

PCE Advice on Spatial Planning Bill and the Natural and Built Environment Bill Departmental Reports

Consolidated table (in clause order)

Spatial Planning Bill

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Part 2 Regional Spatial Strategies (RSS)				
15 Scope of RSS	Amend clause 15 to require RSS to be consistent with: a. limits and mandatory targets set through NBE plans. b. all water conservation orders (WCOs) applying in the region to the extent they are relevant to the matters being considered in an RSS (or the part of an RSS that is being prepared or amended).		This is an important addition that recognises that development must be consistent with environmental limits and targets. Wording is important here. "Consistent with" is a lower standard than "comply with" or "give effect to". Given the importance of limits and targets as the principal tool for protecting the environment, stronger wording is preferable. Places of national (and regional) importance, in particular specified cultural heritage and significant biodiversity areas are also important environmental considerations when setting spatial plans. These should also be specifically included in the scope of RSS using strong drafting language.	Support MfE's proposed additions but with stronger language (eg as "comply with") <i>and</i> Add a subclause requiring RSSs to identify and "comply with the protection of" places of national (and regional) importance
			For RSS to be consistent with limits and targets, the limits and targets need to be identified prior to the RSS being developed. Yet current implementation plans would see the RSS developed prior. That exposes a serious risk because it will raise the expectation that certain developments can proceed despite limits, targets and places of	Delay preparation of RSS until limits, targets and places of importance have been set, <i>either by:</i> Delaying the commencement of RSS <i>or</i>

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			importance not being in place as well as discourage the setting of appropriate limits and targets or identification of places of importance.	Require that the first NPF and NBE plans set limits and targets and that the first NBE plans and RSSs are prepared together.
16 General contents and form of RSS	<i>Inter alia</i> <ul style="list-style-type: none"> provide a vision and objectives for key development, restoration, protection and adaptation shifts in the region to achieve the purpose of the SPA over the period of the strategy. outline the key actions and priorities to make progress towards the vision and objectives 		The additions put protection and restoration on a more even footing with development and require a sense of what is needed to achieve it.	Support
17 Contents of RSS: Key Matters	<i>Inter alia</i> <ul style="list-style-type: none"> clause 17(1)(a) relates only to areas that the RPC considers do (rather than may) require protection, restoration or enhancement 		Strengthening the language to include areas that need protection and restoration is positive bringing it into line with the development provisions. However, use of the word 'are' in subclauses (c), (d), (e) and (f) is too strong as it could imply that the environmental effect of those activities be ignored or downplayed in those areas. Use of the word 'may' provides a better indication that development in those areas is still dependent on meeting environmental standards. Using the term 'may' for all the subclauses provides an alert that does not then imply guaranteed approval.	<i>Either</i> Support the proposed change <i>or preferably</i> Replace 'are' with 'may' in subclauses (a), (c), (d), (e) and (f)
18 Contents of RSS: Other Matters	<i>Inter alia</i> <ul style="list-style-type: none"> Clarify, for the avoidance of doubt, that the identification of a nationally significant feature, area or activity under clause 18(1)(f) is not limited to 'places of national importance' (as defined in NBE Bill, clause 555). 			Support
19 Level of detail in RSS	Amend to make clearer that the decisions must be commensurate with the information available, not just the level of certainty about the information that is available.		The proposed change makes sense, but will depend on the precise drafting.	Add a subclause referencing the precaution in favour of the natural environment.

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			There will always be uncertainty with information or lack of information. In those situations caution should be applied in favour of the natural environment.	
24 General considerations Instruments	Various		Under the hierarchy proposed in clause 24, the Aotearoa New Zealand Biodiversity Strategy is only "have regard to". Given it is the key government direction on a major environmental issue, " <i>must have particular regard to</i> " would be more appropriate.	Amend to ensure " <i>particular regard</i> " needs to be taken of the Aotearoa New Zealand Biodiversity Strategy
25 General considerations Other Matters	<ul style="list-style-type: none"> delete subclause (3) and its sub-heading (matters that RPC must disregard) add a new provision to require that the RPC considers whether the proposed provisions in an RSS would be consistent with likely future states of the environment where dynamic environmental processes are operating. 		<p>The general intent of the proposed new provisions seems sensible, but it is difficult to determine the effect and any issues without seeing specific drafting.</p> <p>As drafted clause 25 requires RPCs to "have regard to -any cumulative effects of the use and development of the environment;". As cumulative effects can pose significant risks to the environment, the higher standard of "<i>must have particular regard to</i>" would be more appropriate.</p>	Support, in-principle, the proposed changes, depending on drafting <i>and</i> Strengthen language around cumulative effects to " <i>must have particular regard to</i> ".
28 Quality of evidence and other information	More clearly reflect the precautionary principle Amend clause 28 to incorporate a new principle related to the way uncertainty in information should affect decisions.		Seems sensible, if well drafted.	Support
29 Incorporation of information from NBE plans	Amend to include limits and mandatory targets as matters an RPC can incorporate into its RSS from an NBE plan, without opening up that content to re-litigation.		It is important these points are not relitigated.	Support
30-36	<i>Inter alia</i> clarify that the RPC can use a different process for different parts of the region or different issues. For example, how they		It is sensible that not all parts of a region need to be treated the same in an RSS because they will have very different issues and needs.	Support the proposed change <i>and</i>

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Process for developing RSS	might engage on a major urban growth issue would be different to how they might deal with a rural catchment restoration programme where there is an existing collaborative process.		<p>However, the requirement that all parts of the region must agree on things that only affect some parts still presents a real risk of horse trading.</p> <p>These clauses need more nuance to deal with both truly regional issues (eg network infrastructure and major areas for protection) and sub-regional issues (eg more detailed urban development) as a sub-regional plan.</p>	Provide for sub-regional plans (perhaps as sections of the overall plan) for sub-regional issues and consider delegated decision-making to better align incentives.

Natural and Built Environment Bill

Tranche 1

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Purpose of Act				
Cl 3	<ul style="list-style-type: none"> have a singular purpose statement that is to uphold Te Oranga o te Taiao clarify the intent is to have a bottom line in the purpose that protects the health of the natural environment subject to this bottom line, clarify that use and development is enabled in a way that supports intergenerational well-being 		<p>On the surface this is better for the environment, but dependent very much on actual drafting.</p> <p>Likely to bring purpose much closer to current RMA purpose. Question whether worth litigating all the new language</p>	<p>Support amendment of the purpose clause subject to adequate drafting.</p> <p>This will require rigorous attention. It is not easy and the temptation to use words to paper over ambiguity or disagreement should be resisted.</p>
Add clause	New clause to identify that the key mechanisms to assist in achieving the purpose. Move references to outcomes, limits, targets, RSS integration, decision making principles and provision for Places of National Importance (PNIs) and High Value Biodiversity Areas (HVBA) from cl 3 to new		No risks involved, although reference to managing effects seems to have been dropped. Management of adverse effects is still a key way to protect the environment from harm	Add reference to “managing adverse effects”
System Outcomes				
Cl 5	<p>Continue with having no prioritisation between outcomes, but clarify that:</p> <ul style="list-style-type: none"> not all system outcomes are required to be achieved in all places at all times conflict resolution occur at the highest practicable level in the planning regime add a preference synergies between outcomes <p>Tweak wording to several outcomes and add a new standalone outcome on sustainable use of coastal marine</p>		<p><i>This was a major fault of the original draft that has not been addressed.</i></p> <p>Lack of prioritisation in primary legislation risks natural environment outcomes being de-prioritised or balanced out by development outcomes. This may be mitigated to some degree if the purpose clause (clause 3) gives clear priority to the natural environment</p> <p>Addition of a coastal outcome is good.</p>	<p>If left unchanged, this formulation will come back to haunt the Committee. Consider splitting into two clauses similar to s6 & 7 of RMA – with natural environment clauses in one and other clauses in the other.</p> <p>The reality is that the non-environmental outcomes are more relevant to spatial planning than the environment as most people understand it.</p>

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Decision making principles				
Cl 6	<ul style="list-style-type: none"> ensure these principles must be applied by <u>all persons making recommendations or decisions</u> on the NPF and NBE plans Add new decision-making principle on the polluter pays principle add a new decision-making principle to require consider whether an approach to effects management 		All these additions are better from an environmental perspective, but could be stronger. Further additions would make for a much stronger focus on the environment.	Add principles to: require consistency with limits and targets; consider encapsulating the Te Mana o te Wai hierarchy.
Preliminary matters: Definitions				
7 Interpretation <i>Natural hazards</i>	Clarify throughout the Bill that when considering natural hazards, the effects of climate change on those natural hazards are to be included.			Support
7 Interpretation Resource Allocation			No comment	
Duties and Restrictions				
13 Environmental responsibility	<ul style="list-style-type: none"> amend to state that the responsibility is not of itself enforceable, using the same wording as clause 14(2). amend to change the words “for the benefit of all New Zealanders” to “for the benefit of all present and future New Zealanders”. 			Support
14 Duty to avoid, minimise, remedy, offset, or provide redress for adverse effects	Amend clause 14 by replacing the words ‘take steps to provide redress for’ with ‘provide compensation for’.		Changing ‘redress’ to ‘provide compensation’ is supported but ‘redress’ should only be available when avoid, minimise, remedy, or offset are not possible.	Support proposed change <u>and</u> Amend to clarify that ‘redress’ only available when avoid, minimise, remedy, or offset are not possible.
19 Restrictions relating to use of coastal marine area	<i>Inter alia:</i> <ul style="list-style-type: none"> amend subclause 19(1)(c)(i) to expressly include ‘anchoring’. 		Specific inclusion of anchoring is a good addition. Narrowing this provision back to the common marine area (even if it was an error) will	Not support narrowing this provision to the common marine area. <u>and</u> Support inclusion of anchoring

