.

98. We do not see that Three Waters, local government reform, or RM system reform is integrated. This fragmentation will lead a long period of transition uncertainty for councils and communities. It is likely that the system will continue to be refined along the way, this will continue to put consultation and analysis paralysis on our staff and communities. Sufficient consideration of the full consequences of the approach proposed is required.

99. Staging and capacity will be crucial to ensure a successful transition. We seek urgent clarity of the staging of tranches, considering the upcoming long-term-plan cycle and ongoing RMA plan

[2] (Down v R [2012] NZSC 21)

changes. And with current capacity issues across the workforce and national inflation, the need for funding support is vital.

Specific comments

100. We have some specific concerns not addressed by the NBEB:
    a. Additional clarity around resource user charges for geothermal resources is necessary. This is covered in some capacity on pages 25 and 209 of the Supplementary Analysis Report[3]. However, there is a significant lack of clarity around the legislative intent, which makes it difficult to understand how the statutory provisions will work.
    b. Improving enforcement of bylaws will be crucial.
    c. There should be a mechanism to designate land for future flood storage to prevent development in those areas.
    d. More Māori kupu (words) are used in the legislation (compared with the RMA), but they need to be clearly defined and understood, supporting cultural integrity

101. There are some minor editorial errors throughout the NBEB:
    a. Inconsistent use of “planning committee” and “regional planning committee”

102. We provide further specific clause-by-clause feedback in the table below:

[3] Supplementary Analysis Report: The new resource management system - 21 September 2022 - Regulatory Impact Statement - Ministry for the Environment (treasury.govt.nz)

Part/clause	Feedback
2. Commencement	103. It is unclear why some parts of the NBEB are not included under clause 2(1) as coming into force on the day after Royal assent, specifically, why part 11, compliance and enforcement, has been excluded. It is vital that compliance and enforcement clauses are added to 2(1). 104. If enforcement provisions are not 'live' on the same day as other provisions, it will result in councils applying enforcement provisions under one Act (the RMA) to achieve the purpose of a different Act (the NBEA). For example: A farm inspection may involve looking at Farm Plan compliance (related clauses under the NBEB come into effect immediately) and unlawful discharge issues (under the RMA). The following issues and uncertainties would arise: a. Which lawful authority would be used to enter private property? b. What enforcement mechanisms would apply to any non-compliances found? c. Potentially, one single activity could qualify as a breach under both Acts. Which has precedence? d. Which statute of limitations applies? Which penalty? e. When considering enforcement action, which purpose (of which Act) guides decision making?
3. Purpose	105. We would like clear guidance on the meaning of "uphold" Te Oranga o te Taiao. To uphold te Oranga o te Taiao implies a need to wholly understand the intrinsic relationship from an iwi/hapū/Māori perspective. 106. We request guidance on how we would practically assess whether the wellbeing of future generations will be compromised, or indeed will be enhanced or provided for.
4. Tiriti o Waitangi	107. We support the strengthening of direction to 'give effect to' and improve recognition of Te Tiriti principles. However, we recommend that the principles are clearly defined. This subject cannot be addressed by this Bill only: there needs to be a nationwide discussion to clearly agree the principles. There are opposing views and they need to be reconciled before we can have that clarity. Given the much higher obligation to give effect to the principles it is essential that there is certainty as to what the principles are. We acknowledge that some iwi and hapū prefer the use of "Te Tiriti o Waitangi" over "the principles of te Tiriti o Waitangi". 108. Decision makers will require further guidance on what the higher standard of "give effect to" will mean.

5. System outcomes	109. Requiring the NPF and plans to *provide for* stated system outcomes is a low threshold – we consider the reform will not achieve its stated purpose without being more directive. 110. We see matters (e) to (g) as key enabling factors for giving effect to the principles of Te Tiriti which may give them higher weighting. 111. We support the shift to restoration of the natural environment from RMA terms like conservation and sustainability. 112. We query whether it is appropriate to include affordability in the system outcomes considering this is not solely controlled by the planning system and it seems unlikely RPCs will be able to directly influence affordability. 113. It is not possible to remove *all* greenhouse gases from the atmosphere, nor is it desirable – clause 5(b)(ii) should be rephrased to seek a reduction of greenhouse gases from the atmosphere rather than removal.
6. Decision making principles	114. The requirement to recognise and provide for the kawa, tikanga, and mātauranga of iwi and hapū could be interpreted as giving priority to those matters, particularly in circumstances of uncertainty. 115. We note there is no guidance in the NBEB in relation to the weighting of different or competing tikanga or kawa, or how to determine which iwi or hapū has standing, which may well lead to litigation. 116. Not all cumulative effects are adverse. Amend 6(1)(e) to: "manage the cumulative ~~adverse~~ effects of using and developing the environment <u>that might be considered adverse when assessed as a whole,"</u> or to similar effect. 117. We are concerned about the use of the word 'caution' in clause 6(2)(a), as opposed to 'precaution.' The precautionary principle is embedded in the New Zealand Coastal Policy Statement (NZCPS) and has come directly from the United Nations Framework Convention on Climate Change, to which Aotearoa New Zealand is a signatory. We consider that 'precaution' is more appropriate terminology, as it implies anticipatory planning and supports adaptive planning which is vital when addressing coastal issues and flooding, particularly in the context of climate change.
7. Interpretation	118. We note the following terms are not defined in the NBEB and recommend they are defined: a. adaptive management approach b. hapū c. highly mobile animals d. integrated management

e. kawa
f. mana
g. matauranga
h. mauri
i. significant adverse effect
j. significantly contaminated land and contaminated land sites of national significance
k. significant indigenous vegetation and significant habitat
l. soil
m. well-functioning urban and rural areas.

119. We note that definitions for Māori terms will need to be acceptable to Māori as a whole whilst maintaining any regional variance in interpretation.

120. The following definitions are unclear and we seek rewording or further clarification:
a. Adverse effect – what is trivial?
b. Affected person – the definition is incomplete.
c. Consent authority – who is an 'other person'?
d. Contaminated land – does the extent of contaminated land exclude the bed of a lake or river?
e. Critical habitat – should include all areas used by critical and endangered species.
f. Dwellinghouse - The NPS 2019 uses the term residential unit. The NBEB should be consistent with the direction.
g. Environment – 'as the context requires' is vague and weakens the definition.
h. Environmental limit – includes an error, should be 'or' not 'of'.
i. Geothermal energy - water is not energy, but it contains energy. We recommend rewording as follows: "geothermal energy— (a) means energy derived or derivable from, and produced within the Earth by natural heat phenomena; and (b) includes all energy within geothermal water".
j. Geothermal water - the NBEB definition (b), without the cut-off temperature included, covers all water, because all water has been heated by natural phenomena to some extent. It would not be useful to define all water as geothermal. We recommend rewording as follows: "(b) includes all steam, water, and water vapour, and every mixture of all or any of them that has been heated by natural phenomena to a temperature of 30 degrees Celsius or more".
k. Highly vulnerable biodiversity area (HVBA) - contains a double reference. Amend to: highly vulnerable biodiversity area and HVBA ~~have the meaning given in section 555~~ means an area that is highly vulnerable because it meets 1 or more of the criteria set out in section 562.

