

**PCE Advice on Tranches 3A & 3B of the Natural and Built Environment Bill**

**Tranche 3A**

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
<b><i>Natural and Built Environment plans – Preliminary matters</i></b>				
96 & 97 Purpose & Scope of plans	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>• Change wording ‘further the purpose’ to ‘assist in achieving the purpose’</li> <li>• clarify that NBE plans have a role in providing for the needs of communities</li> <li>• amend clause 104 to include the following additional circumstances for when an NBE plan can be inconsistent with an RSS:               <ul style="list-style-type: none"> <li>a) when it would conflict with the achievement of limits and mandatory targets set by the NPF</li> <li>b) in circumstances when the Environment Court has considered a challenge to an NBE plan provision</li> </ul> </li> </ul>			Support
99 General considerations relevant to RPC decisions	Delete clause 99 because further conflict resolution provisions have been embedded in the purpose (clause 3), system outcomes (clause 5) and decision-making principles (clause 6). The NPF will also expand on how conflicts between outcomes can be resolved.		How this change works will depend on how clauses 3, 5 and 6 are reworded.	
<b><i>Content of plans</i></b>				
102 What plans must include	Amend subclause 102(1) to define strategic content and clarify that strategic content in plans can be made as plan outcomes and policies (but not rules)			Support
	Edit 102(2)(b) to clarify the plan should enable the management of the effects of using and developing the environment, and delete the reference to cumulative effects		Management of cumulative effects, particularly of permitted activities, is critical to ensure that environmental limits are not breached. It is a difficult but essential task. While “cumulative effects” is a decision-making principle, repeating it as required	Retain reference to cumulative effects.

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			content in an NBE plan will ensure that it is not forgotten.	
	Edit 102(2)(c) to state the plan must specify how environmental limits and targets will be achieved (rather than that limits must be achieved)		This is a useful addition that will help ensure RPC (and local authorities) are proactive in management of limits and targets	Support
	Delete 'include provisions that' from the start of 102(2)(h) on giving effect to water conservation orders			Support
	Add an additional matter to 102(2) that plans must identify the preferred state of the future environment			
	Clarify the content in this subclause can be made as plan outcomes, policies, rules and other methods to the extent they are relevant to a region to any one of its constituent districts			Support
103 General: matters within the responsibility of regional councils and territorial authorities	Amend clause 103 to clarify a plan must provide plan outcomes, policies, rules and other methods in a way that enables a local authority to fulfil its functions in relation to the matters for which they are responsible under clause 644 and 646.			Support
105 What plans may include	Various			
106 Te Oranga o te Taiao statements	<i>Inter alia:</i> Delete clause 106 and include 'Te Oranga o te Taiao' statements as a matter that the RPC must have particular regard to in clause 107		This change brings 'Te Oranga o te Taiao' statements on par with statements of community outcomes and regional environmental outcomes.	
107 Considerations relevant to preparing and changing plans	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>• Add the following additional matters to which an RPC must 'have regard' to: <ul style="list-style-type: none"> <li>○ any management plans or strategies prepared under other Acts</li> </ul> </li> </ul>		These are all sensible additions	Support

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	<ul style="list-style-type: none"> <li>○ regulations relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including regulations or bylaws relating to taiāpure, mahinga mātaītai, or other non-commercial Māori customary fishing)</li> <li>○ relevant project area and project objectives (as those terms are defined in section 9 of the Urban Development Act 2020), if section 98 of that Act applies</li> <li>○ the Crown’s interests in the coastal marine area.</li> <li>● Clarify that for all of the matters to which an RPC must have regard to is to the extent their content has a bearing on the natural and built environment issues of the region.</li> </ul>			
108 Matters that must be disregarded when preparing or changing plans	<ul style="list-style-type: none"> <li>● Amend subclause 108(b) to limit "stopping places" to those in rural areas and on state highways.</li> </ul>		Being explicit that private views cannot be taken into account is appropriate. But projects that disfigure landscape views should not be given a free pass. Views do not start and stop at the (increasingly rare) stopping places provided by Waka Kotahi. The Committee should think hard about this, particularly in a country that widely markets its landscapes to international tourists.	Amend 108(b) to: <i>(b) any effect on scenic views from private properties <del>or land transport assets that are not stopping places;</del></i>
	<ul style="list-style-type: none"> <li>● Amend subclause 108(c) to ensure refers to effects associated with an activity that may obscure the visibility of commercial signage or advertising and ensure it is not permissive of commercial signage and advertising.</li> </ul>			
	<ul style="list-style-type: none"> <li>● Reword subclause 108(d) to better reflect that it is limited to housing and avoid discrimination against specific groups or their characteristics that prevent housing supply and choice</li> </ul>			Support
110 Adaptive management	Amend subclause 110(1) to clarify that a plan may direct that an activity uses an adaptive management approach.		Adaptive management helps ensure activities remain appropriate as new information emerges.	Support

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approach in plan				
112 Specific requirements relating to environmental contributions	Proceed with clause 112 with the following amendments: <ul style="list-style-type: none"> <li>clarifying that environmental outcomes contributions can also be for the purpose of achieving positive outcomes (in addition to positive effects)</li> <li>clarifying that an environmental contribution is also for the purpose of minimising adverse effects.</li> </ul>		Environmental contributions are an important way of funding the achievement of environmental outcomes.	Support
<b>Rules in plans</b>				
117 Purpose and effect of rules	Various technical changes		EDS's suggestion was not addressed. It suggested that one purpose of plan rules should be to establish limits and [mandatory] targets. It considered this is important, since it seems likely that the NPF will establish a framework for limit setting that will only "bite" in a regulatory sense through NBE plans (such as rules and standards). This is a sensible addition given the environmental limits are expected to be the main environmental protection in the Act.	Add specific reference to limits and mandatory targets
			EDS suggested an additional clause to ban development in high hazard areas. This was not addressed. That may or may not be appropriate. Regardless, it suggests a gap in the drafting with respect to natural hazards. This gap could be addressed by expanding subclause 117(7) from just 'surface water' to also cover 'natural hazards'. Surface water in the sense of subclause 117(7) is a natural hazard. This suggestion simply expands the sense.	Amend subclause 117(7) to include natural hazards. For example: "...to protect other property from the effects of surface water <u>and natural hazards</u> , and may require persons undertaking the work..."
118 Rules about discharges	Various technical changes		Forest and Bird sought clause 118 to explicitly require consideration of cumulative effects. The Department Report notes "Clause 118	Amend subclause 118(2) to include specific reference to cumulative effects.

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			<p>already requires a consideration of the discharge of the contaminant “either by itself or in combination with the same, similar, or other contaminants”. This provides the consideration sought by the submitter without further amendment.”</p> <p>That relies on interpretation. There is no harm in making it explicit, especially given how important management of cumulative effects is from an environmental perspective.</p>	
123 Rules relating to esplanade reserves	Proceed as currently drafted			Support
124 Limitations applying to making of rules relating to water and coastal marine area	Remove subclause 124(5) and (6)) place them in their own clause (because these clauses are wider than the coastal marine area, and also apply to water and air more generally.)			Support
	Clarify subclause 124(7) and (8) only applies to the coastal marine area.			Support
			<p>Forest and Bird noted that it is not consistent with the purpose of the Bill to reduce the quality of water and sought the deletion of subclause 124(7). The Departmental Report recommended that the clause should stay because it carries over the existing RMA provision.</p> <p>This Bill proposes setting the environmental limit at “baseline / current” state and limits cannot be breached. It should therefore <u>never</u> be “consistent with the purposes of this Act” for water quality to reduce from the current state. That part of subclause 124(7) should be deleted so as not to imply otherwise.</p>	Delete “ <i>unless it is consistent with the purpose of this Act to do so.</i> ” from subclause 124(7).