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	<ul style="list-style-type: none"> 209. We recommend that you amend clause (19)(1)(i) to state, “remove any sand, shingle, shell, or other natural material from the common marine and coastal area”. 		provide less protection to a sensitive natural environment.	
20 Restrictions relating to use of beds of lakes and rivers	No substantive change		Some submitters suggested extending this to include river margins. This is a sensible suggestion since rivers move and need to be able to move naturally. While, as the department report notes, there may be some overlap with land management areas, within a river’s margins, what is land and what is water often changes naturally. This is an issue that recent events have highlighted and will likely become even more prominent with climatic disruption. The definition of ‘river margins’ should include braid plains.	Amend to include river margins <u>and</u> Ensure definition of ‘river margins’ includes ‘braid plains’
24 Restrictions on discharging harmful substances in coastal marine area	<ul style="list-style-type: none"> Amend clause 24(4)(b) to add the word ‘aquatic’ before the word ‘life’. amend clause 24 to add a provision which states that regulations or rules may be made prohibiting or controlling a discharge which would otherwise be permitted in accordance with subsection (2)(b) or (4)(b). amend subclauses 24(2)(a) and 24(4)(a) to add 		The proposed changes are sensible. Clause 24(2)(b)(iv) should also be amended to add the word ‘aquatic’ before the word ‘life’. This would bring it into line with the relevant RMA provision.	Support proposed changes and Add ‘aquatic’ to clause 24(2)(b)(iv)
26 Certain existing uses protected in relation to land	<p>Various, including narrowing the circumstances when rules related to the natural environment can modify or extinguish existing use rights, to only cover situations where:</p> <ol style="list-style-type: none"> a change is reasonably necessary to ensure compliance with a limit or achieve an associated target; or the activity is generating adverse effects on the attributes that make an area a highly vulnerable biodiversity area; or 		The proposed changes seem a reasonable balance.	

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	c) the activity is causing or contributing to significant harm or damage to other aspects of the natural environment, human health, or property.			
27 When existing use rights may be lost	<ul style="list-style-type: none"> amend subclause 27(2) to replace the word 'six' with the word 'twelve'. amend the heading to clause 27 be reworded to 'When existing use protections may be lost'. 		The proposed changes seem a reasonable.	
36 Resource allocation principles	<ul style="list-style-type: none"> change the resource allocation principle of 'sustainability' to 'environmental sustainability'. clarify that the resource allocation principles only apply to clauses 87, 88, 126 and 128. 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. 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). 		These are all useful clarifications	Support proposed changes
Environmental Limits				
37 Purpose of limits	Use "baseline state" as the definition of environmental limit		<p><i>"Baseline state" is essentially the same as "current state" which was a major fault of the original draft.</i></p> <p>As noted by many submitters using "current state" will lock in already degraded environments.</p> <p>It is inconsistent with Te Oranga o te Taiao: No assessment of health of the environment is required, yet health of the environment is a key arm of Te Oranga o te Taiao</p>	
38 Domains	Add definitions of air, soil and estuary		It is important to have this clarity of definitions. The definitions of air and soil could both be improved.	Support with these suggested changes: Air means the mixture of gases, vapour, and particulates, that

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			<p>The definition of <i>air</i> could clearer and is important to more than just people.</p> <p>Soil biota or living organisms missing from the definition of <i>soil</i>. Soil has five components — minerals, soil organic matter, living organisms (soil biota), gas, and water.</p>	<p>surrounds the Earth in the lower atmosphere (troposphere) in which life lives.</p> <p>Soil means a natural, evolving body, which is the product of its environment formed on the land surface, and composed of five components: minerals, organic matter, living organisms, gas, and water.</p>
39 Minister to set limits	No recommended change		If limits are set at baseline state (which is effectively still the current state), it is unclear how the Minister what there is for the Minister to do since they cannot set the ‘current state’ – it is what the state of environment is. There may be a role to define how the ‘baseline state’ is to be <i>measured</i> and <i>determined</i> but not the setting the limit itself.	Clarify
40 Format of limits	Remove ‘minimum’ and ‘maximum’ from subclauses 40(2)(a) “biophysical state” and (b) “harm and stress” respectively, as it is inconsistent with the current state approach for the level of limits.		<p>Even if set at current state, ‘minimum’ and ‘maximum’ in this context are still important qualifiers to identify which side of the limit activities must occur on.</p> <p>Use the qualifiers ‘minimum’ and ‘maximum’ subclause 40(2) helps make it clear that activities cannot occur that would cause that state to be further impaired.</p>	Retain ‘minimum’ and ‘maximum’ qualifiers;
	the principle of favouring caution in subclause 6(2) does not apply to decisions on setting limits or minimum level targets		There will always be some uncertainty about what the current state of any environment is. Caution in this context would dictate that the limit be set at the level within the band of uncertainty most advantageous for the natural environment	Clarify what ‘caution’ means with regard to limit setting

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	Add a procedural principle to reduce reliance on resource consent processes should not be applied to setting limits or minimum level targets		This seems sensible	Support
41-43 Interim limits	<ul style="list-style-type: none"> Interim limits are removed from the Bill the relevant council must publicly notify the breach of any limit, along with other relevant information, including the cause (if known), extent of the breach, how it plans to manage the breach and when compliance is expected to be achieved 		Allowing further environmental degradation was a serious flaw of the first proposal	Strongly support removal
44-46 Exemptions to limits	Only minor tweaks be made to the exemption regime, which slightly broaden the ability to achieve an exemption		<p><i>This was a major fault of the original draft that has been continued.</i></p> <p>Limits remain the last line of defence for the environment in the Bill. Providing for exemptions is contrary to the protective outcome implied by the purpose. Exemptions could be granted for private projects that can show an identifiable public benefit. Most could qualify in that they would be achieving at least one of the outcomes proposed under the Bill.</p> <p>MfE’s argument that “not enabling exemptions creates risk that limits lose certainty and effectiveness by coming under pressure to be set too low” does not carry much weight when the decision has been taken to set limits at essentially the ‘current state’.</p> <p>MfE’s point that “an exemption from a limit should only be an option if it is needed and all alternative options for complying with an environmental limit have been exhausted.” Is a good point and the drafting needs to make that clear.</p>	<p>If the committee does see a need for exemptions, they should be strictly limited to <u>nationally significant public projects</u> (e.g. national projects that would meet Public Works Act 1981 criteria).</p> <p>Ensure the Bill makes it clear that an exemption should only be an option if it is needed and all alternative options for complying with an environmental limit have been exhausted. The wording of subclause 44(4) could be strengthened in this regard. An additional subclause 46(c) should be added to say the Minister must not direct an exemption unless all alternatives have been exhausted.</p>

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47-49 Purpose of targets	<ul style="list-style-type: none"> • Replace 'combined targets' with separate 'mandatory targets' associated with limits, and 'discretionary targets' • Purpose of mandatory targets associated with limits is to define a desired future state to drive improvement in ecological integrity and reduce human health risk • rename mandatory targets associated with limits as simply mandatory targets, with "target attribute states" required for each aspect of the natural environment for which limits are required 		This distinction, proposed purpose and clarification seem sensible.	Support recommended changes
	Not to include a 'non-regression' principle, instead rely on the 'expectation' of maintain and improve.		<p><i>This was a major fault of the original draft that has been unaddressed.</i></p> <p>Many of the environments where the limit is set at 'baseline state' will be degraded. There is potentially a very large gap between that degradation and what certain Ministers might consider "unacceptably degraded". There is no other way to lock-in improvements in those degraded environments, even if the local community wants it. This is a serious environmental weakness in the Bill.</p> <p>Mandatory targets should automatically become the environmental limit once reached. RPCs would then have the ability to determine the degree of permanent improvement themselves as they can set that 'mandatory target' anywhere "at or above" the current limit.</p>	Consider making 'mandatory targets' once met the new 'environmental limit'
50 Minimum level targets	<ul style="list-style-type: none"> • criteria set out in subclause 50(2) be reframed with more active language and be future focussed • Minister should consider the impact of disaster events when determining unacceptable degradation 		MfE's proposed changes do not increase environmental risk, except possibly in relation to the impact of disasters. However, some faults with the original design have not been addressed.	Support MfE's recommended changes <i>and</i> Add a subclause stating that any minimum level limit cannot be