	l. Indigenous biodiversity – currently appears to not be the same as that in the draft National Policy Statement for Indigenous Biodiversity. m. Natural environmental limit or limit – why is this needed when environmental limit is already defined? n. Natural hazard - (a) does this mean any natural occurrence? Also need to consider man-made hazards such as a stop bank and dam breaches. Also, we recommend the definition includes naturally occurring substances such as arsenic in groundwater. o. Te Oranga o te Taiao - Whilst we acknowledge that a broad definition of te Oranga o te Taiao is good as it means that iwi/hapū/Māori can define this for themselves, we see a risk of the appropriation of the term and its meaning being misconstrued. It is a Māori term with matauranga Māori origins and its definition and application must remain authentic to its source. We seek clarification as to whether the concepts of te Oranga o te Taiao are to be considered in a hierarchy or read as a whole. p. Wetland – should be consistent with the definition in the National Policy Statement for Freshwater Management. q. Working day – previously it was standard for people to be allocated 15 working days of annual leave per year. Now that 20 working days is the norm it would be more appropriate to extend the exception period to run from 20 December to 17 January each year. 121. We question how production land might be defined in relation to industrial or trade premises, as many associated activities such as agrichemical and fertiliser use are known to create widespread diffuse contamination. We also need to consider the effects of combustion of fossil fuels for process heat for glasshouses and poultry and broiler operations etc. which we consider should be treated equally.
19 – 22. Restrictions	122. As part of the council's flood and drainage protection role, it is necessary to undertake some of the activities listed in (1) of clauses 19 to 22. Most WRC pump stations currently rely on existing use rights under our regional plan. Under the new system, it then becomes important to have framework or plan rules that support the activities we need to undertake. If this was to change and resource consents required for our existing pump stations, this would be a significant and costly exercise.
21. Restrictions relating to water	123. We query the intention of permitting diversions for individual domestic needs or stock drinking water which is contrary to the equivalent provision in the RMA. 124. The National Policy Statement for Freshwater Management 2020 places stock water at the bottom of the hierarchy of obligations. Considering stock water take volumes tend to be much higher than other consented uses, we query whether it is appropriate for it to be included in clause 21. 125. We note a minor drafting error in 21(3)(c). We recommend amending the wording as follows: (c) heat or energy from the material surrounding geothermal ~~energy~~ water.

26 – 30. Existing uses that are protected	126. We seek confirmation that council assets will retain existing use rights, such as pump stations and stop banks which are key for us to achieve our functions under the NBEB and other legislation. 127. We query if the reduction from 12 months to 6 months is appropriate, considering some activities are seasonal and not undertaken consistently throughout the year.
33. Purpose of National Planning Framework	128. The NPF should help achieve purpose of the Act, rather further it. 129. The NPF should resolve conflicts, going beyond simply helping to resolve them.
35. Te Ture Whaimana	130. We strongly support the inclusion of Te Ture Whaimana in the NBEB. 131. We query the wording of (1) - Te Ture Whaimana "is intended by Parliament to be the primary direction-setting document…". We recommend it would provide more certainty to amend to "is the primary direct-setting document…".
36. Resource allocation principles	132. We seek that the principles are defined through the NPF and guidance is provided for RPCs and consenting authorities on how to apply them.
37 – 40. Environmental limits	133. Clause 37, which essentially requires no net loss of ecological integrity of the natural environment, will require clear protocols to assess current state. 134. We seek that the Minister involves councils in the setting of limits to ensure they are workable. It is important that limits can account for local variation and circumstances. Limits and management units have proven difficult and in some cases unworkable at the regional level and will need to be carefully worked through. 135. Relating to the matters for which limits are required: a. Why does indigenous biodiversity require environmental limits and not just biodiversity? b. We query if coastal water is too broad. c. Should climate be excluded given it is to be controlled by other legislation? d. Geothermal should be included. e. It is unclear whether 'soil' would include subsoil, sediment or former beds of lakes and rivers. We recommend soil is defined in clause 7, 'Interpretation'.

	136. We note that increased stress on the natural environment caused by climate change will be difficult to build into limits and targets. We are supportive of how the proposed system allows for a dynamic approach to mitigation and adaptation. However, there is concern around ensuring that the NPF provides strong enough direction, factors in climate futures, and interprets the Emissions Reduction Plan and National Adaptation Plan accurately and clearly. 137. We strongly recommend that limits for geothermal resources are set at a local level (plan level) and not in the NPF. 138. We caution the difficulty to set, demonstrate compliance with, and enforce qualitative limits. 139. Limits (and targets) will require regular review. This will flow through to plan changes, creating potential for significant costs. 140. Questions relating to environmental limits: a. How will managed fills and landfills be dealt with under environmental limit setting and management units? b. How do limits and targets under the NBEA relate to the National Objectives Framework under the NPS Freshwater Management? 141. It is important that council assets are given some leeway in terms of limits under the NPF. Most of the council's pump station discharges are currently provided for under our regional plan. While the operation of the pump station may have some influence on water quality, the main contributing factor is the wider environment because of land use, which we have little control over.
41 – 43. Interim limits	142. What evidence of pre-condition would need to be provided to support interim limits? How would a harm or stress assessment be applied if the previous environmental conditions were unknown? 143. 43(4) includes an error – An interim limit applies until ...
44 – 46. Exemptions	144. We oppose the ability to allow exemptions to interim limits considering these can essentially lower environmental limits and can have lengthy duration. 145. We consider that exemptions from limits should be publicly consulted on. 146. Public benefits is a vague term. We recommend it is defined.

47- 53. Targets	147. 'Minimum level' should be defined. 148. A lack of data will make it difficult to set targets that are ambitious but also practical. 149. Monitoring of limits and targets will be costly and we recommend central government provide funding towards this. 150. Further, monitoring can be of high-risk e.g., around waterways, for which health and safety training will be required, particularly for Māori. 151. In line with our recommended definition for 'natural hazard' we recommend monitoring includes investigation and delineation of naturally occurring contamination.
54 – 55. Management units	152. Setting management units at a national scale will be difficult considering it has proven very difficult for freshwater in practice. It would be better to set units at a regional scale on a physio-chemical basis. Social/cultural matters are on top of this and need to be factored into the management of water within units, rather than defining the units. 153. Consultation with councils should be mandatory. 154. We query what happens if the Minister cannot measure the size and location of a management unit. This should not prevent setting the management unit.
58. National planning framework must provide direction on certain matters	155. We consider that geothermal resources should be defined under the NBE plans or in the RSSs instead of the NPF. This will allow plan makers to capture and represent local nuances and the nature of different systems in different locations. Therefore, we recommend that an exclusion be added stating that 'geothermal systems' or 'geothermal resources' can only be defined at the regional level under NBE plans or in the RSS.
61 – 67. Effects management framework	156. It is unclear why the effects management framework only applies to adverse effects on significant biodiversity and specified cultural heritage. Is there reasoning why it should not also apply to other system outcomes? 157. It is unclear whether the effects management framework applies in plan making and consenting processes. 158. Clause 63(a) refers to specified biodiversity which is inconsistent wording with other clauses relating to the effects management framework which refer to significant biodiversity.