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125 Limitations applying to making rules relating to tree protection	<ul style="list-style-type: none"> <li>Delete clause 125 which restricts a plan from making rules relating to tree protection.</li> <li>Amend subclause 646(e) to remove the reference to a specific location.</li> </ul> <p>NB These are in addition to the already recommended addition of 'urban trees' to the list of matters in clause 58</p>		Protecting urban trees, and urban greenspaces generally, helps provide environmental services to cities. Flexibility in how that is mandated is sensible. The NPF is a good place to provide that flexibility. These changes would provide flexibility to allow the NPF to determine the best way trees can be protected while balancing private property rights.	Strongly support
130 When rules have legal effect	Clarify clause 130 so that any rules or requirements that identify a place of national importance or area of highly vulnerable biodiversity have immediate legal effect.		This addition brings places of national importance and areas of highly vulnerable biodiversity on par with the legal effect of other key natural environment protections.	Support
139 & 140 Land subject to controls & Jurisdiction of Environment Court over land subject to controls	Proceed with clauses 139 and 140 as currently drafted. (In part because Officials consider the inclusion of 'risk and future risk' in subclause 140(3) is intended to cover climate change risks and is sufficiently clear.)			
146 Duty of local authorities to observe own plans	Proceed with clause 146 as drafted (because is essentially carried over from the RMA with the difference is inconsequential and simply reflects more modern drafting than that in the RMA.)		This is important clarification.	
<b>Schedule 7: Preparation, change, and review of natural and built environment plans</b>				
Schedule 7 Clause 2 Overview of time frames for development	<i>Inter alia:</i> Amend Schedule 7 clause (2)(1)(b) to specify that an RPC must resolve to commence drafting an NBE plan 'no later than' (rather than 'within') 40 working days of a decision to adopt the applicable RSS under Schedule 4 of the Spatial Planning Act 2022		Spatial planning must follow the grain of the environment. There is a strong inter-relationship between RSS and NBE plans. It is especially important that areas that require environmental protection (and restoration) are identified before areas for development	Amend Schedule 7 clause (2)(1)(b) to specify that RSS and NBE Plans are to be developed in parallel and adopted together.

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of first plans or full review			so as not to raise the expectation that certain developments can proceed despite (This is even more important if the PCE's recommendation that environmental limits and other protected areas be identified first is taken up.) RSS and NBE plans should be produced in parallel. This will help avoid inconsistencies and gaps.	
Schedule 7 Clause 20 Enduring submissions	Various amendments to the provisions on enduring submissions		The concept of enduring submissions is a good one. The proposed changes strengthen it further.	Support
Schedule 7 Clauses 21, 32, 34 and 36 (regarding 'evidence' with submission)	Various with the overall effect of extending the timeframe by which submitters have to provide information to support their submission and relief sought, but still require it well in advance of any hearings or decisions.		The changes seem to strike the right balance between transparency and timeliness and reasonableness in submitters ability to provide information.	
Schedule 7 Clause 25 Content of evaluation reports	Make the following changes to Schedule 7 clause 25: <i>Inter alia:</i> a) require evaluation reports to outline how the system outcomes have been provided for to achieve the purpose of the Act b) require evaluation reports to outline how the decision-making principles have been used to determine how the system outcomes are most appropriately provided for c) require evaluation reports to assess the effectiveness of the proposal in achieving the system outcomes d) require evaluation reports to assess the environmental and economic impacts of any proposal to regulate nor		These proposed changes are sensible. The addition on the requirements to explain how the system outcomes are provided for leaves a gap for the important environmental protection measures (limits, targets, PNIs, HVBA etc). The report should also be required to outline how environmental limits, targets and place protection are achieved. These protections are arguably more important that the system outcomes. The evaluation report <i>could</i> also outline how the proposal gives effect to the national planning framework. This will provide	Support proposed changes <i>and</i> Add requirement to outline how limits, targets and place protection are achieved. <i>and</i> Add requirement that evaluation reports outline how the proposal implements the NPF

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	<p>not regulate (including benefits) and where those impacts lie</p> <p>e) amend subclause 25(1)(b) to require the evaluation report to include an examination of any 'reasonably practicable' alternative options</p>		<p>transparency to the public that plans are meeting national requirements.</p> <p>Addition of outlines of how both limits and NPF are implemented are already needed for the report required in clause 29 so should not add additional work to the preparation of the evaluation report. It will also allow those aspects to be subject to the notification requirements of Schedule 7 clause 31(2).</p>	
<p>Schedule 7 Clause 29 Planning committee to report to chief executive on compliance with NPF</p>	<p>Amend to:</p> <ul style="list-style-type: none"> <li>provide more flexibility in the deadline</li> <li>explicitly enable the Secretary for the Environment (or the Director-General of Conservation, as the case requires) in subclause 29(5) to identify alternative provisions for the RPC to consider</li> <li>regulations can prescribe the content as well as the form of the report.</li> </ul>		<p>Compliance reporting is to introduce a check in the system to ensure that the NPF is appropriately given effect to in the NBE plans. The proposed amendments strengthen that. It would also be useful to specifically reference targets in subclause 29(1). Achievement of mandatory targets is also important in addition to complying with limits.</p>	<p>Support <i>and</i> Add reference to [mandatory] targets</p>
<p>Schedule 7 Clause 30 Review of full plan development and review by appointing body</p>	<p>Amend Schedule 7 subclause 30(2) so it is a mandatory rather than optional requirement to refer draft NBE plans back to appointing bodies</p>		<p>This is an important step for local voice and public accountability as it is the local authorities themselves who are elected.</p>	<p>Support</p>
<p>Schedule 7 Clause 36 Certain persons may make secondary submissions</p>	<ul style="list-style-type: none"> <li>Enable the RPC to make a secondary submission on a plan (to itself)</li> <li>Include in Schedule 7 subclause 36(1)(a) any person representing a relevant aspect of the public interest, and that as a consequence, subclause 36(2)(d) should be deleted.</li> <li>That the timeframes for secondary submissions are doubled to 40 working days.</li> </ul>		<p>These are all good improvements for accountability. The change to allow any person representing a relevant aspect of the public interest to make a secondary submission is particularly good.</p>	<p>Support</p>