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	<ul style="list-style-type: none"> 'maintain and improve' approach of the NPS-FM should be required for minimum level targets minimum level targets be renamed as 'minimum acceptable limits' or similar 		<ul style="list-style-type: none"> The term "unacceptably degraded" is subjective and may be interpreted differently by different Ministers. There is a real risk a Minister might try to lower a minimum level 'limit' set by a previous Minister because they have a different view of what is "unacceptably degraded". Adding a clause that any new "minimum level limit" cannot be lower than previous limits and minimum level limits would help stop that. The criteria the Minister must consider around "local displacement or extinction" (50(2)(c)(i) seems too narrow and the "risk of irreversible or significant harm" (50(2)(c)(ii) is too high. We should never be even close to that bar. The power given to the Minister is broad so it should be subject to a requirement to <i>have particular regard to</i> advice from the Limits and Targets panel 	<p>lower than previous minimum level limits <i>and</i> Further strengthen the criteria in subclause 50(2) <i>and</i> Require the Minister to "have particular regard to" the advice of the Limits and Targets panel <i>and</i> Shift this clause to be with the other clauses on limits (possibly between clauses 38 and 39)</p>
51 Discretionary targets	<ul style="list-style-type: none"> clarify that the purpose of discretionary targets is to define the desired future state that will achieve improvement in a system outcome, a framework outcome or a plan outcome that discretionary targets cannot undermine a limit or a mandatory target 		This distinction, proposed purpose and clarification seem sensible.	Support recommended changes
No reference to Limits and Targets panel in relevant clauses	Not addressed	-	While the role of the Limits and Targets Panel is set out in Schedule 6, there is no reference to it in the clause about Limits and Targets. This risks the advice provided being ignored. Adding a reference, probably in clause 39, to advice from the Limits and Targets Panel as something the Minister and RPC's must have regard to when setting limits and targets would ensure	Add reference to Limits and Target panel into relevant clauses of the main Bill (probably clause 39).

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			transparency and reduce the risk that a Minister could simply disregard expert advice. See also comments on Schedule 6 later in this table (which suggest <i>inter alia</i> having the PCE not the Minister appoint the panel)	
53 Monitoring of limits and targets	Minor changes		Original provisions were good. That said, a huge investment in data gathering and analytical capability will be needed to manage limits and targets properly. Our systems cannot cope with what we need from them now let alone what will be needed under the new Bill	The Committee should note the huge investment requirements in its report to the House. This matter has been drawn to the House’s attention annually but little has been done about it.
54-55 Management units	<ul style="list-style-type: none"> the size and location of a management unit should be set to provide flexibility and to maximise opportunities for offsetting and other management approaches. the NPF may provide direction on management units for freshwater and air 		The term “maximise opportunities” implies large management unit areas. The larger the unit the higher the risk that pockets of it will be able to degrade. It also makes the units more difficult to monitor and manage for environmental protection. This is a serious risk to the integrity and ability to manage environmental limits. Allowing for direction in the NPF is no protection at all, particularly if a Minister is minded to maximise development opportunities.	Add “ability to adequately measure and monitor the environmental state of the management unit” as one of the matters to be considered when setting management units (clause 55)
<i>NPF – Other required content</i>				
58 Matters NPF must provide direction on	Add ‘urban trees’ to the list of matters in clause 58		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. The deletion of clause 125 (Tree Protection) proposed in Tranche 3A would provide flexibility to allow the NPF to determine the best way trees can be protected while balancing private property rights.	Support

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Effects Management Framework (EMF)				
61 Effects management framework	<ul style="list-style-type: none"> • 'redress' is replaced with 'compensation' • offsetting and compensation is only allowed where it meets the requirements set out in Schedules 3, 4 or 5 (whichever applies) • if the requirements of the EMF are not met the activity cannot proceed unless it is authorised by a rule made under clause 64 that substitutes other requirements. 		Narrowing when offsetting and compensation can apply is an important improvement. The clarification that activities cannot proceed (unless exempted) is also stronger. <i>However, ongoing provision for exemptions is problematic from an environmental perspective. (See below)</i>	Support (except exemptions)
62 When EMF applies	Delete restrictions on EMF applying in areas, other than specified cultural heritage and significant biodiversity areas. This will give more freedom to apply the EMF in other areas		MfE's recommendation to allow more freedom to apply the EMF more widely is a positive for the environment. However, the EMF should also be required to be applied in all Places of National Importance (PNIs) not just specified cultural heritage and significant biodiversity areas. If a place is of national importance it is important that the adverse effects on that place to be as small as possible.	Support MfE recommendations <i>and</i> Require the EMF to apply to all PNIs.
63	Relocate the substance of clause 63 (Requirements when framework applies) into clause 61 so that the schedules become part of the EMF			Support
64 Scope of possible exemptions	Inter alia: <ul style="list-style-type: none"> • state that the framework rules can require effects to be managed in a way that is more stringent than the EMF • state that the framework rules can only allow effects to be managed in a way that is less stringent than the EMF if [certain criteria are met] 		Providing exemptions to the EMF which already provides significant flexibility for projects that must occur in protected areas is environmental risky. Narrowing the exemptions significantly could be a reasonable middle ground. Whether MfE's recommendation is narrow enough is highly dependent on the specific drafting proposed.	<i>Highly conditional</i> support – dependent on adequate drafting
	Make it clear that if an activity is covered by a framework rule made under clause 64 then its effects on the relevant PNI cannot be considered under any other rule or in decisions on a notice of requirement		There may be cases where the adverse effects a particular activity can managed appropriately in some PNIs but not others (eg PNIs that may be particularly ecologically sensitive). This provision might preclude more stringent	Discuss with MfE how such a situation might be addressed.

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			control that would be appropriate for that particular environment.	
66 Limits to exemptions	Keep the list of activities as proposed, with various minor drafting changes.		<p>As noted in the departmental report “the extent of the activities that should be eligible for exemptions is a value judgment for the Committee.”</p> <p>The drafting changes proposed seem to be sensible clarifications, if those exemptions are to remain.</p> <p>Exemption from the effects management framework (EMF) essentially places no controls on the environmental impacts of those activities. This is very risky for the environment. The list of activities that could get an exemption is huge. They allow almost any activity to be exempt even from the already very flexible requirements of the EMF. Assuming MfE’s proposed drafting changes are adopted, the activities in the PCE’s view that pose the biggest risks if granted exemptions are:</p> <ul style="list-style-type: none"> • (g) <i>activities in a place identified as a significant biodiversity area solely because of the presence of a plant species listed as threatened or declining in the New Zealand Threat Classification System, unless the species is rare within the region or ecological area</i> (Species are threatened for a reason) • (i) <i>subdivision</i> (The departmental report states “subdivision does not generate adverse effects in and of itself”. This is casuistry. No, lines on a piece of paper don’t have an effect. But they are only ever put their to permit activities with effects. If subdivision doesn’t 	<p>Support MfE’s recommended drafting changes</p> <p><u>and</u></p> <p>Consider removing specific activities, in particular (g), (i), and (o). Priority should be given to removing (o)</p>

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			<p>generate adverse effects why does it need an exemption from the EMF? Creating this exception inevitably raises the expectation that other activities will be allowed.</p> <ul style="list-style-type: none"> (o) <i>activities that will provide nationally significant benefits that outweigh any adverse effects of the activity</i> This is a particularly broad and subjective judgement to leave with the Minister of the day so it is potentially high risky. It could, for example apply, to a chemical factory if the Minister thought the benefit outweighed the adverse effect. The other exceptions already provide sufficient scope for large public good infrastructure and other public good projects so exception (o) is effectively redundant. 	
National Planning Framework				
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"> 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 subclause 110(1)(a) to clarify that a plan can direct the use of an adaptive management approach if there is 		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

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	likely to be a significant adverse change in the environment <ul style="list-style-type: none"> 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). 			
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
92 Relationship between framework rules and designations	Amend clause 92: <ol style="list-style-type: none"> to ensure how and when the NPF applies to designations at different points in time is clear by being more specific with terms associated with designations and with the steps in the process for making designations 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. 		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 influence the environmental effects of designations. 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.	Scrutinise the drafting proposed to implement these recommendations.
Natural and Built Environment plans – Preliminary matters				
96 & 97 Purpose & Scope of plans	<i>Inter alia:</i> <ul style="list-style-type: none"> Change wording ‘further the purpose’ to ‘assist in achieving the purpose’ clarify that NBE plans have a role in providing for the needs of communities amend clause 104 to include the following additional circumstances for when an NBE plan can be inconsistent with an RSS: <ol style="list-style-type: none"> when it would conflict with the achievement of limits and mandatory targets set by the NPF in circumstances when the Environment Court has considered a challenge to an NBE plan provision 			Support
99 General considerations	Delete clause 99 because further conflict resolution provisions have been embedded in the purpose (clause 3),		How this change works will depend on how clauses 3, 5 and 6 are reworded.	