	159. An exemption from the effects management framework should not be granted if the sole reason is that there is no reasonably practicable alternative location. The NPF should not be enabling site-specific loopholes for activities. 160. We query the intention behind allowing exemptions for activities with effects on significant biodiversity areas within areas of geothermal activity (66(1)(f)). This does not seem appropriate considering this habitat type is already under pressure from development and is critically threatened. There is no equivalent exemption for any other ecosystem type in the Bill (e.g., wetlands, coastal), and we oppose this provision. If the intent is to specifically provide for geothermal development, then the clause should be limited specifically to that, rather than extend to any activity in a geothermal area. We recommend deleting the clause, or rewording it to read: "Geothermal development where the effects of the reinjection and extraction of geothermal water and heat may result in activities with effects on significant biodiversity areas within areas of geothermal activity." Another option is to provide for an exemption if the activity is within or affecting a protected geothermal system as defined at the regional level in the RSS, ensuring that local context is captured. 161. During comprehensive engagement on the National Policy Statement for Indigenous Biodiversity, regional councils clarified the distinction between land use effects relating to geothermal development (e.g. clearance for infrastructure), and indirect effects created by the removal of water and heat from geothermal reservoirs (i.e. cooling or heating at the surface). It is the latter effects that are difficult to manage, monitor and predict, and for this reason the current regional policy frameworks provide an enabling framework. 162. It is unclear what is meant by 'rare within the region or ecological area' (66(1)(g)). Is this a reference to ecological regions and districts? The exemption may also encapsulate the nationally critical species found in HVBAs 526 (1)– whereby an exemption pathway would not be the intended purpose. 163. Exemptions should require frequent assessments considering that species threat status and distribution may change over time. 164. Clause 67(1)(b)(ii) is unclear – is it referring to the relative financial cost or the costs to the environment or wellbeing?
75. Direction to review consents and permits	165. It is unclear who will pay for this review of consents. It will require large time and financial costs to council if we are expected to pay to review groups of consents.
87. Directions on allocation method	166. We seek that the NPF must provide further detail on the meaning of the resource allocation principles.

	167. The meaning of 85(1)(h) is unclear, we suggest amending to "provide for the frequency and duration of the required time period in section 306 for affected applications."
88. Use of market-based allocation method to determine right to apply for resource consent for certain activities	168. For market-based allocation methods, we would like clarification on who would run an auction or tender process. 169. We have concerns around the proposed use of market-based allocation and the equity issues this may create. Under this system, natural resources could be auctioned off to the highest bidder with little regard to matters of equity and social, economic, and cultural wellbeing. In addition, it fails to recognise the purpose of the Bill and the intrinsic nature of Aotearoa's taonga and natural environment values which contravenes important concepts such as te mana o te wai. We consider it necessary that economic considerations are secondary to cultural, social and environmental wellbeing to ensure alignment with the purpose of the NBE bill. We see this as the best way to address the issues that have been observed with the first-in, first-served approach under the current resource management system. 170. We note that assimilative capacity is difficult to determine for geothermal water (clause 88(1)(c)). We recommend deleting clause 88(1)(c) as this matter should be limited to the NBE plans and should not be subject to the use of market mechanisms.
89. Framework rule prevails unless exceptions apply	171. Case law has noted that adaptive management requires good baseline information about the receiving environment. If the NPF is able to direct this approach is used, the legislation should include this as a requirement for this to be directed in the NPF. 172. How should the stringency test be undertaken in cases where national and regional rules have the same activity status yet are fundamentally different in direction and content? For example, the stock exclusion regulations and Waikato Regional Plan Change 1. The NBEB needs to clarify whether national or regional rules should prevail where activity status is the same, or clarify that the decision is at councils' discretion.
102. What plans must include	173. How should a plan determine the extent to which it must give regard to RSS and other regions plans (102(2)(f))? 174. Clause 102 (2)(j) requires plans to ensure sufficient land capacity for development. We consider this is the role of the RSS not the plan. 175. We support the requirement for cumulative effects to be managed in NBE plans. However, we consider it important that a specific point for geothermal resources is included. We recognise that managing cumulative effects on geothermal resources is difficult, but note that these effects are irreversible and therefore should be recognised in the legislation.

	176. We consider that there should be a requirement to consult CDEM groups on matters related to natural hazards.
105. What plans may include	177. Guidance will be needed to determine how to account for localised issues in plans. Some specific localised issues would be better managed through local bylaws such at setbacks. 178. 105(2) provides that existing holders of resource consents must, if the NPF or plan so requires, comply will newly promulgated rules relating to maximum or minimum levels or flows or rates of use of water, or minimum standards of water quality or air quality, or ranges of temperature or pressure of geothermal water. 279(3) makes it clear that giving effect to this requires a review of affected consents but there is no indication in clause 105 that such a review is required. 105(2) should be amended to make this clear by cross-referencing to 279(3).
106. Te Oranga o te Taiao statement	179. It is unclear what the weight is of a te Oranga o te Taiao statement.
107. Considerations relevant to preparing and changing plan	180. Considering that the issues and direction previously contained in RPSs will now be contained in NBE plans, and RPSs must be given effect to, we consider that a statement of regional environmental outcomes (SREO) (which will contain similar issues to RPSs) should be given greater weight than 'particular regard'. SREOs will cover matters directly relevant to te Oranga o te Taiao and will be based on technical evidence. For this reason, it would be appropriate for them to be given effect to when preparing and changing plans and have higher weight than statements of community outcomes (SCOs).
108. Matters that must be disregarded when preparing or changing plans	181. Without legal precedent it will be important for clear definition on what constitutes 'low income'.
114. What is required if aquaculture activity described as permitted	182. It is unclear if an activity under this clause requires a PAN (as per clause 113).
117. Purpose and effect of rules	183. The reference to 'hazardous substance' in 117(3)(e)(i) and (ii) needs to be replaced with 'contaminant'.
118. Rules about discharges	184. It is unclear why discharges to air have not been included in this provision. We recommend this be resolved. 185. Clause 118(3)(b)(ii) should be amended to also refer to the quality of the discharge itself.

120. Imposition of coastal occupation charges	186. The proposed coastal occupation charges (COC) are very similar (if not the same) to the provisions in the RMA, which were largely ineffective. We consider that these provisions require more consideration and development. Key additions include guidance on what a COC is (clarifying that it is not a rental, or a cost-recovery mechanism), how to calculate it, and how the removal of the coastal marine area from Crown ownership as a result of the Takutai Moana Act 2011 affects these. There has been significant correspondence from Local Government New Zealand since 2005 detailing the unworkability of these provisions, and it appears there has been no significant change to make COCs capable of being calculated equitably and implemented fairly and quickly.
122. Rules relating to contaminated land	187. The reference to 'hazardous substance' in 22(2)(a) and (b) needs to be replaced with 'contaminant'.
124. Limitations applying to making of rules relating to water and coastal marine area	188. The relationship between clause 124 and Schedule 9 and the intent of Schedule 9 needs further clarification in the Bill itself. • We expect they are intended to have a direct and clear relationship to each other. In particular clause 124 sets out some limitations on making of rules relating to the coastal marine area, coastal waters, water quality and fisheries resources, and Schedule 9 sets out 'classes' of water quality across a wide variety of uses in both coastal and freshwater situations. Clause 124 is intended as the clause that dictates the relevance and application of Schedule 9; other than what is spelt out in clause 124, Schedule 9 does not appear to have any legal effect. • Despite this, clause 124 only mentions Schedule 9 in relation to the quality of coastal waters so clause 124(4) is unclear how the other water quality classes in Schedule 9 that do not necessarily relate to coastal waters are to have any relevance to legislative requirements. 189. It is not clear by the wording "**Schedule 9** applies for the purpose of managing the quality of coastal waters" whether these words are intended to apply the actual standards set out in Schedule 9, provide limits set out in Schedule 9 on the standards that might be applied via plan rules, or merely provide a reference point of 'classes' of water quality standards that can potentially be used in plans.
125. Limitations applying to making rules relating to tree protection	190. The clause needs to consider threat categories and trees' capacity to support threatened species. 191. This clause limits the ability of local authorities to protect bush and vegetation, particularly in urban areas. Under this rule, local authorities are unable to include general rules in NBE plans that prevent the removal of trees. This is concerning, given the widespread benefits that vegetation (both indigenous and non-indigenous) provides in regard to climate change adaptation (urban cooling and reducing the urban heat island effect) and biodiversity (habitat provision). To ensure alignment with the purpose of the NBEB, we recommend removing this clause or amending it to enable vegetation