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Schedule 7 Clause 47 Initiation of urgent process for making plan change	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>amend Schedule 7 clause 47 to make it clear that the RPC itself can initiate an urgent plan change</li> </ul>		The provision in this clause to allow urgent changes to avoid significant harm to the environment or to human health is critically important.	Support
Schedule 7 Clause 51-53 3-yearly plan review reports	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>combine Schedule 7 subclauses 51(a) and (b) to specify that the three-yearly report must include consideration of the results from monitoring conducted under clause 783, including the state of the environment and the effectiveness and efficiency of the relevant plan</li> </ul>		The requirements to consider state of the environment reporting will help ensure both adequate monitoring takes places and that any plan changes are based on evidence.	Strongly support both the original clauses and the proposed addition.
Schedule 7 Clause 66 Objection rights	Amend Schedule 7 clause 66 so that the right of objection is heard by a commissioner and not the RPC who made the decision which is being objected to.			Support
Schedule 7 Clause 70 Form of independent plan change requests	Amend subclause 70(1)(e) so the wording considers to what extent, the request, if granted, would contribute to the relevant outcomes and policies, and respond to limits and targets.		Agree with the proposed change. It would also be useful to specifically reference targets in subclause 70(2)(b) about the report to the Chief Executive of MfE. Achievement of mandatory targets is also important in addition to complying with limits.	Support <i>and</i> Add reference to [mandatory] targets in subclause 70(2)(b)
Schedule 7 Clause 73 Grounds for rejecting request	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>amend subclause 73(1)(c)(ii) to ‘give effect’ to the NPF rather than ‘not be inconsistent’ with it.</li> <li>amend Subclause 73(1) to grant local authorities the ability to reject independent plan change requests if the request will result in there being insufficient infrastructure and/or funding being available at the time the application is lodged to support that development</li> <li>a new criteria is added to subclause 73(1)(c) so that a local authority may reject the request if the request would be inconsistent with the strategic content of the NBE plan.</li> </ul>		Risk of breaching an environmental limit or achievement of a mandatory target should be added to subclause 73(1)(c). The departmental report states “in respect of targets or environmental limits, we think this is adequately provided for by the amendment we propose at the start of this Response section, to ensure subclause 73(1)(c)(ii) refers to the need to ‘give effect’ to the NPF.” Not all limits or targets will be set in the NPF so there will be a gap. Additionally, compliance with limits and targets is such an important part of	Support proposed changes <i>and</i> Add specific reference to breaching limits and achieving mandatory targets.

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			the environmental protections set by the Act it is worth specific mention.	
Schedule 7 clauses on IHP (All of Part 3)	Various		The provision for independent hearings panels is a good addition to the statute.	
Schedule 7 Clause 93 IHPs established for each region	Two around consultation with iwi and hapū and qualification to be an IHP Chair		<p>Composition of IHPs is heavily weighted towards cultural knowledge (3 of 8 criteria) and planning/legal awareness (3 of 8 criteria). Only one of eight criteria is about environmental knowledge and only in a very specific area (“freshwater quality, quantity and ecology”). That is odd for a statute specifically about the environment. Missing from this list are skills in biodiversity, terrestrial and marine ecology, estuaries, soil science and air science, amongst others. Extending the list would ensure the IHP had skills covering all the key environmental domains.</p> <p>The departmental report notes that “it is unlikely the Chief Environment Court Judge will not fully consider the issues that are locally and regionally significant and the expertise required to consider these issues when deciding on the composition of the IHP.” This is not a useful safeguard. It would be unusual for a judge to stray far from the words of the statute, especially since there is no specific reference to an ability for them to consider other relevant skills necessary.</p> <p>This provision should be amended to require that the IHP include members with skills,</p>	Amend subclause 93(2) to specifically include <i>either</i> a more general reference to environmental expertise <i>or</i> to expand the list of expertise to ensure that it covers all the environmental domains.

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			<p>knowledge and experience of other specific aspects of the natural environment. Alternatively, it could also be rationalised by combining the cultural criteria and combining the legal/planning criteria and adding more general terminology regarding environment expertise. A catch-all “expertise in other issues that are locally or regionally significant” could also be added.</p>	
<b>Schedule 12: Incorporation of documents by reference in plans</b>				
			No comments	
<b>Matters relevant to natural and built environment plans - Heritage protection orders</b>				
General comment	The policy intent is to move away from permanent long-term heritage orders to protection through plan provisions.		<p>If this is the policy intent, it is important that RPCs are able to identify regionally significant heritage (as well as outstanding landscapes etc). There seems to be a tendency to assume that the only things that matter are centrally determined things. It would seem the only way to actually protect an area of heritage would be to declare it a <i>place of national importance</i>. The proposed changes to clause 556 (proposed in tranche 1) suggest this can only be done by the Minister. If that is the case, it would make it difficult to protect regionally significant heritage.</p>	<p>Clarify with MfE how regionally significant heritage can have legal protection <i>and</i> Refer to PCE suggestions regarding clause 556 (and Part 8, subpart 3 more generally)</p>
543 Notice to territorial authority	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> <li>clarify the information required to be provided by the heritage protection authority in subclause 543(3)(b) includes: an assessment of the significance of the site undertaken by a suitably qualified person which demonstrates whether protection by a heritage protection order is warranted</li> <li>clarify subclause 543(2) includes protection of a geoheritage place</li> </ul>		<p>The departmental report (p254) notes that as “drafted subclause 543(1) only provides for the protection of the area surrounding the place and not the place itself and we recommend drafting to correct this error.” However, it does not appear that a specific recommendation was made to that effect. The other recommended changes seem sensible.</p>	<p>Amend subclause 543(1) to ensure the place itself is protected <i>and</i> Support the proposed clarifications</p>

### Tranche 3B

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
<b>Resource Allocation</b>				
7 Interpretation			No comment	
36 Resource allocation principles	<ul style="list-style-type: none"> <li>change the resource allocation principle of 'sustainability' to 'environmental sustainability'.</li> <li>clarify that the resource allocation principles only apply to clauses 87, 88, 126 and 128.</li> <li>require the Minister for the Environment and RPCs to 'have particular regard' (rather than 'have regard') to the resource allocation principles when making decisions where they are applied.</li> <li>direct officials to work with PCO to relocate clause 36 so that it can be more easily read alongside other clauses relevant to the resource allocation principles (clauses 87, 88, 126 and 128).</li> </ul>		These are all useful clarifications	Support proposed changes
87 Directions on allocation method	Clarify the application of the resource allocation principles by the Minister as required by subclause 87 (2) applies only to direction that relates primarily to the allocation of resources		This is a useful clarification	Support proposed change
126 Rules relating to allocation methods for certain resources	Amend clause 126 to: <ul style="list-style-type: none"> <li>exclude discharges of greenhouse gases to air as a contaminant an NBE plan may include an allocation method for</li> <li>enable (but not require) NBE plans to include an allocation method for all discharges of contaminants to freshwater other than nitrogen</li> <li>enable NBE plan rules to allocate resources to specified activities consistent with the approach in section 30(4) of the RMA</li> <li>enable RPCs to allocate the taking, diverting, or use of "coastal water (other than open coastal water)"</li> </ul>		These are all useful clarifications The departmental report says "NBE plans should include an allocation method for [nitrogen]. However, this is not reflected in the actual recommendations."	Support proposed changes <i>and</i> Ensure the redraft clause reflects that NBE <i>must</i> have allocation rules for nitrogen.