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
relevant to RPC decisions	system outcomes (clause 5) and decision-making principles (clause 6). The NPF will also expand on how conflicts between outcomes can be resolved.			
Content of plans				
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 content in an NBE plan will ensure that it is not forgotten.	Retain reference to cumulative effects.
	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			

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
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"> • Add the following additional matters to which an RPC must 'have regard' to: <ul style="list-style-type: none"> ○ any management plans or strategies prepared under other Acts ○ 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) ○ 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 ○ the Crown's interests in the coastal marine area. • 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. 		These are all sensible additions	Support
108 Matters that must be disregarded when preparing or changing plans	<ul style="list-style-type: none"> • Amend subclause 108(b) to limit "stopping places" to those in rural areas and on state highways. 		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 or land transport assets that are not stopping places;</i>
	<ul style="list-style-type: none"> • Amend subclause 108(c) to ensure refers to effects associated with an activity that may obscure the 			

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	visibility of commercial signage or advertising and ensure it is not permissive of commercial signage and advertising.			
	<ul style="list-style-type: none"> 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 			Support
110 Adaptive management approach in plan	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
112 Specific requirements relating to environmental contributions	<p>Proceed with clause 112 with the following amendments:</p> <ul style="list-style-type: none"> clarifying that environmental outcomes contributions can also be for the purpose of achieving positive outcomes (in addition to positive effects) clarifying that an environmental contribution is also for the purpose of minimising adverse effects. 		Environmental contributions are an important way of funding the achievement of environmental outcomes.	Support
Rules in plans				
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.	Amend subclause 117(7) to include natural hazards. For example: "...to protect other property from the effects of surface water and natural

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			<p>This gap could be addressed by expanding subclause 117(7) from just 'surface water' to also cover 'natural hazards'.</p> <p>Surface water in the sense of subclause 117(7) is a natural hazard. This suggestion simply expands the sense.</p>	<p><i>hazards, and may require persons undertaking the work...</i></p>
<p>118 Rules about discharges</p>	<p>Various technical changes</p>		<p>Forest and Bird sought clause 118 to explicitly require consideration of cumulative effects. The Department Report notes "Clause 118 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>	<p>Amend subclause 118(2) to include specific reference to cumulative effects.</p>
<p>123 Rules relating to esplanade reserves</p>	<p>Proceed as currently drafted</p>			<p>Support</p>
<p>124 Limitations applying to making of rules relating to water and coastal marine area</p>	<p>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.)</p>			<p>Support</p>
	<p>Clarify subclause 124(7) and (8) only applies to the coastal marine area.</p>			<p>Support</p>
			<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</p>	<p>Delete "<i>unless it is consistent with the purpose of this Act to do so.</i>" from subclause 124(7).</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			<p>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>	
<p>125 Limitations applying to making rules relating to tree protection</p>	<ul style="list-style-type: none"> • Delete clause 125 which restricts a plan from making rules relating to tree protection. • Amend subclause 646(e) to remove the reference to a specific location. <p>NB These are in addition to the already recommended addition of ‘urban trees’ to the list of matters in clause 58</p>		<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.</p> <p>These changes would provide flexibility to allow the NPF to determine the best way trees can be protected while balancing private property rights.</p>	<p>Strongly support</p>
<p>126 Rules relating to allocation methods for certain resources</p>	<p>Amend clause 126 to:</p> <ul style="list-style-type: none"> • exclude discharges of greenhouse gases to air as a contaminant an NBE plan may include an allocation method for • enable (but not require) NBE plans to include an allocation method for all discharges of contaminants to freshwater other than nitrogen • enable NBE plan rules to allocate resources to specified activities consistent with the approach in section 30(4) of the RMA • enable RPCs to allocate the taking, diverting, or use of “coastal water (other than open coastal water)” • remove the requirement for RPCs to ensure allocation methods are “consistent with” any direction or definition in the NPF 	<div style="display: flex; flex-direction: column; align-items: center;"> <div style="width: 100%; height: 15px; background-color: #90EE90; margin-bottom: 2px;"></div> <div style="width: 100%; height: 15px; background-color: #FFD700; margin-bottom: 2px;"></div> <div style="width: 100%; height: 15px; background-color: #90EE90; margin-bottom: 2px;"></div> <div style="width: 100%; height: 15px; background-color: #FFD700; margin-bottom: 2px;"></div> <div style="width: 100%; height: 15px; background-color: #90EE90; margin-bottom: 2px;"></div> <div style="width: 100%; height: 15px; background-color: #FFD700; margin-bottom: 2px;"></div> <div style="width: 100%; height: 15px; background-color: #90EE90;"></div> </div>	<p>These are all useful clarifications</p> <p>The departmental report says “NBE plans should include an allocation method for [nitrogen]. However, this is not reflected in the actual recommendations.</p>	<p>Support proposed changes <i>and</i> Ensure the redraft clause reflects that NBE <i>must</i> have allocation rules for nitrogen.</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<ul style="list-style-type: none"> clarify the standard consenting process is the default allocation method for resources specified in 126(3). 			
127 Rules may specify applications to be dealt with under affected application pathway	<i>Inter alia:</i> <ul style="list-style-type: none"> rename the 'affected application consenting process' in a manner that best reflects its role as a comparative consenting process 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 		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
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.)			

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
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.	
Resource consenting				
153 How activities are categorised	<ul style="list-style-type: none"> • No change to the four categories, including the expansion of the permitted activity category • Amend clause 153 as follows: <ol style="list-style-type: none"> a) rename the ‘controlled’ category ‘anticipated’ 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) c) persons undertaking activities that are regulated by these rules must comply with relevant rules, or requirements for permitted activities. 		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.	Support these changes <i>and</i> <i>Consider</i> retaining the term ‘controlled’ instead of ‘anticipated’
	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.		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.	Care needs to be taken in drafting that it is not too permissive

<p>154</p> <p>How to decide which activity category applies</p>	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> • 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 • amend subclause 154(2)(b) to replace ‘positive and adverse effects are known’ with ‘well understood effects’ or similar • 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 • clarify in subclause 154(2) all permitted activities will also need to comply with any relevant prescribed limits • 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’ • amend subclause 154(5) to clarify a controlled activity will need to meet relevant prescribed limits • 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 • 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"> 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 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 		<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>			
156 Activities may be permitted with or without requirements	<ul style="list-style-type: none"> • Amend clause 156, and consequentially amend clause 302 to clarify the following: <ul style="list-style-type: none"> a) the link between clauses 156, 302 and 303, subject to discussions with PCO b) all of the circumstances listed in subclause 156(3) will require a PAN. • Amend clause 156 in relation to upholding takutai moana rights 		<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>
158 Discretionary activities or prohibited activities	<ul style="list-style-type: none"> • Amend subclause 158(1)(b) to remove the reference to 'prohibited activity' • 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 • 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). 		<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>
Application for resource consent				
198 Purpose of notification	<ul style="list-style-type: none"> • 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"> a. whether the proposed activity achieves or contributes positively or negatively to achieving relevant outcomes, b. how an activity would comply or contribute to complying with any relevant prescribed limits; and 		<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>c. the extent to which the activity's adverse effects on the environment and on affected persons can be avoided, minimised, remedied, offset or compensated for.</p> <ul style="list-style-type: none"> 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 			
<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"> 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)). delete subclause 200(3)(b) 		<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>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
203 Public notification not required for controlled activity	No changes proposed.		<p>The departmental report states “Controlled activities (‘anticipated’ activities) will not need to be publicly notified. These activities may be limitedly notified”.</p> <p>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>	Amend to clarify that ‘limited notification’ is possible for ‘controlled’ activities.
205 Determination of notification status in plan & 206 Limited notification of consent applications	<ul style="list-style-type: none"> • Amend clauses 205 to 207 to clarify there are two sets of considerations relating to when to notify or not: <ol style="list-style-type: none"> a. for decision makers on the NPF and NBE Plans; and b. for consent authorities when processing a consent application. • 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: <ol style="list-style-type: none"> 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 b. for limited notification - consider if an activity achieves relevant outcomes, complies with relevant prescribed limits, and there are identified affected persons 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. • Clarify that consent authorities will non-notify if: 		<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. 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"> a. the presumption for controlled activity applies, or b. the NBE plan or the NPF precludes notification, and c. there are no identified affected persons (see clauses 201/202 for responses/recommendations), or they have provided their written approvals • Clarify that consent authorities will limited notify if: <ul style="list-style-type: none"> a. the presumption for controlled activity applies, or b. the NBE plan or the NPF requires limited notification, and 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. • Amend the clauses on notification so the consent authorities will publicly notify if: <ul style="list-style-type: none"> a. the presumption for discretionary activities applies, or b. the NBE plan or the NPF requires public notification, or c. a joint application to exchange reserve land under Reserves Act 1977, or d. when an applicant requests it • 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 			
223 Consideration of resource consent application	<p>Amend clause 223(2), <i>inter alia</i>:</p> <ul style="list-style-type: none"> • clarify clause 223 (2)(b)(i) to ‘minimise’ instead of ‘mitigate’ • 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. 		<p>Considerations for decisions on resources consents are an incredibly important part of the legislation. These proposed changes seem sensible.</p>	Support these changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<ul style="list-style-type: none"> • clarify clause 223(2)(e) to refer to the ‘preferred state’ of the future environment rather than the ‘likely state’ • amend subclause 223(10) to require that when considering any matter the consent authority may have regard to: <ul style="list-style-type: none"> 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. This limitation does not apply where framework rules have direct effect; and then 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>Note: the proposal to remove ‘limits’ from subclause 223(2)(c) makes sense because limits are covered by subclause 223(11)</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.		<p>The addition of places of national importance to subclause 223(11) fills a critical gap. The term “contrary” has a particularly narrow legal interpretation. It is a high bar which would put the environment at risk. 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” <i>and</i> Replace the word “an” with “any” in front of “environmental limit” <i>and</i> 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"> • 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. • Make clearer that when considering natural hazards, the effects of climate change on those natural hazards are to be included within those considerations • Amend clause 228(3) to reflect the changes in clause 228(1)(a). 		These are useful clarifications	Support these changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
229 Granting of certain discharge or coastal permits restricted	Amend subclause 229(2) to clarify: a. 'irreversible effects of the waterbody' means significant irreversible adverse effects on the waterbody. b. 'significant adverse effects on aquatic life' are significant adverse effects on current aquatic life at the time of the discharge.		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. The precautionary principle would imply that 'irreversible' should be replaced with 'significant adverse'.	Replace "irreversible" with "significant adverse" (preferred) <i>or</i> Delete "significant" from in front of "irreversible"
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"> Amend clause 232 so it is explicit that a condition of consent for duration can be imposed as a condition of consent. 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). 			Support these changes
233 Adaptive management approach	<ul style="list-style-type: none"> 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. Amend clause 233(2)(f) to clarify that the unacceptable effects are those that were unanticipated at the time of granting the consent. 		Adaptive 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
223, 269, & 270 All related to resource consents and	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		These provisions are important to ensure equity in use of allocation methods	Support proposal for no changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
allocation methods	applications are assessed before others) is not applicable outside of the standard consenting process)			
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.
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"> i. operational consents for infrastructure that forms part of a public ii. wastewater, storm water or sewerage network iii. operational consents for all existing hydrogeneration facilities with iv. an operational capacity of 5 megawatts or greater v. non-operational consents for renewable electricity generation vi. facilities that connect to local distribution networks vii. 'replacement', 'repair' and 'removal' activities across all grounds. 		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"> i. nationally or regionally significant infrastructure ii. water storage that would deliver better environmental and climate change resilience outcomes 		Care needs to be taken that these exemptions are not too broad.	
277 Circumstances when consent	<ul style="list-style-type: none"> • Amend clause 277 to clarify that the ability provided in subclause (4) for a regional consent authority to review 		Limits (and targets) are critical mechanisms to protect the environment. The clause currently restricts review of consents on the basis of	Amend so that <u>all</u> consents can be reviewed because of