	protection more widely. This will help to avoid loss of vegetation cover, which is an increasing threat given recent direction to intensify urban centres and the pressures of climate change.
126. Rules relating to allocation methods for certain resources	192. It is unclear what an alternative allocation method may be under 126(5).
146. Duty of local authorities to observe own plans	193. Clause 146(2) is unclear – how does a resource consent comply with 146(1) which relates to duties of local authorities?
153. How activities are categorised	194. We recommend central government provides guidance on how to deal with non-complying activities that were previously granted.
156. Activities may be permitted with or without requirements	195. 194. 156(3)(a) refers to monitoring the activity for compliance with standards. This only makes sense if it relates to monitoring required to be carried out by the operator. A condition in a permitted activity rule cannot require Council monitoring. The provision should be clarified accordingly. 196. Enforcing compliance with the requirements would require the consent authority to be aware of the activity, yet there is no requirement in clause 156 to notify the consent authority that the activity is occurring. Such a requirement would need to be included. 197. Subclause 3(e) - it is not clear what the purpose of the report would be, or what consequences a report would have for the activity. 198. Subclause 3(f) - is there any limitation to this? Would written approval be required once or for every time the activity is carried out?
164. Recovery of costs incurred in consultation and engagement	199. If there are no regulations in place, are councils obligated to have an agreed “schedule of costs” with iwi/hapū, or is it at the council’s discretion? 200. Many iwi/hapū groups have settlements with the Crown and are resourced to engage. It is unclear if this clause also applies to these groups. 201. It would be useful for ‘engagement’ to be defined in this clause.

	202. Similarly, costs should be defined – i.e., does it include time or just direct costs? What criteria apply to determining engagement costs? 203. There should also be principles for consent engagement costs in primary legislation such as: a. proportionality to the scale and significance of the proposed activity, b. a duty to make a timely determination as to the identity of hapū and iwi groups to be engaged with in the event of a dispute, or, c. a mechanism to impose a ceiling amount to be split amongst interested parties. 204. A level of predictability of costs is useful for consent holders in determining whether they may be prohibitive to carrying out the activity.
188. What can be excluded from consideration of time periods	205. Clause 188(c) incorrectly refers to additional costs. This should be consents. 206. Clause 188(l) currently only applies to the time taken to confirm regional ADR, this should be extended to include the time taken to conduct and complete ADR also.
193. Exclusion of period when processing of non-notified application suspended	207. It is unclear why excluded time periods for non-notified applications has its own clause. It would make more sense to include the provisions of clause 193 as a sub-clause of clause 191.
194. Excluded time periods relating to non-payment of administrative charges	208. We seek amendment to reflect charging that is undertaken on a progress payment basis.
198. Purpose of notification	209. We do not support the current purpose statement. It should be amended by adding a further purpose "to enable affected persons to participate in the consent process", or similar. In general terms the purpose statement should better align with the considerations in clause 201(2).
199. Consent authority must comply with notification requirements or determine notification status	210. The notification process, including affected person identification under the clause could be challenging in the plan making process. The notification status will be dependent on the scale of the activity. We seek further clarification on how to connect notification status to the activities to be listed in the plans.

201. Determination of whether person is affected person or person from whom approval required	211. The criteria make determining affected persons extremely complex and quite subjective when compared with the simple effects test of the RMA currently. This is contrary to the reform's intention to provide greater certainty in the consent process. 212. It is unclear if all or any of the criteria can be determinative in their own right in considering whether a person is affected or not. 213. Some of the criteria seemingly have no direct relevance to whether a person is affected, particularly: a. The positive effects of the proposal – adverse effects on a person can exist irrespective of any positive effects, it is not an "apples for apples" comparison b. Whether information from the person is necessary to understand the extent and nature of the effect.
204. Public notification for discretionary activity	214. We do not consider that the number of discretionary activities will be decreased. In light of this, we suggest that consent authorities should (unless explicitly determined by the NPF or NBEA plan) retain the discretion to decide on notification for discretionary activities.
206. When to require limited notification	215. Why is "appropriateness" replacing a consideration of effects? What does "appropriateness" mean in this context and how is it to be determined? We do not support the appropriateness test in clause 206(a).
207. Prohibiting public or limited notification	216. It is unclear how clauses 205 and 207 work together and which overrides the other.
215 - 217. Hearing of applications	217. It is unclear how clauses 215 and 217 work together and which overrides the other. 218. There should be a time limit for requests for a hearing under clause 217.
223. Consideration of resource consent applications	219. Clause 223(2)(e) limits consideration of the future environment to cases where this is specified in a higher order document. This is problematic because the environment and future environment of applications is usually site specific and unlikely to always be addressed in plans. We recommend amending the wording to "the likely state of the future environment ~~as specified in a plan, a regional spatial strategy, or the national planning framework;~~" 220. We perceive a misalignment between clauses 223(10(a) and 223(2)(c)(iii) in which the latter uses "must have regard" and the former "may have regard" in relation to the NPF.

	221. It is not clear why a restriction on discharge or coastal permits should result in consents not being granted under clause 223(11)(a)(vi) or (vii). 222. It is unclear what the relationship is between this clause and clause 62, specifically whether clause 223 is subject to clause 62. Clause 62 refers to "minimising" effects whereas clause 223 refers to "mitigating" effects.
227. Matters relevant to certain applications	223. The assessments in clauses 227(1)(d) and (e) will, in many instances, be unnecessary and onerous for applicants.
233. Adaptive management approach	224. What is required in the way of conditions, varies greatly from project to project. For a relatively small scale or low risk project it may be appropriate to adopt an adaptive management approach which incorporates some, but not all, of the subclause (2) matters. 225. Non-statutory guidance can better provide information on the range of adaptive management approaches, give best practice examples, and appropriately address the range and complexity of different consenting scenarios.
244 – 252. Resolution of certain disputes before application for resource consent determined	226. These provisions are currently unclear and unworkable. Some issues/queries we have include: a. It is unclear what a 'dispute' is in the context of this process. Does it relate only to matters which are potentially subject to conditions, or does it extend to the granting or declining of the consent itself? b. "Matters that are discrete or confined to a particular location only" is subjective and could be easily challenged. c. Why does the ADR process not apply to disputes in discretionary activity applications? d. It is unclear who else might be a party other than an applicant and notified/affected persons. e. What would an ADR notice contain? f. It seems illogical for a party to be able to intervene in a non-notified process.
266. Duration of consent	227. Clause 266(2) specifies that the duration for land use consents is unlimited. There is no caveat on this as there is under the RMA (unless otherwise specified in the consent). This fails to accommodate regional land use consents which are generally for short-term activities. We oppose the lack of discretion on terms for land use consents. 228. It is unclear whether consent terms can only be shortened if it is to meet a system outcome. There are multiple other reasons why terms shorter than the maximum might be appropriate – as examples, an applicant's previous compliance history, to align with other consents at the site or in the catchment, or where uncertainty regarding future effects warrants it. We seek discretion to impose shorter-than-maximum durations where appropriate.