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	<ul style="list-style-type: none"> <li>remove the requirement for RPCs to ensure allocation methods are “consistent with” any direction or definition in the NPF</li> <li>clarify the standard consenting process is the default allocation method for resources specified in 126(3).</li> </ul>			
127 Rules may specify applications to be dealt with under affected application pathway	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>rename the ‘affected application consenting process’ in a manner that best reflects its role as a comparative consenting process</li> <li>clarify that its use in plans is limited to the resources for which plans must or may include an allocation method for under clause 126</li> </ul>		These are all useful clarifications	Support proposed changes
128 How plan may require or permit use of market-based allocation method	Amend clause 128 to clarify that market-based allocation methods (ie, auction or tender arrangements) can only be conducted by local authorities when required by the NPF or an NBE plan		This is a useful clarification	Support proposed change
129 Rule may allow receipt of certain applications outside required time frame	Broaden so that it enables consent authorities to receive consent applications prior to the running of market-based allocation methods.		This will help improve running of allocation methods	Support proposed changes
223, 269, & 270 All related to resource consents and allocation methods	Proceed with subclauses 223(5), 269(4) and 270(5) as drafted (so that a statutory prioritisation of existing users at renewal (in other words, the notion that certain applications are assessed before others) is not applicable outside of the standard consenting process)		These provisions are important to ensure equity in use of allocation methods	Support proposal for no changes
275 Duration of certain resource consent activities	Refine the scope of the limited-duration freshwater consent proposals (clause 275 and Schedule 15, Part 6 clause 38) to cover freshwater takes and diversions, and discharges to freshwater (as opposed to takes and diversions of water and discharges to water more broadly)		There could be a good case for this provision to apply to all water. However, the departmental report says that was not the policy intent.	Clarify with MfE why the policy intent is not for this clause to apply to call water <i>and</i> Consider the merits or otherwise of this provision applying to all water.

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276 When section 275 does not affect duration of resource consent	Expand exemptions (clause 276 and Schedule 15, Part 6 clause 40) to include: <ul style="list-style-type: none"> <li>i. operational consents for infrastructure that forms part of a public</li> <li>ii. wastewater, storm water or sewerage network</li> <li>iii. operational consents for all existing hydrogeneration facilities with</li> <li>iv. an operational capacity of 5 megawatts or greater</li> <li>v. non-operational consents for renewable electricity generation</li> <li>vi. facilities that connect to local distribution networks</li> <li>vii. 'replacement', 'repair' and 'removal' activities across all grounds.</li> </ul>	<div style="background-color: #90EE90; width: 100%; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: #FFD700; width: 100%; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: #90EE90; width: 100%; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: #FFD700; width: 100%; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: #90EE90; width: 100%; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: #FFD700; width: 100%; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: #90EE90; width: 100%; height: 15px; margin-bottom: 2px;"></div> <div style="background-color: #FFD700; width: 100%; height: 15px;"></div>	The overall intent of these changes is good and should be supported. However, it is unclear how the 5MW threshold was determined. It is worth noting a number of historic hydro facilities owned by major energy companies and connected to the grid would fall below this threshold. They may become uneconomic with shorter duration consents. Further thought should be given to the threshold for existing hydro generation.	Support the proposed changes <i>and</i> Consider whether a lower threshold would be appropriate for existing hydro generation.
	Replace the existing RMA regulation making power and provide for a regulation making power in both the RMA and NBE that gives an ability for the Minister for the Environment to introduce further exemptions for: <ul style="list-style-type: none"> <li>i. nationally or regionally significant infrastructure</li> <li>ii. water storage that would deliver better environmental and climate change resilience outcomes</li> </ul>		Care needs to be taken that these exemptions are not too broad.	
Clauses 304-314 Affected application consenting process	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>• clarify the obligation on consent decision-makers in clause 314 when determining applications is to compare each affected application having regard to the matters contained in subclause 223(2)</li> <li>• preclude decision makers from determining applications in order of lodgement under clause 314</li> </ul>		These provisions are important to ensure equity in use of allocation methods	Support proposed changes
Clauses 689 to 692 <i>regarding</i> Freshwater Working Group ( <i>looking at freshwater allocation</i> )	Proceed with clauses 689 to 692 as currently drafted		Seems a sensible first step in addressing the allocation of freshwater and related Treaty issues	

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693 Freshwater allocation matters	<i>Inter alia:</i> clarify when an RPC updates its plan on receipt of an allocation statement under subclause 693(6)(a) it must do so in accordance with Schedule 7		Given the contentious nature of freshwater allocation following good process in amending plans is important.	Support this proposed change
825-827 <i>regarding</i> Money obtained through market-based allocation method	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>amend subclause 827(3)(a) to clarify that while the NPF will be able to either permit or require market-based allocation method, NBE plans will only be able to require market-based mechanisms and will not be able to “permit” them</li> <li>amend subclause 826(1)(b) to refer to ‘natural hazard events’ and not ‘other natural disasters’</li> </ul>		These are all useful clarifications	Support proposed changes
Schedule 15 Clauses 38-39 <i>regarding</i> consent duration	<i>Inter alia:</i> <ul style="list-style-type: none"> <li>increase the maximum duration that affected resource consents can be granted for to 5 years after allocation methods in NBE plans apply</li> <li>Various related to which provisions to apply depending on when consent is lodged.</li> </ul>		These seem sensible to enable a transition to using allocation methods	Support proposed changes
<b>National Planning Framework</b>				
75 Direction to review consents and permits	Minor clarification		The ability to review consents is important to help ensure development within environmental limits can be realised.	Support this clause
76 Direction relating to conditions of resource consents	Proceed with clause 76 as currently drafted		The ability to review consent conditions is important to help ensure development within environmental limits and outcomes and targets can be achieved.	Support this clause
86 Adaptive management approach (also refers to clause 110)	Amend: <ul style="list-style-type: none"> <li>subclause 86(1)(a) to clarify that the NPF can direct a plan to direct use of an adaptive management approach if there is likely to be a significant adverse change in the environment</li> <li>subclause 110(1)(a) to clarify that a plan can direct the use of an adaptive management approach if there is</li> </ul>		Adaptive management is helpful to manage potential significant changes in the environment where the timing and magnitude of that change is uncertain.	Support these provisions and the proposed changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<p>likely to be a significant adverse change in the environment</p> <ul style="list-style-type: none"> <li>subclauses 86(1) and 110(1) to delete the words “under section 233” and instead provide that consideration must be given to the matters in subclause 233(2).</li> </ul>			
<b>Resource consenting</b>				
<p>153 How activities are categorised</p>	<ul style="list-style-type: none"> <li>No change to the four categories, including the expansion of the permitted activity category</li> <li>Amend clause 153 as follows: <ul style="list-style-type: none"> <li>a) rename the ‘controlled’ category ‘anticipated’</li> <li>b) the NPF and NBE plans have the powers to make rules to set activity categories (ie, obtain resource consents, prohibited, or undertake an activity lawfully as it is permitted or met the conditions of permitted activity)</li> <li>c) persons undertaking activities that are regulated by these rules must comply with relevant rules, or requirements for permitted activities.</li> </ul> </li> </ul>		<p>The new activity categories are sensible, as are the proposed changes, especially the requirement to comply with rules! The term ‘anticipated’ might cause some confusion to a lay person ie the ones applying for consents. ‘Controlled’ better describes what is intended by this category. Confusion between the RMA and NBE definition is likely to be short-lived.</p>	<p>Support these changes <i>and</i> Consider retaining the term ‘controlled’ instead of ‘anticipated’</p>
	<p>Require that decision makers developing NPF or NBE plans (and those making recommendations) must consider the presumptions of land use and natural [resource] use when making rules to regulate or de-regulate activities or uses as part of the procedural principle in clause 804 to reduce reliance on consenting processes.</p>		<p>Care must be taken in how this ‘principle’ is both drafted and then implemented to ensure it does not increase the use of permitted activities that have significant adverse effects on the environment or whose adverse effects cumulatively would have significant adverse effects on the environment. The committee should consider this change closely. The committee might also want to seek specific legal advice on how the presumptions of land use and natural resource use work in practice and its implications.</p>	<p>Care needs to be taken in drafting that it is not too permissive</p>