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
conditions can be reviewed	<p>consent conditions is not limited to only when specifically directed in the NPF or NBE plan.</p> <ul style="list-style-type: none"> 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. Amend clause 277(7) to make it clear that the NPF can direct a review of duration. 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. 		<p>'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 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.</p>	<p>"compliance with limits and to achieve targets" <i>and</i> Change the requirement to review consents in exceptional circumstances from 'may' to 'must' <i>and</i> Support the changes proposed in the departmental report</p>
281 Decisions on review of consent conditions	<ul style="list-style-type: none"> 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. Amend clause 281(7) so that it is consistent with amended wording of clause 26(2). 		<p>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.</p>	<p>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</p>
302 Permitted activity notices	<p>Various changes to the administrative provisions of the clause</p>		<p>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.</p>	<p>Support this clause (and the proposed changes)</p>
Clauses 304-314 Affected application consenting process	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> 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) preclude decision makers from determining applications in order of lodgement under clause 314 		<p>These provisions are important to ensure equity in use of allocation methods</p>	<p>Support proposed changes</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Fast-track consenting				
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.	
Proposals of national significance				
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)
Clauses 328-348	Various		All the changes proposed in the departmental report seem sensible.	
How matter decided if direction made to refer matter to board of inquiry or court				
Clauses 349-360			No comment	
Miscellaneous provisions				
Clauses 361-377			No comment	
Water conservation orders				
378 Purpose of water conservation orders	Proceed with clause 378 as currently drafted			Agree
379 Meaning of water conservation order	Amend to clarify that subsection (e) includes maximum contaminant concentrations as well as loads, similar to NPS-FM clause 3.29		The departmental report states "Clause 398 now requires a plan to be amended to incorporate the changes in relation to the WCO. Once changes are incorporated into the plan then the relevant monitoring and enforcement requirements of a local authority	Support

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			with respect to the relevant plan will apply.” This should usefully clarify the role of regional councils.	
397 Relationship between plans and water conservation order	Clarify the relationship between subclause 396(2) and 397(2) and suggest these may be more clearly provided for in a single clause.			Support
Freshwater farm plans				
Part 6 subpart 2 as a whole (clauses 399-415)	We do not support removing Part 6 subpart 2 or providing it as regulations under the NPF. ... It is important not to create uncertainty or impede progress in using freshwater farm plans to improve freshwater outcomes. We do not recommend any changes being made to the Bill in response to the general comments above.			Agree
Contaminated land				
417 Polluter pays principle	Work with PCO regarding the most appropriate placement of the definition currently in clause 417 so that it can be applied more widely across the Bill.		The reach of the polluter pays principle should be extended to have general application rather than just in respect of contaminated land.	Support
422 -423 Classification of significantly contaminated land & EPA’s role in relation to contaminated land sites of national significance	<ul style="list-style-type: none"> • Proceed with clause 422 as currently drafted. • Update clause 423 to reflect the language used in clause 422 in respect of the classification of sites as significantly contaminated land sites. 		Providing provision for a national agency to deal with nationally significant contamination is sensible.	Support

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			<p>The provisions of clauses 416-427 set up a good system to dealing with one form of pollution (contaminated land). There is a huge, missed opportunity to extend these provisions to other forms of pollution. That would truly give effect to the polluter pays principle. (Such an extension was proposed in the PCE submission.)</p>	<p>Extend the provisions to other types of pollution.</p>
Coastal matters (clauses 428-496)				
			No comment	
Designations				
497 Interpretation	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> 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. 			Support this addition
	<p>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.</p>		This is a critically important clarification.	Support this change.
500 Criteria for approval as requiring authority	<ul style="list-style-type: none"> 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: <ol style="list-style-type: none"> the approval of the applicant as a requiring authority is appropriate for the purposes of carrying on the project or work. 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. 		<p>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.</p>	Support the proposed changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<ul style="list-style-type: none"> • 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"> a. the project or work provides a significant public benefit necessary for the functioning of the economy, for people’s health and safety or the protection of the environment 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. c. the size and scale of the project or work is such that approval as a requiring authority is appropriate. d. the public benefit must be for the general public or a sufficient section of the public 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) 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. • 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). • That the Minister may also consider any other matter relevant and reasonably necessary to determine the application. 			
Clauses 503-505	<i>Inter alia:</i>			Support this change

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Designation instruments	<ul style="list-style-type: none"> 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. Clarify territorial authorities (rather than the RPCs) are responsible for processing and make recommendations on NORs and CIPs outside of the plan-making process 			
Clauses 506-510 Process for designations	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> 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. 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] Clarify in clause 507, that a NoR and/or Primary CIP may be limited notified, when all directly affected parties can be identified. Amend clause 509 to provide for any persons notified of a NoR or primary CIP to be able to make a submission direct officials to work with PCO to include all the procedural and administrative steps necessary for the NOR, primary CIP and secondary CIP process 		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"> 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. 		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	

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Matters relevant to natural and built environment plans - Heritage protection orders				
General comment	The policy intent is to move away from permanent long-term heritage orders to protection through plan provisions.		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.	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)
543 Notice to territorial authority	<i>Inter alia:</i> <ul style="list-style-type: none"> 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 clarify subclause 543(2) includes protection of a geoheritage place 		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.	Amend subclause 543(1) to ensure the place itself is protected <i>and</i> Support the proposed clarifications
Places of National Importance, significant biodiversity areas, high-value biodiversity areas				
555 Interpretation	Amend the definition of ‘place of national importance’ in clause 555 to cover: <ul style="list-style-type: none"> an area of the coastal environment, or a wetland, or lake, or river or its margins that has outstanding natural character <u>exceptional value at the national scale</u> an outstanding natural feature or outstanding a natural landscape <u>or natural feature (including</u> 		The proposed change from ‘outstanding’ to ‘exceptional value at the national scale’ will severely narrow the sites that qualify, to the detriment of the environment. Moving away from the existing ‘outstanding’ definition which has jurisprudence to support it will bring a fresh round of legal uncertainty in its wake. The change will also limit the ability of an RPC to protect areas that are outstanding or	Retain the original wording of clause 555.