269 – 271. Applications of resource consent	229. We understand these clauses more or less replicate the provisions of s124A – C of the RMA. These sections have always been extremely problematic, both in terms of understanding what they mean, and giving practical effect to them. It seems that they have been adopted into the NBEB without careful scrutiny of their effectiveness.
274. Change or cancellation of consent condition on application by consent holder	230. The clause introduces a new criterion for when the clause applies – i.e. where the change/cancellation will not result in a materially different activity. This criterion derives from case law on the scope of section 127 of the RMA. To that extent, the criterion is supported however relevant case law also raised two further critical criteria which should be included in 274(1)(a): a. The change does not have materially greater or different adverse effects; and b. The location is within the footprint of the consented activity. 231. 274(2) requires an application to be processed "as if the application were an application for a resource consent for a controlled activity." This means that the application must not be publicly notified and is only subject, at most, to limited notification. This is misconceived as it assumes that the only potential effects of applications for changes to consent, are on persons. An application to remove a condition that is there to protect the environment may not affect any person and would therefore be non-notified under subclause 2. This would be a seriously perverse outcome. We recommend that all Clause 274 applications should be processed as if it were discretionary (as is the case currently under the RMA).
275. Duration of certain resource consent activities	232. 10 years for discharge consents may not provide sufficient security for large investment outlays, for example, industry needing to upgrade a wastewater treatment plant. 233. If this clause does not commence at the assent of the Act there may be a rush of consents applied for in the meantime to obtain or renew water permits.
276. When section 275 does not affect duration of resource consent	234. It is unclear why clause 233 has been referenced in this clause, it seems to be irrelevant. 235. The clause should include flood protection infrastructure as an activity not affected by clause 275. 236. There is no right of objection or appeal to the consent authority's determination, leaving judicial review as the only recourse for an applicant. We consider a right of objection should apply to determinations under this clause.

279. Public notification, submissions, and hearing, etc	237. Clause 279(2)(a) provides that notification must be decided as if the review of consent conditions were an application for a resource consent for a discretionary activity. Given clause 204, this means that, although the NPF or plan can provide otherwise, the default setting for any review will be full public notification. This is onerous for consent holders and procedural overkill. 238. Clause 279(3) refers to the process required for applications affected by clause 105(2). It strongly infers that giving effect to this requires a review of affected consents but, there is no indication in clause 105 that such a review is required. If review is required, clause 105(2) should be amended accordingly. 239. It is unclear whether the request to be heard in clause 270(5) is still subject to clause 215(1) which provides councils discretion as to whether to have a hearing.
282. Consent authority to report on review of consent conditions	240. We oppose this clause. The nature and purpose of the report is not described. It is not clear why the RPC would need to know of every review and what they would do with this information.
287. Transferability of consents	241. There is no definition for geothermal field in clause 287(2)(b). The geothermal community has no standard definition of a geothermal field, and the term is used differently in various contexts, to mean either a set of geothermal surface features, an upflow within a geothermal system, or a geothermal system. It would be better to use the term 'geothermal system' which can comprise more than one geothermal field. 242. Transfers do not work very well from site to site, as allocation status and proximity to other parties changes (for example, neighbouring bore owners). Plan rules will need to be well written to allow transfers of allocation as per clause 287(2)(b)(i). Transfers of allocation are typically market-driven, and under the NBEB framework this may be exacerbated as consent holders compete to have rights to apply for affected application processes. 243.
289. Consent authority may prevent transfer under sections 286 to 288	244. We perceive a conflict between this clause and clauses 286-288: if written notice of transfer has already been given, is "prevention" still available or must prevention occur pre-emptively? 245. By what procedure/method/form, should "prevention" occur? For example, is written advice with reasons required? 246. There is no appeal or objection right to a consent authority's prevention. Is this appropriate?

292. Activities allowed under consents	247. The title of this clause is non-descriptive compared to its equivalent clause in the RMA. We suggest it is named the same - “Person acting under resource consent with permission.”
297. Status of COC	248. It is assumed that “lapse” for the purpose of this provision means the same as “lapse” in clause 272. However, the “lapse” of consent in clause 272 is avoided if, before the lapse date, the consent is given effect to or an application to extend the lapse period is made and the consent authority extends it. Neither of those “lapse avoidance” steps are included in clause 295(5) which implies that the COC simply lapses after 3 years. It seems unlikely that this is the intent.
302. Permitted activity notices	249. PANs will create an additional and onerous requirement on users for activities which would otherwise be permitted, and additional resourcing burden on consenting authorities (in the form of receiving, administering and processing PAN applications; changes required to systems and databases and changes to charging policies). 250. The consenting authority must decide whether to issue or decline to issue the PAN within 10 working days of receipt. There are no criteria included for making this decision. This is opposed; decision-making criteria must be included. Also, the inability to seek further information is counter productive. 251. Further, we consider that the time limits under subclause (4) are harsh and will inflict significant pressure on the consenting authorities to meet the deadlines. We recommend reviewing the time limits for the clause and clarifying for which activities PANs will be required. 252. We oppose that there are no objection or appeal rights against the consent authority’s decision on a PAN.
303. Duration of PANs	253. It is unclear in what scenario it would be likely that a PAN is revoked and yet still requires consent under the NPF or a plan. This seems problematic. We oppose this clause and recommend deletion.
Subpart 7. Affected application consenting process	254. The process makes no reference to existing consents which are already utilising the resources to which the affected application process pertains, potentially undermining the purpose of the process. This could be remedied by simultaneously requiring a review of any existing consents as part of the process.
308. 2 or more affected applications must be dealt with at same time	255. The clause infers that the notification status of all applications will be the same however that might not be the case if the statutory notification provisions are independently applied to each application. If the intention is that all applications have the same notification status then provisions need to provide for this, perhaps through the NPF or NBA plan.

310. When processing time frame for affected applications commence	256. It is unclear when exactly the processing timeframe commences with the current wording. We suggest amendment to "...commences <u>on the first working day</u> after the close of the required time period."
311. Suspension of processing	257. Requiring all applicants to agree to suspend processing is unduly restrictive. We suggest amendment to requires agreements by a majority of applicants.
314. Decision maker must consider merits of affected applications and apply criteria	258. There is no guidance as to what "merits" means in this context. What particular "merits" should be considered and how should they be compared? Rather than reference to "merits" it could be reworded to refer to "the extent to which each affected application is consistent with the purpose of the Act" or similar.
316. Activities eligible for specified housing and infrastructure fast-track consenting process	259. Regional councils need to remain part of the fast-track process. The council has been involved in a number of fast-track proposals in flood prone areas to provide early advice to the Minister.
404. Contents of freshwater farm plan	260. Landowners are unlikely to know and understand what a HAIL activity is and report that to the regional council. 261. Rural HAIL activities (such as farm dumps, sheep and cattle dips, fuel storage, spray storage and mixing areas, bulk fertiliser storage etc) should be included for the following reasons: a. Rural HAIL activities have significant potential to impact freshwater quality and also human and environmental health. b. Farmers and rural landowners know their properties and their histories better than anyone else. c. Many rural HAIL activities are, and have been, permitted activities so there are no council records of them. d. Most rural HAIL activities are indiscernible, or difficult to identify, using historic aerial images. e. It is almost impossible to identify rural HAIL activities without the cooperation of the farmer/landowner. Requiring HAIL activities as content of freshwater farm plans is the most cost-effective means of identifying them.
406. Audit of farm for compliance with certified freshwater farm plan	262. Under subclause (5) it is unclear what constitutes 'compliance'. Does any non-compliance, no matter how minor, render the farm non-compliant? A clearer, reasonable threshold should be specified. We suggest amendment to: "... the farm fails to achieve compliance with the actions in the certified freshwater farm plan:" 263. Further, the requirement for the auditor to specify reasonable timeframes by which compliance must be achieved confuses the role of auditor with that of the regulator. Similarly, the provision that the auditor may include recommendations on how compliance may be achieved confuses the auditor with the role of a farm advisor and arguably undermines the ability of the Council in its CME role to address non-compliance.