<p>154 How to decide which activity category applies</p>	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> <li>• amend the references in clause 154 which say ‘meets the relevant outcome’ to ‘achieves relevant outcome, to which it relates’ or ‘contributes to achieving relevant outcomes, to which it relates’ or similar</li> <li>• amend subclause 154(2)(b) to replace ‘positive and adverse effects are known’ with ‘well understood effects’ or similar</li> <li>• clarify in subclause 154(2)(c) an activity is a permitted activity if known effects can be managed through requirements, standards or similar in a planning instrument without the need for bespoke consent conditions</li> <li>• clarify in subclause 154(2) all permitted activities will also need to comply with any relevant prescribed limits</li> <li>• amend subclause 154(4)(a) to delete the reference ‘either taken in isolation or, if allowed to be carried out in addition to consented activities that have existing use rights or are permitted’</li> <li>• amend subclause 154(5) to clarify a controlled activity will need to meet relevant prescribed limits</li> <li>• amend subclause 154(5)(b) where it says ‘effects may vary’ to say ‘effects need to be determined through assessment so that bespoke consent conditions are needed’ or similar</li> <li>• clarify the intent in subclause 154(6) so it reflects an activity is categorised as a discretionary activity if: <ul style="list-style-type: none"> <li>a) there is inadequate information (unknown or unclear) at the plan making stage to understand the extent to which the proposed activity contributes to achieving relevant outcomes, and/or complies with relevant prescribed limits</li> <li>b) there is an understanding that an activity is likely to breach a relevant prescribed limit or not contribute to achieving relevant outcomes, and a broad assessment is required to understand the</li> </ul> </li> </ul>	<p>Ensuring that an activity is properly categorised is essential to achieving the intended environmental protections in the legislation, especially with regards to limits. The added references to limits are welcomed.</p>	<p>Support these proposed changes.</p>
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Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<p>measures that may be required to avoid, remedy, minimise, offset and compensate any effects and to contribute to achieving these outcomes and/or ensure limits are not breached</p> <p>c) an activity is unanticipated by a plan</p>			
<p>156 Activities may be permitted with or without requirements</p>	<ul style="list-style-type: none"> <li>• Amend clause 156, and consequentially amend clause 302 to clarify the following:               <ul style="list-style-type: none"> <li>a) the link between clauses 156, 302 and 303, subject to discussions with PCO</li> <li>b) all of the circumstances listed in subclause 156(3) will require a PAN.</li> </ul> </li> <li>• Amend clause 156 in relation to upholding takutai moana rights</li> </ul>		<p>The ability to impose conditions and require monitoring of permitted activities is a significant advance. The clause should be strongly supported.</p> <p>How the proposed changes will be reflected in drafting is unclear and should be closely scrutinised.</p>	<p>Support this clause <i>and</i> Scrutinise closely any proposed drafting changes</p>
<p>158 Discretionary activities or prohibited activities</p>	<ul style="list-style-type: none"> <li>• Amend subclause 158(1)(b) to remove the reference to 'prohibited activity'</li> <li>• Amend subclause 158(2)(a) to include the definition of the internal waters as defined in section 4 of the Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977</li> <li>• Amend subclause 158(2) so it does not say 'application for a prohibited activity' and better mirrors subsection 87B(2) of the RMA (in other words, an activity is a prohibited activity).</li> </ul>		<p>The departmental report describes these changes as technical. That is understating their importance as they are important changes to clarify the intent.</p>	<p>Support these changes</p>
<b>Application for resource consent</b>				
<p>198 Purpose of notification</p>	<ul style="list-style-type: none"> <li>• Retain a purpose for notification but amend clause 198 to reflect the intent of notification is to obtain additional information to enable the consent authority to better understand:               <ul style="list-style-type: none"> <li>a. whether the proposed activity achieves or contributes positively or negatively to achieving relevant outcomes,</li> <li>b. how an activity would comply or contribute to complying with any relevant prescribed limits; and</li> <li>c. the extent to which the activity's adverse effects on the environment and on affected persons can</li> </ul> </li> </ul>		<p>The inclusion of <i>purpose of notification</i> is strongly supported.</p> <p>The proposal to add reference to limits is critical. Limits are one of the key environmental protective mechanisms being introduced by the Bill.</p> <p>Reference should also be added to targets.</p>	<p>Support clause and the proposed changes <i>and</i> Add reference to targets</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<p>be avoided, minimised, remedied, offset or compensated for.</p> <ul style="list-style-type: none"> <li>that the purpose of notification be applicable to all decisionmakers, including the Minister, when developing NPF, RPCs, when developing NBE plans, and consent authorities, when processing consents</li> </ul>			
<p>200 National planning framework or plans may set or provide for consent authority to determine notification requirements</p>	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> <li>amend clause 200 to retain the need for RPC or Minister to consider the likely state of the future environment in light of information they consider relevant in the plan, the RSS, or the NPF or any combination of those documents (clause 200(3)(a)).</li> <li>delete subclause 200(3)(b)</li> </ul>		<p>The wording of 200(3)(b) was particularly problematic. Deleting it is sensible.</p>	<p>Support these changes</p>
<p>201 Determination of whether person is affected person or person from whom approval required</p>	<p><i>Inter alia:</i> Amend clause 201 to specify that to identify a person as affected they must be a person who has an interest in an activity greater than that of the general public and will experience potential adverse effects that are more than minor above what is anticipated by a plan or the NPF.</p>		<p>As the proposed activities are likely to have some degree of adverse effects on the environment, there needs to be a mechanism by which the impact of those effects can be tested and assessed independently. This is particularly important if those effects risk a limit being breached. As drafted the proposed change about “a person with a greater interest than the general public” seems to preclude the ability of key environment groups to engage because of the wording “will experience potential adverse effects that are more than minor above what is anticipated by a plan or the NPF” and the conjunction ‘and’. This should be clarified.</p>	<p><i>Clarify</i> whether or not that the proposed change would allow for the adverse effects on the environment to be tested by environmental groups. If it does not allow that, <u>amend</u> the clause to allow the environment to be represented.</p>
<p>203 Public notification not required for controlled activity</p>	<p>No changes proposed.</p>		<p>The departmental report states “Controlled activities (‘anticipated’ activities) will not need to be publicly notified. These activities may be limitedly notified”.</p>	<p>Amend to clarify that ‘limited notification’ is possible for ‘controlled’ activities.</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			The current drafting of clause 203 does not make it clear that limited notification would be possible. It should be amended to make that clear.	
<p>205 Determination of notification status in plan &amp; 206 Limited notification of consent applications</p>	<ul style="list-style-type: none"> <li>• Amend clauses 205 to 207 to clarify there are two sets of considerations relating to when to notify or not: <ul style="list-style-type: none"> <li>a. for decision makers on the NPF and NBE Plans; and</li> <li>b. for consent authorities when processing a consent application.</li> </ul> </li> <li>• Amend the notification clauses so that when making decisions for NPF or plan content and assessing if the presumption of notification is appropriate (specified in the legislation for each activity type) decision makers reflect the following: <ul style="list-style-type: none"> <li>a. for non-notification - consider if an activity achieves relevant outcomes, complies with limits, has effects that are understood, and there are no identified affected persons</li> <li>b. for limited notification - consider if an activity achieves relevant outcomes, complies with relevant prescribed limits, and there are identified affected persons</li> <li>c. for public notification NPF and/or NBE - to consider if there is adequate information to understand the extent to which the proposed activity contributes to achieving relevant outcomes or complies with relevant prescribed limits; or if an activity is likely to have effects that are not well understood.</li> </ul> </li> <li>• Clarify that consent authorities will non-notify if: <ul style="list-style-type: none"> <li>a. the presumption for controlled activity applies, or</li> <li>b. the NBE plan or the NPF precludes notification, and</li> <li>c. there are no identified affected persons (see clauses 201/202 for responses/recommendations), or they have provided their written approvals</li> </ul> </li> <li>• Clarify that consent authorities will limited notify if:</li> </ul>		<p>Getting the public notification provision right is important both for the efficiency of the new system <u>and</u> its ability to adequately identify and manage risks to the natural environment.</p> <p>The changes proposed in the department report appear sensible. It may be useful to obtain additional advice on the effect of these changes from those familiar with consenting. It is also important to test whether the 'presumptions' referenced are clearly defined and easily understood.</p>	<p>Seek further independent advice from someone familiar with consents <i>and</i> Ensure the 'presumptions' are clearly defined and understood</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<ul style="list-style-type: none"> <li>a. the presumption for controlled activity applies, or</li> <li>b. the NBE plan or the NPF requires limited notification, and</li> <li>c. if there is an affected person in relation to the activity (either identified by NPF/plans or identified by consent authority), or if an affected customary marine title group or protected customary rights group is identified.</li> <li>• Amend the clauses on notification so the consent authorities will publicly notify if: <ul style="list-style-type: none"> <li>a. the presumption for discretionary activities applies, or</li> <li>b. the NBE plan or the NPF requires public notification, or</li> <li>c. a joint application to exchange reserve land under Reserves Act 1977, or</li> <li>d. when an applicant requests it</li> </ul> </li> <li>• Amend any references to ‘meets the relevant outcome’ to ‘achieves relevant outcome, to which it relates’ or ‘contributes to achieving relevant outcomes, to which it relates’ or similar</li> </ul>			