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<u>geoheritage</u>) that has exceptional value at the national scale		exceptional regionally (which would be covered by the 'outstanding' term). There does not appear to be another clear mechanism by which they can do that.	
	Include specific mention of 'geoheritage' in the definition			Support addition of 'geoheritage' in clause 555
556 Identification of places of national importance	<i>Inter alia:</i> <ul style="list-style-type: none"> require the NPF (rather than NBE plans) to identify the outstanding natural landscapes and natural features (including geoheritage) places which qualify as PNIs; 		<p>While identifying PNIs in the NPF is a good idea, it should not be the only place they are required to be identified. It should be possible for outstanding landscapes and features to be identified in NBE plans, especially if they have not been identified in the NPF. Limiting it only to places identified in the NPF by the Minister will likely result in many places that deserve protection from not being protected.</p> <p>This proposed change highlights that these protections are only for places of national importance and ones that meet a very high bar. It seems to open a gap that would prevent places of regional importance being both identified and having similar protections. Not having mechanisms to identify and protection places of regional importance is a serious omission from an environmental protection perspective.</p>	<p>Allow PNIs to be identified in both the NPF and NBE plans.</p> <p>Redraft to allow for the identification and protection of places of regional importance, with the same protective measures available.</p>
	<ul style="list-style-type: none"> prevent the Minister from making a SBA exempt from the identification requirements if it has already been assessed by an RPC or regional council; 		If the Minister is satisfied that the work done by a RPC or regional council in identifying a SBA was sufficient they should have the flexibility to approve it as a PNI without having to redo that work.	Do not support this proposed change
	<ul style="list-style-type: none"> require the NPF or plan provisions which identify a PNI to set out the attributes or values of a place that qualify the place as a PNI; 		The requirement that the Minister consider costs of identification, potential use for development and investment certainly seem designed to ensure almost no PNIs get	Do not support the proposed additional requirements that the Minister must consider (ie cost, likelihood; investment certainty).

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<ul style="list-style-type: none"> • require the Minister, in determining what SBAs must be identified in NBE plans, to consider: <ul style="list-style-type: none"> i. the costs of identification ii. the likelihood that the type of SBA may be affected by use or development; and iii. whether identification will improve investment certainty. 		<p>identified as they would tip the balance well in favour of development rather than the environment. Development interests are already covered by the proposed exemptions regime.</p> <p>Conversely, the proposed requirement to articulate the attributes of a place that qualifies is a good addition.</p>	
558 Considerations relevant to setting criteria	Amend subclause 558(2) to empower the Minister to determine whether and where the consideration of representativeness applies within the coastal marine area, and to apply it to a part or parts only of the coastal marine area.			Support the change
559 Protection of places of national importance	<ul style="list-style-type: none"> • Define 'trivial' as 'de minimis' • Clarify that consent authorities are required to confirm that an activity will have no more than trivial effect, including for permitted activities • Clarify exemptions are via way of rules 		<p>Most of the points of clarification proposed by MfE seem sensible and reasonable. As the proposed changes are extensive, care will be needed in getting the drafting right, especially around treatment of exemptions, so as not to inadvertently create loopholes that would allow activities with more than trivial effects to proceed without adequate management protections.</p> <p>One way to do that would be to specifically require that any rule creating an exemption is required to specify how adverse effects must be managed.</p>	<ul style="list-style-type: none"> • Close scrutiny of the proposed redrafting when available. • Consider adding provision to specifically require that any rule creating an exemption is required to specify how adverse effects must be managed.
561 Protection of significant biodiversity areas	<ul style="list-style-type: none"> • retain the clause as currently drafted except that the word 'significant' be changed to 'substantive' • relocate the content into clause 559 to improve navigability for readers 			Support changes
562 Criteria for identifying HVBAs	<p>No specific recommendations section, but in the text MfE recommended:</p> <ul style="list-style-type: none"> • HVBAs should be appropriately identified in NBE plans if they have been identified 			Support these changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<ul style="list-style-type: none"> • areas that are not identified in NBE plans but are identified during consenting should be covered. • some changes sought by the NZ Ecological Society be incorporated into the revised definition of HVBA, particularly clarity about how a nationally critical species is defined in accordance with the NZ Threat Classification System (which is periodically updated). The IUCN system is referenced instead in the context of ecosystems, as ecosystems are not included in the NZ Threat Classification System. 			
563 Limits to activities within HVBAs	<p>Inter alia</p> <ul style="list-style-type: none"> • require HVBAs in terrestrial and intertidal areas to be appropriately identified in the relevant plan • require any other HVBAs known to the RPC to be appropriately identified in the relevant plan • specify that RPC must treat the approach to identifying HVBAs as a 'major regional policy issue' (Clause 14 of Schedule 7) • require that before issuing a permitted activity notice, granting a consent or making a notice of requirement, the consenting authority or requiring authority must take reasonable steps to confirm whether the activity will have a more than trivial effect on a HVBA. 			Support these changes
Subdivision of land				
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.

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
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
Reclamations				
Cluses 597-603			These clauses all cover administrative issues to do with registering reclaimed land on survey plans. No comment.	
Esplanade reserves, esplanade strips, and access strips				
604 Purposes of esplanade reserves and esplanade strips	Amend clause 604 to: a. align more closely with the language and wording used in section 229 of the RMA 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 c. include 'riparian yards' to the list of purpose of an esplanade reserve or esplanade strip.			Support these changes
Clauses 605-614			No comment	
Subdivision consent conditions and related provisions				
Clauses 615-629			No comment	
Exercise of functions, powers and duties of central and local government				
636 Functions of Minister of Conservation	Delete subclause 636(d) - the function "to monitor the effect and implementation of coastal permits".		The departmental report notes this was "an unintended expansion of the Minister of Conservation's role". While it may have been unintended it seems entirely appropriate given the general role the Minister of Conservation has in the coastal marine area.	Retain subclause 636(d)
Environmental Protection Authority Clauses 639-641	Proceed with clause 639 to 641 as currently drafted.		In addition to the functions proposed in the Bill, there is a missed opportunity to provide greater roles for the EPA (see PCE submission). While not practical to address given the	Support departmental report <u>and</u> Consider noting in the Committee's report the potential

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			Committee's timeframes, policy work should begin to consider future changes.	for a greater role by the EPA in future.
644 Matters for which regional councils and unitary authorities responsible	<ul style="list-style-type: none"> clarify that when regional councils (and territorial authorities in clause 646) are considering natural hazards, they must give- consideration to the effects of climate change as an exacerbator of those natural hazards. add 'avoiding' to 'mitigating or reducing the risks arising from natural hazards'. 			Support
646 Matters for which territorial authority or unitary authority responsible	<i>Inter alia:</i> <ul style="list-style-type: none"> amend subclause 646(a)(iii) to refer to maintaining and enhancing biodiversity. add the emission of light pollution and its effects as a responsibility for territorial authorities. 			Support
649 Local authorities to prepare compliance and enforcement strategy	<i>Inter alia:</i> <ul style="list-style-type: none"> amend subclause 649(2) to add how local authorities will monitor and enforce their own compliance. amend subclause 649(2) to add matters a local authority will consider when determining whether to waive compliance under clause 157. amend subclause 649(2)(a) to refer to 'how compliance monitoring will be carried out, including how mātauranga Māori and other specialist input is to be integrated'. 			Support
Freshwater Working Group				
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	

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
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
Compliance and enforcement				
694 Interpretation	<ul style="list-style-type: none"> Delete RPCs from the definition of 'NBE regulator' Various other definitional changes 			Support these changes
696 Scope and effect of declaration	Amend to clarify that the Environment Court has the ability to make a declaration in the course of proceedings where a formal application has not been made.			Support this changes
700 Scope of enforcement order	Amend to include the new civil remedies within the scope of an enforcement order, by enabling the courts to impose a monetary benefit order (clause 718), an adverse publicity order (clause 731), or pecuniary penalties (clause 776) as part of an enforcement order.			Support this changes
718 Monetary benefit orders	<ul style="list-style-type: none"> Amend to provide for a person to respond to the NBE regulator's submission regarding the amount of the monetary benefit order. Amend to enable an NBE regulator to apply to the District Court or Environment Court for a monetary benefit order. Amend to clarify the 'contravention' is a contravention of the requirements in the Bill. 		Monetary benefit orders would add a significant new tool to the compliance and enforcement toolbox	Support this clause and the proposed changes
719 Environment Court may revoke or suspend resource consent	<i>Inter alia:</i> <ul style="list-style-type: none"> amend clause 719 so that it is clear suspension or revocation of a consent may be in part or full. clarification that a resource consent holder is not entitled to any compensation or redress as a result of any losses that might be suffered by the revocation or suspension amend subclause 719(1) to include reference to the RMA, so that non-compliance under the Act and the RMA can be considered; and various other legal process improvements 		Revocation or suspension of consents would be a significant new tool to the compliance and enforcement toolbox.	Support this clause and the proposed changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Enforceable undertakings Clauses 723 - 730	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> • amend subclause 724(1)(b) to link the amount of compensation to the remediation of any actual or likely adverse effects arising from the contravention; • delete subclause 724(2) and replace it with a requirement for the NBE regulator to apply the amount collected under an undertaking to the purpose for which it was collected • amend subclause 724(4)(b) to require the notice to specify the compensation or action taken to avoid, remedy, or mitigate any actual or likely effects arising. • amend clause 724 to require the name of the person providing the undertaking to be published. • amend subclause 728(4) and/or 730(1) to make it clear that proceedings for the original contravention can be brought if the enforceable undertaking is not complied with. 		Enforceable undertakings would add a significant new tool to the compliance and enforcement toolbox	Support these clauses and the proposed changes
731 Adverse publicity orders	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> • amend clause 731 so that adverse publicity orders can be made for all contraventions of the Bill 		Adverse publicity orders would add a significant new tool to the compliance and enforcement toolbox	Support this clause and the proposed changes
Financial assurances Clauses 732-750	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> • clarify the provisions so that it is clear that a financial assurance can be required by consent authorities as a condition of consent. • amend subclause 743(6) so that money recovered goes to the NBE regulator. • amend clause 745 to clarify that it applies in the event of immediate or serious risk to life or the environment. 		Financial assurances would add a significant new tool to the compliance and enforcement toolbox	Support these clauses and the proposed changes
766 Insurance against fines unlawful	No change, except clarify that the prohibition on insurance only relates to insurance arrangements and does not prohibit standard apportionment of liability via indemnities between commercial parties involved in an activity.			Support this clause and the proposed change