411. Regulations relating to freshwater farm plans	264. Amend 411(1)(g)(v) to "any matters that an auditor must take into account when considering whether the farm achieves ~~compliance~~ the actions specified in ~~with~~ the certified freshwater farm plan.
417. Polluter pays principle	265. We support the polluter pays principle. 266. Under the RMA section 342 was a significant contributor to this principle in practise. Currently no corresponding section exists in the NBEB and we strongly recommend that it be included. This provision enabled the sentencing judge in an RMA prosecution to order that 90% of any fine imposed be paid to the prosecuting authority (EPA or local government agency). This recognises that the cost of investigation and prosecution has been borne by the respective agency (and in the case of local government, their ratepayers) and this was a simple and effective method of some degree of cost recovery. 267. The council channels any fines paid directly into funding current investigations and prosecutions, thus offsetting the burden on the ratepayer. This is the Polluter Pays Principle in practice.
418. Landowner's obligations when land used for activity or industry listed in HAIL	268. It seems onerous to require a landowner to notify regional council that a HAIL activity has occurred on their land. It also requires landowners to have a good understanding of the HAIL classification system which is unlikely for the majority of landowners. It is unclear how this would be enforced. 269. It is also unclear what the prescribed timeframes are for notification and whether there is a requirement to only report current HAIL or legacy HAIL also.
419. Landowner obligations when land is contaminated	270. How will activities which do not pose unacceptable risk to human health but exceed other limits be managed? For example: a. a site being used for commercial industrial purposes may exceed a residential health limit but not pose unacceptable risk to human health. b. Landfills and managed fills would likely exceed environmental limits without posing unacceptable risk to human health. c. A site with elevated geogenic arsenic may exceed a limit without posing risk. 271. It is unclear what the prescribed timeframes are for notification and for taking action.
420. Obligations of regional council	272. Identification of contamination has previously been a requirement for landowners undertaking development and subdivision activities. We understand that this will still be the case but that it will be regional council's responsibility to use

	and store this information. To identify and determine all HAIL and contaminated land would be challenging for regional councils. Further, it is unclear what the timeframe for this will be.
421. Territorial authority must consider effects of proposed development, etc, on contaminated land	273. We see potential for duplication of efforts through this provision although with current under-resourcing in the sector, we are more likely to see a void, or gap in contaminated land assessments. 274. Territorial authorities are unlikely to have the in-house resourcing for this work. There is a need for legislative means of sharing services, transferring functions and removing liability issues.
422. Classification of significantly contaminated land	275. There is no detail on the elements that might trigger contaminated sites to be reclassified as 'significantly contaminated' - could this be environmental risk, risk to human health, societal risk, etc? 276. What controls/information will be required when declassifying a site?
423. EPA's role in relation to contaminated land sites of national significance	277. We do not consider that the EPA is currently equipped and resourced to undertake this role. If it does become so, it will be at the cost of regional authorities. There is a current talent shortage, and so any duplication of function needs to be avoided.
424. Identifying the polluter	278. We recommend clarification that the proposed polluter pays framework is not backdated and only applies to polluters who cause or allow discharge of contaminants from the date of assent of the Bill. We assume this is the intent but the clause is written in past tense which could result in confusion as to when and to whom the framework applies. 279. It appears that the burden of proof regarding prior state and post state, and proof of culpable action will remain with the regulator. The burden of proof has been a major barrier to taking enforcement action under the RMA regime.
427. EPA may recover costs from local authority	280. We are concerned that the EPA may recover costs from local authorities for remediation that cannot be recovered from the polluter or landowner. We suggest it would be better to maintain a national fund for such scenarios.
555. Interpretation	281. The definition of critical habitat will be difficult to justify in a practical sense. "Essential" is a very high threshold and will be difficult to prove using scientific evidence.
559. Protection of places of national importance	282. Is an area of significant biodiversity the same as a significant biodiversity area? If not, this should be clarified and explained.

562. Criteria for identifying HVBAs	283. Would not all critical habitats fall under the definition of HVBA? 284. We seek the following amendments and have the following queries on the criteria in clause 562(1): a. Additional criteria for highly mobile fauna b. (1)(a) – it is unclear if this covers the full extent of habitat and existing range of any nationally critical species. c. (1)(b) - Define 'critically endangered ecosystem'. Presumably this relates to the International Union for Conservation of Nature's (IUCN) classification of ecosystem-risk assessment. d. (1)(c) - Define critically threatened area. e. (1)(d) - What criteria defines 'best remaining example'? 285. Clause 562(2) should be amended to: "Any person making a determination as to whether an area ~~in~~ is an HVBA must have regard to mātauranga Māori".
597-603. Reclamations	286. We seek a definition for reclamation be included and note that the existing national planning standards definition is problematic as it does not explicitly exclude activities that result in the formation of permanent dry land but fall short of being a "reclamation".
644. Matters for which regional councils and unitary authorities responsible	287. It is unclear how a matter can be a regional "responsibility" without being subject to a regional "function" and what this means in practice. 288. Clause 644(c)(iii) should refer to "geothermal heat or energy". 289. The relative responsibilities of regional and district councils need to be explicit relating to managing biodiversity. Territorial authorities are often not resourced and do not have the expertise to maintain indigenous biodiversity. In the Waikato region this tends to fall back to the regional council. To ensure consistency this should sit with one agency.
650-652. Transfer of powers and limits to transfer of powers	290. The definition of "public bodies" in Clause 650 to whom a transfer may be made, includes two additional entities – a "regional planning committee" and "a group representing 1 or more hapu". The latter raises concerns about both the meaning of the phrase and the appropriateness of enabling such transfer. What is a "group" for the purposes of the provision? Are there any structural requirements for a group, or will any group qualify? Is it appropriate in principle to enable transfer of statutory functions to such a group?