<p>223 Consideration of resource consent application</p>	<p>Amend clause 223(2), <i>inter alia</i>:</p> <ul style="list-style-type: none"> <li>• clarify clause 223 (2)(b)(i) to ‘minimise’ instead of ‘mitigate’</li> <li>• remove the reference to limits in clause 223(2)(c) and clarify that the activity contributes to the achievement of relevant outcomes, targets and policies.</li> <li>• clarify clause 223(2)(e) to refer to the ‘preferred state’ of the future environment rather than the ‘likely state’</li> <li>• amend subclause 223(10) to require that when considering any matter the consent authority may have regard to: <ul style="list-style-type: none"> <li>a. the NPF only to the extent necessary to resolve either an ambiguity, an unresolved conflict between outcomes, or a gap, in the relevant plan.</li> </ul> </li> </ul>		<p>Considerations for decisions on resources consents are an incredibly important part of the legislation.</p> <p>These proposed changes seem sensible.</p> <p>Note: the proposal to remove ‘limits’ from subclause 223(2)(c) makes sense because limits are covered by subclause 223(11)</p>	<p>Support these changes</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<p>This limitation does not apply where framework rules have direct effect; and then</p> <p>b. the purpose of this Act only to the extent necessary to resolve either an ambiguity, an unresolved conflict between outcomes, or a gap, in the NPF.</p>			
Subclause 223(11)	Amend subclause 223(11) by including a new subclause to state that ‘the consent authority must not grant consent if an activity would have a more than trivial effect on a place of national importance, unless a rule under section 559(1) applies’ or similar.	<div style="background-color: #90EE90; height: 20px; width: 100%;"></div> <div style="background-color: #FF0000; height: 20px; width: 100%;"></div> <div style="background-color: #90EE90; height: 20px; width: 100%;"></div> <div style="background-color: #FF0000; height: 20px; width: 100%;"></div>	<p>The addition of places of national importance to subclause 223(11) fills a critical gap.</p> <p>The term “contrary” has a particularly narrow legal interpretation. It is a high bar which would put the environment at risk.</p> <p>Use of a more neutral term like “<i>inconsistent with</i>” is much better. It is also important to make clear that a consent cannot be granted if it is inconsistent with “<u>any</u>” environmental limit or target.</p>	<p>Replace “contrary to” with “inconsistent with”</p> <p><i>and</i></p> <p>Replace the word “an” with “any” in front of “environmental limit”</p> <p><i>and</i></p> <p>Support proposed addition of places of national importance to this subclause.</p>
228 Consent authority may refuse subdivision consent in certain circumstances	<ul style="list-style-type: none"> <li>Amend clause 228(1)(a) so that ‘avoid’ and ‘mitigate’ be added to ‘reduce risks’ as purposes for which subdivision consent can be refused or conditions attached.</li> <li>Make clearer that when considering natural hazards, the effects of climate change on those natural hazards are to be included within those considerations</li> <li>Amend clause 228(3) to reflect the changes in clause 228(1)(a).</li> </ul>	<div style="background-color: #90EE90; height: 100%; width: 100%;"></div>	These are useful clarifications	Support these changes
229 Granting of certain discharge or coastal permits restricted	<p>Amend subclause 229(2) to clarify:</p> <p>a. ‘irreversible effects of the waterbody’ means significant irreversible adverse effects on the waterbody.</p> <p>b. ‘significant adverse effects on aquatic life’ are significant adverse effects on current aquatic life at the time of the discharge.</p>	<div style="background-color: #FF0000; height: 100%; width: 100%;"></div>	<p>Great care needs to be taken with any <i>irreversible</i> effect on the environment. While clarification of the subclause refers to ‘adverse’ effects is acceptable, the addition of ‘significant’ raises the bar too high for something that cannot be reversed.</p> <p>The precautionary principle would imply that ‘irreversible’ should be replaced with ‘significant adverse’.</p>	<p>Replace “irreversible” with “significant adverse” (preferred)</p> <p><i>or</i></p> <p>Delete “significant” from in front of “irreversible”</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
231 requirements before conditions may be included	Amend the conjunction between subclause 231(2)(a)(i) and (ii) to replace 'and' with 'or'.			Support proposed change
232 Particular conditions that may be included in resource consent	<ul style="list-style-type: none"> <li>Amend clause 232 so it is explicit that a condition of consent for duration can be imposed as a condition of consent.</li> <li>Amend subclause 232(5)(b) by splitting into 2 further subclauses (i) preventing or minimising any actual or likely adverse effect on the environment, which is the current wording in the clause and adding (ii) to achieve limits or targets identified in the NPF or NBE plan (or similar wording).</li> </ul>			Support these changes
233 Adaptive management approach	<ul style="list-style-type: none"> <li>Amend clause 233(2) to require that all the matters in (a) to (f) are given consideration, but need not apply in each and every case.</li> <li>Amend clause 233(2)(f) to clarify that the unacceptable effects are those that were unanticipated at the time of granting the consent.</li> </ul>		Adaptative management is a useful and important addition to resource management legislation.	
253 Right to appeal	Proceed with clause 253 as currently drafted		Appeals are an important accountability mechanism.	Support this clause
277 Circumstances when consent conditions can be reviewed	<ul style="list-style-type: none"> <li>Amend clause 277 to clarify that the ability provided in subclause (4) for a regional consent authority to review consent conditions is not limited to only when specifically directed in the NPF or NBE plan.</li> <li>Amend clause 277(3)(a), (4)(b) and (7)(a)(i) to include reference to both 'avoid' and 'mitigate' (as well as 'reduce') in respect of natural hazard risks.</li> <li>Amend clause 277(7) to make it clear that the NPF can direct a review of duration.</li> <li>Amend clause 277 so that consent authorities may add a duration condition to the consent at decision of the review when directed to review the duration of consent.</li> </ul>		<p>Limits (and targets) are critical mechanisms to protect the environment. The clause currently restricts review of consents on the basis of 'compliance with limits and to achieve targets' to consents issued by a regional council. However, any consent could create an issue for limits and targets. 'Compliance with limits and to achieve targets' should be a reason to review <u>any</u> consent.</p> <p>A number of submitters suggested that consent be required to be reviewed in exceptional circumstances (ie "must" instead of "may"). The departmental report</p>	<p>Amend so that <u>all</u> consents can be reviewed because of "compliance with limits and to achieve targets"</p> <p><i>and</i></p> <p>Change the requirement to review consents in exceptional circumstances from 'may' to 'must'</p> <p><i>and</i></p> <p>Support the changes proposed in the departmental report</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			disagreed. If an 'exceptional circumstance' exists it should certainly warrant a review. Nothing states that the review will require a change in the consent conditions so there is no harm in reviewing it.	
281 Decisions on review of consent conditions	<ul style="list-style-type: none"> <li>Amend clause 281 (7)(b)(i) and (7)(c) to include reference to the concepts of both 'avoidance' and 'mitigation' (as well as 'reduction') of natural hazard risk.</li> <li>Amend clause 281(7) so that it is consistent with amended wording of clause 26(2).</li> </ul>		Limits (and targets) are critical mechanisms to protect the environment. The clause currently restricts cancellation of consents because of a breach or potential breach of limits to regional consents. However, any consent could create an issue for limits and should be able to be cancelled if limits are potentially compromised.	Amend so that <u>all</u> consents can be cancelled because of a breach or potential breach of limits <i>and</i> Support the changes proposed in the departmental report
302 Permitted activity notices	Various changes to the administrative provisions of the clause		The ability to impose conditions and require monitoring of permitted activities is a significant advance. The clause should be strongly supported. PANs are critical to implementing this improvement.	Support this clause (and the proposed changes)
<b><i>Fast-track consenting</i></b>				
Clauses 315-327	Various		The PCE continues to think that the fast-track consenting pathway should be removed. It adds little that would not be available through the 'Ministerial call-in' and 'direct referral' pathways. However, if it is retained, all the changes proposed in the departmental report seem sensible.	
<b><i>Proposals of national significance</i></b>				
329 Minister may call in matter that is or is part of proposal of national significance			Compliance with limits and achievement of targets are critical environmental protective mechanisms in the proposed new system. They should not be relegated to "any other relevant matter" as suggested by the departmental report.	Add "compliance with limits and achievement of targets" as one of the considerations of subclause 329(3)



Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Clauses 328-348	Various		All the changes proposed in the departmental report seem sensible.	
<b>How matter decided if direction made to refer matter to board of inquiry or court</b>				
Clauses 349-360			No comment	
<b>Miscellaneous provisions</b>				
Clauses 361-377			No comment	
<b>Designations</b>				
497 Interpretation	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> <li>for the purposes of Part 8 Subpart 1 only, define the term 'natural and green infrastructure' and add it to the definition of 'public works' in clause 497 so that it can be provided for as a public work in the designations process.</li> </ul>			Support this addition
	Clarify Part 8 Subpart 1 so that designations comply with and cannot override or be contrary to environmental limits, unless an exemption to the limit is allowed.		This is a critically important clarification.	Support this change.
500 Criteria for approval as requiring authority	<ul style="list-style-type: none"> <li>Clarify the public good test in clause 500(4), (5) and (6) so that the Minister, when making a decision on whether 'other applicants' should be a requiring authority, must be satisfied that: <ul style="list-style-type: none"> <li>a. the approval of the applicant as a requiring authority is appropriate for the purposes of carrying on the project or work.</li> <li>b. the applicant is likely to satisfactorily carry out all the responsibilities (including financial responsibilities) of a requiring authority under this Act and will give proper regard to the interests of those affected and to the interests of the environment.</li> </ul> </li> <li>Clarify that when giving approval to the project or work in clause 500(4) (5) and (6), the Minister must be satisfied that: <ul style="list-style-type: none"> <li>a. the project or work provides a significant public benefit necessary for the functioning of the</li> </ul> </li> </ul>		Designations confer significant power to companies. Great care needs to be taken to whom those powers are delegated. The original drafting requiring only a 'public good' was far too broad. The departmental report proposes significant changes that will result in a significant narrowing of who might be eligible. That is good. The Committee may want to consider whether they should be narrowed even further.	Support the proposed changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<p>economy, for people’s health and safety or the protection of the environment</p> <p>b. there are limited options for locating the project or work due to operational requirements or the project or work responds to a defined need in a specific location.</p> <p>c. the size and scale of the project or work is such that approval as a requiring authority is appropriate.</p> <p>d. the public benefit must be for the general public or a sufficient section of the public</p> <p>e. the project or work must not be a commercial retail activity (such as a supermarket or petrol station) or a facility to support a commercial retail activity (such as a warehousing or distribution facility)</p> <p>f. however, a project, or work that has a significant public benefit is not precluded just because the operator charges a fee for access or obtains a commercial benefit from it.</p> <ul style="list-style-type: none"> <li>• In addition to the matters outlined in the public good test, the Minister must have regard to whether the project would be more appropriately progressed using the other processes provided by the Bill (such as a plan change or a resource consent).</li> <li>• That the Minister may also consider any other matter relevant and reasonably necessary to determine the application.</li> </ul>			
<p>Clauses 503-505 Designation instruments</p>	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> <li>• Clarify the drafting to make it clear that a designation can only be made with respect to land and the process cannot be applied to the coastal marine area.</li> <li>• Clarify territorial authorities (rather than the RPCs) are responsible for processing and make recommendations on NORs and CIPs outside of the plan-making process</li> </ul>			<p>Support this change</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Clauses 506-510 Process for designations	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> <li>• Clarify in clause 507, that NoRs and Primary CIPs or, where the route protection process is used, NoRs or Primary CIPs will be publicly notified, unless the RPC makes a decision to limited notify.</li> <li>• Clarify in clause 507, that for NoRs and Primary CIPs or, where the route protection process is used, for NoRs or Primary CIPs, the RPC must in all cases notify [certain persons]</li> <li>• Clarify in clause 507, that a NoR and/or Primary CIP may be limited notified, when all directly affected parties can be identified.</li> <li>• Amend clause 509 to provide for any persons notified of a NoR or primary CIP to be able to make a submission</li> <li>• direct officials to work with PCO to include all the procedural and administrative steps necessary for the NOR, primary CIP and secondary CIP process</li> </ul>		These proposed changes all improve the public's ability to engage in the designation process and hence improve accountability.	Support these changes.
Clauses 511-515 Further provisions relating to designations	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> <li>• amend subclause 512(2)(d) to carry over the RMA (section 171(1)(c)) requirement to have particular regard to whether the work and designation are reasonably necessary for achieving the objectives of the requiring authority.</li> </ul>		Missing from clause 512 (things an RPC must consider) is any reference to limits, targets and places requiring protection (eg HVBA, PNIs etc). These are important protections for the environment, especially because most projects likely to have designations will be large. It is not sufficient for those protections to be just considered as "any other matters". The proposed amendment to add "reasonably necessary" is sensible and should be supported.	Amend subclause 512(2) to add "limits, targets places of national importance, HVBA, SBA (and others)" as one of the matters RPCs need to have "particular regard to" <i>and</i> Support proposed amendment of subclause 512(2)(d)
Clauses 516-540			No comment	
92 Relationship between framework rules and designations	Amend clause 92: a. to ensure how and when the NPF applies to designations at different points in time is clear		It is unclear how the drafting will change as a result of these recommendations. It is important that as the NPF evolves that key environmental rules have some ability to	Scrutinise the drafting proposed to implement these recommendations.