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Pecuniary penalties Clauses 776-780	<i>Inter alia:</i> <ul style="list-style-type: none"> amend clause 776 so that it aligns better with the wording of the other CME provisions, so that pecuniary penalty orders are available if the court is satisfied there has been a contravention or likely contravention of the Act. amend clauses 778 and 779 by replacing natural and physical resources with natural environment. 		Pecuniary penalties would add a significant new tool to the compliance and enforcement toolbox	Support these clauses and the proposed changes
781 Cost recovery	Amend to clarify that it would cover cost recovery for consent and permitted activity monitoring and taking enforcement actions, including any investigations or monitoring related to that enforcement action.			Support this clause and the proposed change
<i>Provisions relating to monitoring, etc (clauses 782-787)</i>				
783 Local authorities to monitor to effectively carry out their functions and duties under this Act	<ul style="list-style-type: none"> amend subclause 783(1)(g) to refer to monitoring permitted activities being carried out in the region or district, where monitoring of those permitted activities is required by the NPF or relevant NBE plan delete subclause 783(3)(b) to avoid duplication and overlap with sub-clause 783(5) proceed with subclauses 783(2), (5) and (6) as drafted amend subclause 783(7) to clarify that the RPC must produce an assessment of the 'state of the environment' and change the timeframe for reporting from five to six years. 		Environmental reporting and monitoring are crucial to ensure we can understand and manage the environment.	Support this clause and the proposed changes
784 Local authorities and planning committees to take action in significant risk situations and other circumstances	Delete clause 784 (because the Bill's general requirement to take action (under subclause 783(4)) provides a more straightforward and efficient way to require action in response to the several forms of monitoring that will be carried out under the NBA)		Deleting the clause would lose the sense of urgency and priority needed to respond to "significant risk to ecological integrity or human health" and hence undermine the purpose of the Act. Significant risk will likely already have a legal test defined in case law. If deletion is still preferred, perhaps subclause 783(4) should be amended to include wording along the lines of " , particularly to respond	<i>Either</i> Retain clause 784 <i>or</i> Redraft subclause 783(4) to reference urgent response to significant risk to ecological integrity or human health

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			urgently if there is a significant risk to ecological integrity or human health.”	
785 Regional monitoring and reporting strategies	Amend clause 785 to require RPCs to develop the strategy in collaboration with local authorities and have particular regard to their input.			Support this clause and the proposed amendment
EPA Enforcement Functions				
Enforcement functions of EPA Clauses 795-802	<i>Inter alia:</i> <ul style="list-style-type: none"> amend clause 796 so that the EPA can commence enforcement action against a regional council. 		The EPA has an important role as the backstop for environmental enforcement should councils not be able to do this effectively	Support these clauses and the proposed change
Best Information				
805 Best information	<ul style="list-style-type: none"> relocate clause 805 so that it can be read alongside clause 6 simplify clause 805 by removing subclauses (2) and (3) with any consequential changes to the remaining wording as required 		While well-intended, the previous wording was confusing, difficult to interpret and provided a hierarchy that was not scientifically accurate. These are welcome improvements.	Support these proposed changes
	<ul style="list-style-type: none"> amend subclause 805(1) so it is a requirement for all decision-making to use the best available information at the time a decision is made, clarifying that the obligation is intended to be proportionate to the level of detail required in the particular context. utilise the phrase best available information, using wording similar to section 61(5) of the EEZ Act (ie “best available information means the best information that, in the particular circumstances, is available without unreasonable cost, effort or time”) 		Use of the EEZ Act wording seems sensible. Care is needed in redrafting subclause 805(1) to ensure it does not inadvertently preclude the use of information that, while not immediately available at the time, could be obtained at reasonable cost, effort and time and thus would improve the robustness of the decision.	Support these proposed changes, subject to actual drafting
Existing rights				
Clauses 810-813			No comment	
816 Duty to gather information and keep records	<ul style="list-style-type: none"> amend the Bill to make it clear that clauses referring to natural hazards include the effects of climate change on those hazards. 		This is a critical duty in improving information and knowledge about the natural environment	Support this clause and the proposed changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	<ul style="list-style-type: none"> amend subclause 816(b) to include reference to making information freely available on an Internet site wherever possible. amend subclause 816(3) to more explicitly refer to the public's right to access information. 			
825-827 regarding Money obtained through market-based allocation method	<i>Inter alia:</i> <ul style="list-style-type: none"> 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 amend subclause 826(1)(b) to refer to 'natural hazard events' and not 'other natural disasters' 		These are all useful clarifications	Support proposed changes
System performance				
836 & 837 Evaluation framework & Reporting	No changes recommended			Support these clauses
838 Parliamentary Commissioner for Environment to review evaluation reports	No change to proposed role of PCE proposed, other than to amend subclause 838(1) to clarify that the PCE's review is focused on reviewing the quality and scope of each evaluation report and making any findings or recommendations as necessary.		Imposing this as a non-discretionary requirement of the PCE is unnecessary and cuts across the framing of the Office in the Environment Act which provides all the powers needed. It is remarkable that in the informal engagement with my office on this point, no compelling reason has been advanced as to why the PCE's current legal powers fall short. There would likely be significant resource implications for the PCE's office that could impinge on its ability to deliver other functions. I note that the Committee didn't raise the issue with me. This seems to be a classic case of adding something to the statute book to be seen to be doing something. If a future	<i>Either</i> Delete the clause <i>or</i> Amend to make the review discretionary (not mandatory) using the formula found in the Environmental Reporting Act

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			Commissioner decided to ignore an evaluation report, the select committee has the power to require him or her to take an interest. I think the Committee can be assured that evaluation reports will prove irresistible to Commissioners since these are almost inevitably likely to be more optimistic than realistic!	
Regulations				
Clauses 848-858			No comment	
Schedule 3: Principles for biodiversity offsetting and Schedule 4: Principles for Biodiversity Redress				
Schedule 3: Principles for biodiversity offsetting and Schedule 4: Principles for Biodiversity Redress	<ul style="list-style-type: none"> Retain the substance of both Schedule 3 and Schedule 4 with the amendments described below; and merge the two schedules. Amend the introductory words for the schedules to make compliance with all of the principles mandatory in order for an action to qualify as offsetting or compensation (whichever applies). Replace all references to 'redress' with references to 'compensation to align with changes made to the EMF (see our advice on clause 64). 			Support these changes
Schedule 3, clause 1	<ul style="list-style-type: none"> Amend the title in Schedule 3 clause 1 to read "Adherence to Effects Management Framework Amend to <i>A biodiversity offset is a commitment to provide a measurable conservation outcome in accordance with the principles set out in this schedule to address redress more than minor residual adverse impacts. It should only be contemplated after steps to avoid, remedy, and minimise mitigate adverse effects have been demonstrated to have been sequentially exhausted and thus applies only to residual indigenous biodiversity impacts.</i> 			Support these changes
Schedule 3 clause 2	Add definition of the term 'vulnerable' as follows: <i>Biodiversity that is listed as threatened within the New Zealand Threat Classification System</i>			Support these changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Schedule 4 Clause 2 – Limits to biodiversity compensation	Redraft to make it clear when biodiversity compensation is not appropriate.			Support these changes
Schedule 3 clause 7	Amend Schedule 3 clause 7 to provide that ‘The biodiversity offset must be managed to secure long-term outcomes of biodiversity that last as long as the impacts, and preferably in perpetuity’.			Support these changes
Schedule 3 Clause 8 and Schedule 4 Clause 7 – Time lags	Amend Schedule 3 clause 8 and Schedule 4 clause 7 as follows: <i>The delay between loss of indigenous biodiversity at the impact site and gain or maturity of indigenous biodiversity at the redress site must be the least necessary and must not exceed the consent period or 35 years, whichever is earlier. Minimised so that gains are achieved within the consent period.</i>			Support these changes
Schedule 3 Clause 9 and Schedule 4 Clause 8 – Trading up	<ul style="list-style-type: none"> Delete clause 9 (Trading up) from Schedule 3 and that you renumber clauses 10 to 14 accordingly. Retain clause 8 in Schedule 4 as currently drafted. 			Support these changes
Schedule 4 Clause 9 – Environmental contributions	Retain Schedule 4 clause 9 as currently drafted		Forest and Bird sought the deletion of clause 9 because it provides a direct loophole to the most crucial principle, the ‘limits to redress’. The departmental report notes “ <i>sometimes it will be preferable to require a contribution as opposed to nothing at all.</i> ” The wider question is why should the activity go ahead if it cannot adhere to the effect management framework and cannot meet the other principles of redress?	Delete this clause.
Schedule 3 Clause 11 – Proposing a	Amend Schedule 3 clause 11 so that plans must include timebound requirements if necessary or desirable to			Support these changes