	291. Sub-clause (3) establishes some important pre-conditions for the transfer of power including service of notice on the Minister, the use of consultative procedures, and ensuring that specified "merits" criteria are satisfied – including the transfer being to an authority representing the "appropriate community of interest", the transfer resulting in "greater efficiency" and the authority having the appropriate "technical or special capability or expertise". However subclause (4) explicitly states that sub-clause (3) does not apply in the case of a transfer of power to an iwi authority or a group representing hapu. This seems completely inappropriate and reinforces the concerns raised above regarding the nature of hapu "groups" and the appropriateness of transfer of function to those groups.
656. Power to make joint management agreements	292. This clause corresponds to s36B RMA but we oppose that the "merits" tests in the RMA (i.e. representing the appropriate community of interest, and having the appropriate technical or special capability or expertise) explicitly does not apply if the party requesting a JMA is an iwi authority or group representing hapu. 293. Clause 656(5) refers to "section 651(4) and (5)" which do not exist.
659 – 674. National Māori Entity	294. The role of the entity seems to not have a large impact in the establishment phase, other than consultation on appointments. Its influence at this stage could be better applied to, for example, provide advice on best practice engagement. 295. We can envisage additional costs being requested by iwi and hapū to be able to participate.
675 – 688. Mana Whakahono ā Rohe	296. The heavy burden on iwi and hapū to negotiate and establish these instruments without certainty of the outcomes remains a significant barrier to their uptake. There does not seem to be any additional resource being provided for those who wish to enter into a new agreement, but rather a focus on aligning existing agreements with engagement agreements and planning committee considerations. As a result, they may end up being just an additional bureaucratic requirement.
689 – 693. Freshwater working group	297. Terms of reference as they relate to process of appointment, matters to be considered and engagement requirements are of high importance to tangata whenua. They will have a bearing on future discussions on Māori rights and interests in freshwater that are yet to be resolved, and how the future system of allocation will operate. It is important that iwi and hapū involvement at this level does not diminish the rights and interest claims Māori have to freshwater, considering there are still unresolved claims.
710. Form and content of abatement notice	298. It is essential that we are able to utilise abatement notices from the date of assent. 299. We strongly recommend that the specific form for abatement notices is included in a schedule or regulations of the NBEB and this is available from the date of assent. This would be the equivalent of Form 48 under the RMA (forms, fees and procedures) Regulations 2003 Schedule 1. If the form is not immediately available, the enforcement tool cannot be utilised.

719. Environment Court may revoke or suspend resource consent	300. There is no provision in clause 719 requiring a consent holder to address the Court relating to the revocation or suspension of a consent, seemingly meaning that the person's silence negates the Court's ability to make an order, given the Court cannot make such an order until it "has heard from the person" concerned.
723. NBE regulator may accept enforceable undertakings	301. Who determines the value of enforceable undertakings? There will likely be large discrepancies among NBE regulators unless this is nationally regulated.
724. Undertaking may include requirements as to compensation or penalties	302. We seek that compensation under clause 724 is tied to the council's costs in dealing with and remedying the matter rather than the adverse effects. For example, how does one value, and therefore compensate for, the temporary degradation of stream habitat from an unlawful discharge?
732-750. Financial assurances	303. The relationship between the bond provisions in this subpart and clauses 234 and 235 is unclear. Clauses 234 and 235 do not cross-refer to clause 732 so it is not clear whether, insofar as bonds are concerned, they are subject to clause 732 or not, whether, in order for a bond to be imposed, a plan or regulations must first explicitly enable it. 304. The relationship between the remaining "non-bond" provisions of clauses 732 – 750 and the general power to impose conditions in clause 231(1) is also unclear. Is 231(1) subject to the "if authorised" provision of clause 732? If it is, this should be explicitly made clear in clause 231. 305. Clause 734 appears to exactly replicate clause 234, the reason being unclear. Similarly, clauses 735 and 235 are almost identical. 306. It is unclear why those provisions are not included within the part of the Bill dealing with consent conditions so that all provisions relating to the setting of conditions are in one place.
751-758. Emergency works	307. We see a need for clause 751 to be tightened to ensure it is not interpreted inappropriately. The equivalent to this clause under the RMA has previously been wrongfully used to take water during a drought without consent which we understand is not the intention of the clause. 308. We also recommend the clause sets limits to the 'foreseeability' of an event and when the provision should apply. For example, if a coastline has been eroding over a 20 year period, then when the erosion scarp finally reaches a building, should the exclusion apply?

	309. We also note these clauses should tie in to Regional Land Transport Plans and resilience provisions around roading and climate change.
771. What infringement notice must contain	310. It is essential that the form for infringement notices is included in a schedule of regulations of the NBEB and that this is available from the date of assent.
775. Regulations relating to infringement offences	311. The current RMA equivalent to this clause is found in the Resource Management (Infringement Offence) Regulations 1999 - Infringement notice schedule. Unless new regulations are cast to reflect the infringement fees (as well as the specific form) they do not legally 'exist' and cannot be used by the regulator. We submit that the required Schedule in Regulation is amended simultaneously with the NBEB.
782 – 787. Provisions relating to monitoring	312. Clause 783(1)(g) can be interpretated as requiring all permitted activities to be monitored in some way. This would simply not be practicable or affordable for councils. 313. Clause 785 which requires RPCs to prepare a regional monitoring and reporting strategy appears to undermine local authority decision-making and is inconsistent with other provisions in this subpart which enable councils to determine monitoring strategies. 314. Clause 786(b) should specify the types of enforcement activities to be recorded by local authorities, including: a. an application for an enforcement order under section 702; or b. an application for an interim enforcement order under section 706; or c. the service of an abatement notice under section 708; or d. the filing of a charging document relating to an offence described in section 760; or e. the issuing of an infringement notice under section 769; or f. an inspection, investigation, or other activity carried out in accordance with this Act for the purpose of an enforcement action described in paragraphs (a) to (e)."
804. Procedural principles	315. We recommend "practical" is replaced with "practicable".
805. Best information	316. Guidance would be useful on what constitutes 'scientifically robust information'.
816. Duty to gather information and keep records	317. The duty to include records of natural hazards will include land containing naturally elevated contaminants. This is an additional resource burden on regional councils.

817. Regional councils must share records of protected customary rights with regional planning committee	318. Protected customary rights title holders need to be aware that the wider sharing of this information is required under the NBEB.
821. Administrative charges and additional charges	319. We request amending clause 821(1) to require the council to fix charges for all and any functions which are subject to cost recovery under this Act. 320. Clause 821(1)(a) should explicitly refer to "reviewing" a consent, to align with 821(3)(c). It should also include charges payable by consent holders relating to the administration of consents, including "life cycle" processes (such as transfers, cancellation, waivers, surrender). 321. Clause 821(1)(f) should be deleted. Local authorities are not the certifiers of freshwater farm plans and therefore it is inappropriate for councils to fix charges for this. 322. Clause 821(3)(d) refers to charges payable by "freshwater farm operators". We assume this is intended to refer to farm operators who have obligations under the Freshwater Farm Plan provisions of Part 6. We recommend this be made clear. 323. It is unclear whether clause 821(3) is intended to be exclusive or not. If a charge does not apply to a person within (3)(a)-(h) does that invalidate the charge? This is important as there are matters within the scope of (1) that are excluded from (3), e.g., a person who seeks a permitted activity notice. Also, as above, consent life cycle administration should be included. 324. It is unclear what the relationship is between this clause and clause 781 which relates to the costs of monitoring and enforcement of compliance. Clause 821 requires that regulators must fix charges relating to cost recovery for "carrying out any inspection, monitoring, supervision…". Which clause prevails over the other?
823. Other matters relating to administrative charges	325. We oppose the new criteria for exercising discretion to remit charges. Broad discretion is more appropriate given the multitude of circumstances in which a request for remission might arise.
824. Local authority policy on discounting administrative charges	326. We oppose the requirement for councils to develop and adopt their own discounts policy when there are nationally applicable discount regulations. This is inefficient and will lead to nationally inconsistent practices.