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<ul style="list-style-type: none"> <li>b. by being more specific with terms associated with designations and with the steps in the process for making designations</li> <li>c. to clarify the NPF may specify that activities carried out in accordance with a designation do not need to comply with a given framework rule, even if the designation is made after the framework rule.</li> </ul>		<p>influence the environmental effects of designations.</p> <p>The equivalent RMA provision only applied to NES not NPS. Under the NBE the NPF covers both. The implications of this need to be carefully thought through.</p>	
<b>Subdivision of land</b>				
Clauses 568-582			These clauses all cover administrative issues to do with subdivision. No comment.	
583 Requirement for consent if land will vest in territorial authority or the Crown	Proceed with clause 583 as currently drafted		The ability of councils (and the Crown) to decide whether or not to take on existing interests in vested land is important so they are not burdened with costs and responsibilities they do not want.	Support this clause as drafted.
592 Compensation when bed of river or lake vests in Crown			There appears to be a sense error in this clause. The title refers to vesting in the Crown only, yet subclause 592(1) only refers to 'territorial authority'. Subclause 592(2) then refers to " the Crown or territorial authority".	Amend as appropriate
<b>Reclamations</b>				
Cluses 597-603			These clauses all cover administrative issues to do with registering reclaimed land on survey plans. No comment.	
<b>Esplanade reserves, esplanade strips, and access strips</b>				
604 Purposes of esplanade reserves and esplanade strips	<p>Amend clause 604 to:</p> <ul style="list-style-type: none"> <li>a. align more closely with the language and wording used in section 229 of the RMA</li> <li>b. amend subclause 604(a)(v) so the purpose of an esplanade reserve or esplanade strip includes mitigating or reducing natural hazards or natural hazard risks</li> </ul>			Support these changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	c. include 'riparian yards' to the list of purpose of an esplanade reserve or esplanade strip.			
Clauses 605-614			No comment	
<b>Subdivision consent conditions and related provisions</b>				
Clauses 615-629			No comment	
<b>Existing rights</b>				
Clauses 810-813			No comment	
<b>Regulations</b>				
Clauses 848-858			No comment	
<b>Schedule 10: Information required in application for resource consent</b>				
Schedule 10 Clause 1 Information must be specified in sufficient detail	Amend Schedule 10 clause 1(c)(i) or add a new subclause which clarifies that the NPF and NBE plans may also have a role in directing the AEE.		With regard to subclause 1(1)(b), it is not really the scale and significance of the activity that matters but the scale and significance of the <i>effects</i> of that activity. A small-scale activity with significant environmental effects will need a lot more information than a small-scale activity with small-scale effects. The bundling of outcomes with limits and targets in subclause 1(1)(c)(i) equates them. Limits and targets have a very different purpose (environmental protection) than outcomes. They should be referenced separately. The addition proposed in the departmental report around AEE is sensible.	Amend subclause 1(1)(b) to reference the "scale and significance of the <i>effects</i> of the activity". <i>and</i> Separate 'outcomes' and 'limits and targets' in to separate subclauses (refer to subclause 1(1)(c)(i)). Wording such as "comply with limits and achieve targets" or similar should be used. <i>and</i> Support MfE's recommended addition
Schedule 10 Clause 2 Information required in all applications	Amend Schedule 10 clause 2 to align with the recommendations in clause 223(10).			Support (subject to suggested additions to Schedule 10 Clause 6 (see below))
Schedule 10 Clause 6 Information required in assessment of	Amend: a. Schedule 10 clause 6(1)(c) so that if the activity includes the use of hazardous installations, an assessment of any risks to the environment that are		Limits and targets are critical environmental protection measures in the proposed new system. So are PNIs, HBVA and SBAs. Resource consent applications should be	Add separate subclauses to require assessment of how the activity will: <ul style="list-style-type: none"> <li>Comply with limits and help achieve targets</li> </ul>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
environmental effects	<p>low probability with a high potential impact, is undertaken.</p> <p>b. Schedule 10 clause 6(2), to add a new subclause which clarifies that the NPF and NBE plans may also have a role in directing the AEE.</p> <p>c. Schedule 10 clause 6(3) to clarify consultation requirements in relation to clause 163.</p>		<p>required to assess how they might be impacted by a proposed activity.</p> <p>The proposed changes in the departmental report are sensible.</p>	<ul style="list-style-type: none"> <li>Impact on PNIs, HBVA and SBAs</li> </ul> <p>and</p> <p>Support MfE's recommended changes</p>
<b>Schedule 11: Provisions about esplanade strips and access strips</b>				
Schedule 11 Clause 9 How [a public access] easement is varied or cancelled			<p>Public access easements are by definition done for the public. Herenga ā Nuku Aotearoa the Outdoor Access Commission's suggestion that proposals to vary or cancel an easement should be publicly notified is a good one. Otherwise, how else will the public who use that easement know that their access might change? The public's views should be taken into account in any decision that is subsequently made.</p>	<p>Add a requirement to clause 9 to require public notification of proposals to vary or cancel an easement.</p>
Schedule 11 Clauses 19-21 How esplanade strips are varied or cancelled			<p>For similar reasons to Schedule 11 clause 9, any proposal to vary or cancel an easement should be publicly notified. The public's views should be taken into account in any decision that is subsequently made.</p>	<p>Amend clauses 19, 20 and 21, as appropriate, to include public notification.</p>
<b>Schedule 13: Environment Court</b>				
Schedule 13 15 Power to make orders and declarations generally	Amend Schedule 13 clause 15 by deleting clause 15(k)		<p>It seems odds that there is no reference in this clause to clause 696 (which sets out a range of declarations that might be made). Nor is there any general reference to other powers that the Environment Court is given in other clauses in the Bill.</p>	<p>Consider whether further references are necessary</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Schedule 13 53 Who may be represented at proceedings	Amend Schedule 13 clause 53 to provide that participation under clause 53(1)(d) requires the Environment Court to agree that a person's involvement will assist the court in addressing the issues in the proceeding.		The proposed change narrows what was consulted on, but does not seem unreasonable. The Committee may wish to consider whether that narrowing is appropriate or not.  The Committee may also wish to consider whether to specify the Parliamentary Commissioner for the Environment as party in subclause 51(1).	Consider the PCE's comments.