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
biodiversity offset	ensure the long-term outcomes under Schedule 3 clause 7.			
Schedule 3 Clause 14 and Schedule 4 Clause 13 – Transparency	Amend the introductory wording to Schedules 3 and 4 to state that all of the principles are mandatory; and that you replace the word ‘should’ with ‘must’ in principle 14 of Schedule 3 and principle 13 of Schedule 4.			Support these changes
Schedule 6: Preparation, change, and review of national planning framework				
Schedule 6, Clause 3 – Limits and targets review panel	<ul style="list-style-type: none"> The limits and targets review panel be required to provide advice to the Minister on exemption applications including whether the science and evidence underpinning an application is robust, advice on appropriate time limits and any conditions that it recommends are applied. The limits and targets review panel be required to evaluate and advise on the overall sufficiency and comprehensiveness of both current and proposed limits and minimum level targets (potentially renamed) and provide advice to the Minister which must then be addressed in the evaluation report of the NPF proposal. The role of the panel is aligned with its functions set out in clause 557. 		<p>The recommendations in the departmental report are all sensible and should be supported. However, given the heavy lifting that limits and targets are required to do in ensuring environmental protection under the act, the proposed changes do not go far enough. As noted in the environmental limits and targets section (clauses 37-55) there should be reference to the panel in one of those clauses (possibly clause 39)</p> <p>The Minister should be required to do more than just <i>consider</i> the panel’s advice. Rather, the Minister should have to <i>have particular regard</i> to the advice.</p> <p>As RPCs can also set limits and targets, they too should be required to set them based on appropriate scientific advice from the limits and target panel.</p> <p>The independence of the panel is paramount. Having the Minister appoint the panel could enable it to be stacked to align with the Minister’s political perspectives. The Committee should consider whether appointment should sit with an independent</p>	<p>Support proposed changes <u>and</u> Amend so the Minister has to <i>have particular regard</i> to the panel’s advice <u>and</u> For limits or targets set in NBE plans require the RPC to also have particular regard to the advice of the panel <u>and</u> Provide for independent appointment of the panel</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			body, such as the PCE. Or it could be the Secretary for the Environment acting independently (similar to the role proposed for the technical advisory panel proposed as part of amendments to the Environmental Reporting Act).	
Schedule 6, Clause 31 – Preparation of first national planning framework and Clause 32 – NPF proposal containing minimum level targets must be notified by 1 January 2028	<p><i>Inter alia:</i></p> <ul style="list-style-type: none"> exclude the limits and targets review panel from being required to be appointed to advise the responsible Minister on any criteria for identifying significant biodiversity areas for the first NPF. a transitional provision to require the responsible Minister to notify an NPF proposal that contains environmental limits across all of the domains set out in subclause 38(1) by no later than 1 January 2028. 		<p>Environmental limits and targets are the primary form of environmental protection under the new legislation. Promulgating an NPF (and NBE plans and SPAs) without them will leave a serious gap and risks environment degradation.</p> <p>While the argument that it is impractical to set limits and target under the timeframes proposed might seem sensible on the surface, the wider question is how can the system operate properly without them? So it should not be implemented until appropriate limits and targets are available.</p> <p>The proposal to use ‘baseline levels’ is already an environmental compromise that will speed up setting the limits. There is very little reason why those cannot be done quickly.</p>	<p>Require limits and targets to be set in the first NPF <u>and</u> Require that no NBE plan or spatial plan is promulgated without appropriate limits and targets</p>
Schedule 7: Preparation, change, and review of natural and built environment plans				
Schedule 7 Clause 2 Overview of time frames for development of first plans or full review	<p><i>Inter alia:</i></p> <p>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</p>		<p>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 so as not to raise the expectation that certain developments can proceed despite (This is even more important if the PCE’s recommendation</p>	<p>Amend Schedule 7 clause (2)(1)(b) to specify that RSS and NBE Plans are to be developed in parallel and adopted together.</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			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	<p>Make the following changes to Schedule 7 clause 25: <i>Inter alia:</i></p> <ul style="list-style-type: none"> 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 not regulate (including benefits) and where those impacts lie 		<p>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 than the system outcomes.</p> <p>The evaluation report <i>could</i> also outline how the proposal gives effect to the national planning framework. This will provide 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</p>	<p>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</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
	e) amend subclause 25(1)(b) to require the evaluation report to include an examination of any 'reasonably practicable' alternative options		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).	
Schedule 7 Clause 29 Planning committee to report to chief executive on compliance with NPF	Amend to: <ul style="list-style-type: none"> provide more flexibility in the deadline 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 regulations can prescribe the content as well as the form of the report. 		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.	Support <i>and</i> Add reference to [mandatory] targets
Schedule 7 Clause 30 Review of full plan development and review by appointing body	Amend Schedule 7 subclause 30(2) so it is a mandatory rather than optional requirement to refer draft NBE plans back to appointing bodies		This is an important step for local voice and public accountability as it is the local authorities themselves who are elected.	Support
Schedule 7 Clause 36 Certain persons may make secondary submissions	<ul style="list-style-type: none"> Enable the RPC to make a secondary submission on a plan (to itself) 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. That the timeframes for secondary submissions are doubled to 40 working days. 		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.	Support
Schedule 7 Clause 47 Initiation of urgent process for making plan change	<i>Inter alia:</i> <ul style="list-style-type: none"> amend Schedule 7 clause 47 to make it clear that the RPC itself can initiate an urgent plan change 		The provision in this clause to allow urgent changes to avoid significant harm to the environment or to human health is critically important.	Support

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Schedule 7 Clause 51-53 3-yearly plan review reports	<i>Inter alia:</i> <ul style="list-style-type: none"> 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 		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"> amend subclause 73(1)(c)(ii) to ‘give effect’ to the NPF rather than ‘not be inconsistent’ with it. 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 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. 		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 the environmental protections set by the Act it is worth specific mention.	Support proposed changes <i>and</i> Add specific reference to breaching limits and achieving mandatory targets.
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	Two around consultation with iwi and hapū and qualification to be an IHP Chair		Composition of IHPs is heavily weighted towards cultural knowledge (3 of 8 criteria) and	Amend subclause 93(2) to specifically include <i>either</i> a more

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
IHPs established for each region			<p>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, 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</p>	<p>general reference to environmental expertise <i>or</i> to expand the list of expertise to ensure that it covers all the environmental domains.</p>

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
			that are locally or regionally significant” could also be added.	
<i>Appointment and Operations of Regional Planning Committees</i>				
Schedule 8 Clause 14 General obligations of all appointing bodies	A range of procedural changes but deliberately chose not to have a requirement to ensure RPCs have the right mix of skills and experience		Members of RPCs represent ‘local voice’ <i>and</i> have a specialist job to make planning decisions and rules. Doing that part of the job requires expertise and experience. Clause 14 should contain a list of expertise relevant to environmental planning and require that any member appointed to an RPC have experience in at least one of those areas. That would not necessarily guarantee RPCs had a balance of expertise across all the areas, but would help ensure that all members had at least some relevant expertise.	Add a requirement that all members appointed to an RPC have relevant expertise (as defined by a list of expertise added to clause 14 or elsewhere)
<i>Schedule 10: Information required in application for resource consent</i>				
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	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))

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Information required in all applications				
Schedule 10 Clause 6 Information required in assessment of environmental effects	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 low probability with a high potential impact, is undertaken. 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. c. Schedule 10 clause 6(3) to clarify consultation requirements in relation to clause 163.		Limits and targets are critical environmental protection measures in the proposed new system. So are PNIs, HBVA and SBAs. Resource consent applications should be required to assess how they might be impacted by a proposed activity. The proposed changes in the departmental report are sensible.	Add separate subclauses to require assessment of how the activity will: <ul style="list-style-type: none"> Comply with limits and help achieve targets Impact on PNIs, HBVA and SBAs <i>and</i> Support MfE's recommended changes
Schedule 11: Provisions about esplanade strips and access strips				
Schedule 11 Clause 9 How [a public access] easement is varied or cancelled			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.	Add a requirement to clause 9 to require public notification of proposals to vary or cancel an easement.
Schedule 11 Clauses 19-21 How esplanade strips are varied or cancelled			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.	Amend clauses 19, 20 and 21, as appropriate, to include public notification.
Schedule 12: Incorporation of documents by reference in plans				
			No comments	
Schedule 13: Environment Court				
Schedule 13 15	Amend Schedule 13 clause 15 by deleting clause 15(k)		It seems odds that there is no reference in this clause to clause 696 (which sets out a range of	Consider whether further references are necessary

Provision Clause(s)	Essence of MfE Recommendation		PCE Comment	PCE suggestion(s)
Power to make orders and declarations generally			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.	
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.
Schedule 15				
Schedule 15 Clauses 38-39 <i>regarding</i> consent duration	<i>Inter alia:</i> <ul style="list-style-type: none"> • increase the maximum duration that affected resource consents can be granted for to 5 years after allocation methods in NBE plans apply • Various related to which provisions to apply depending on when consent is lodged. 		These seem sensible to enable a transition to using allocation methods	Support proposed changes