825. Money obtained through market-based allocation method	327. We have the following concerns with 825(b): a. Is it central government's role to dictate to councils how they spend their income? b. What happens if no regulations are in place at the time the income is generated?
846. Requirements for waivers and extensions	328. It is unclear why the ability to extend a consent timeframe by more than doubling it is not included. There are multiple reasons why applicants may agree to such extensions, including to enable them to get further information, seek written approvals or consult with communities. If councils can only extend applications up to double it is likely that applications will be declined where they may have been granted with further time.
Schedule 1 Transitional, savings, and related provisions	329. The definition for RMA document appears to omit regional policy statements. It is unclear why these documents would be excluded.
Schedule 2 4. Process for upholding Treaty settlements, NHNP Act, and other arrangements	330. We are concerned that the 18-month timeframe proposed for reaching an agreement on how treaty settlements will be given effect under the new legislation is not long enough.
Schedules 3, 4 and 5	331. The purpose and effect of these schedules is very unclear, particularly their effect in consent processes. All schedules purport to define the principles that "must" be complied with in order for the actions to qualify as "offset" or "redress". The compulsory aspect of these provisions raises the question of how they are to be applied in the consent setting, given that consent authorities still have the discretion to grant consent subject to having regard to any measure proposed to avoid, remedy, mitigate, offset, or take steps to provide redress for, any adverse effects on the environment. With the possible exception of matters within the scope of Clause 62 (specified biodiversity and cultural heritage), there is nothing in the specific consent provisions that compel a consent authority to require offset or redress that is compliant with Schedules 3, 4 or 5. We therefore query the value of these schedules and suggest instead that matters of this nature should be relegated to non-statutory guidance or practice standards.
Schedule 3 Principles for biodiversity offsetting	332. It is unclear whether 'net gain' and 'additionality' are intended to have the same meaning. A method is specified for measuring net gain, but not additionality. 333. We would support a requirement for net gain in instances where the level of residual adverse effect is less clearly understood. A threshold for uncertainty around residual adverse effects of the proposed activity would determine how many times the offset should be set at. The more uncertain of the residual adverse effects, the higher the level of offsetting that would be required by the consenting authority.

	334. Principle 3 should be amended to: "...No net loss and net gain are measured by ecosystem type, amount and condition..."
Schedule 4 Principles for biodiversity redress	335. Amend the purpose statement of Schedule 4 to: "The following sets out a framework of principles for the use of ~~cultural heritage~~ biodiversity offsetting. These principles are a standard form of redress."
Schedule 6 2. Pre-notification engagement	336. The Minister should be required to engage with local authorities in addition to other organisations.
Schedule 6 8. Minister must give public notice of NPF proposal	337. We request amending the minimum timeframe for submissions at 2(c) from not less than 40 working days to not less than 60 working days. The NPF proposal will contain significant detail on a range of different planning matters, including detailed information on limits and targets and reconciliation of conflicts between different system and framework outcomes. More time will be required for assessment of the NPF proposal and the formulation of submissions. The Board will be assisted by better researched submissions, rather than wide-ranging placeholder submissions that will require greater case management (and hearing time). Enabling better submissions assists with the Bill's objective to improve system efficiency and effectiveness and reduce complexity, while retaining local democratic input.
Schedule 6 9. Board of inquiry	338. Expertise in environmental science will assist the Board in achieving the objectives of the Bill.
Schedule 6 19. What the board must consider	339. It undermines the function of the Board and its recommendations if it is required to give greater regard to the evaluation report than the evidence that tests it, which may include updated information.
Schedule 6 23 – 24. Streamlined process	340. Public participation and testing of the original NPF proposal is undermined if it may later be changed without allowing participants to be heard. 341. We question if the streamlined process is relevant given clauses 25 and 26 of Schedule 6 provide a regime for minor amendments.
Schedule 7 Preparation, change and review of natural and built environment plans	342. Engagement in a plan making or plan change process could be difficult as communities do not tend to engage with high level documents and the degree of complexity of the plans are likely to be prohibitive for many. Central government must ensure communities are well resourced and have appropriate time to engage with processes under Schedule 7.

Schedule 7 11. Initiation and formation of engagement agreements	343. Amend to: "Despite subclause (1) … initiate an engagement agreement with a Māori group if the committee and the ~~Nāori~~ Māori group..."
Schedule 7 15. Engagement register	344. The ability to join the engagement register could be provided earlier in the process, rather than when the regional policy issues are notified, particularly for those stakeholders not listed elsewhere and who have a greater interest than the public generally. 345. The interrelationship between clauses 15(4) and 17(1)(a) is unclear. We question how an engagement policy can address each constituent within the region if the constituents are not registered?
Schedule 7 28. Requirements relating to designations	346. It should be the regional planning committee who is notified of designations.
Schedule 7 29. Planning committee to report to chief executive on compliance with NPF	347. It seems unnecessary to require a report be provided to the chief executive or Director-General three months ahead of notification given the level of central government involvement during plan preparation. 348. Similarly, a request by a territorial authority to review the proposed plan prior to notification also seems unnecessary given representation on the RPC and engagement through the plan development process. 349. Clause 29(6) anticipates that the chief executive or Director-General will provide feedback after review, and allows for any action that they think is appropriate. There is no timeframe for this to occur. This results in uncertainty for the regional planning committee as to the potential outcome of the review and the impact on the overall development of the plan.
Schedule 7 31. Planning committee to notify proposed plan	350. While clause 31(2)(a) requires public notice to every ratepayer in the constituent local authorities of the region, clause 31(3) states regional planning committees are not obliged to give notice to directly affected ratepayers under this clause. This discrepancy could lead to confusion about the status of "affected" versus "directly affected" ratepayers.
Schedule 7 35. Public notice of submissions	351. It is unclear how long the timeframe is for preparing secondary submissions – clause 35(1)(d) indicates 10 working days while clause 35(3) indicates 20 working days. 352. It is unlikely that all submissions can be uploaded to the local authority websites in a searchable format within 10 working days of public notice.
Schedule 7	353. Clauses 40(b) and 43(1) appear to duplicate each other.

40. Amendment of proposed plans	
Schedule 7 42. Availability of operative plan	354. If the National Planning Standards will continue to require an e-plan, then we do not recommend paper copies. Different systems of presentation run the risk of becoming inconsistent with each other and it will be difficult to determine which takes precedence. This needs to be clarified in this clause to avoid doubt.
Schedule 7 43. Correction and change of plans	355. Clause 43(2) should be extended to include heritage items and trees, or other scheduled items that have been destroyed, removed or demolished as a result of an approved resource consent application.
Schedule 7 94. Regional pool of IHP candidates	356. Does "iwi-approved" mean iwi authority-approved?
Schedule 7 123. Objection rights	357. Decisions to decline or strike out submissions could be addressed at the hearings for submissions rather than a separate process.
Schedule 7 131. Extension of deadlines for decisions	358. This schedule refers to clause 1270(2) – this appears to be an error as there is no clause 1270. Clause 127 sets the deadline for decisions by the RPC.
Schedule 7 140. Regulations	359. All forms should be included in the legislation to ensure consistency of submissions and consent applications, etc. This also would reduce the risk of submissions being struck out (under clause 38) due to submitters not providing the correct information or using a prescriptive approach.
Schedule 8 2 – 3. Members and Composition arrangement	360. The minimum number of Māori appointees will be inadequate in many regions. 361. We support central government representatives in the regional planning committee. However, there must be guidelines to avoid and resolve any conflicts arising between government and regional and local objectives.
Schedule 8 34 – 35. Director of secretariat and Host local authority	362. It needs to be a transparent and clear process to determine resourcing for the regional planning committee. Localised issues such as private plan changes will need to be worked through. 363. The Director of secretariat should be required to consult the constituent councils in establishing the resourcing plan (given they will fund and supply resources).

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