PCE Comment on Departmental Reports 1–3

Departmental Report – Report 1

MfE Recommendation/Topic		Comment	PCE Recommendation
Plans and plan-making			
20	Bespoke provisions PB cl 79, NEB cl 96	The MfE response mischaracterises the flexibility available to local authorities. There will not always be a genuine choice available to them, as national instruments could mandate when standardised provisions must be used. This amounts to Executive overreach. If the drafting and procedure for developing standardised provisions presents a more attractive option(s), they will be preferred – without the need to mandate their use.	Remove the ability for national instruments to require the use of standardised provisions.
21	Core obligations in plan preparation PB cl 80, NEB cl 97	There is risk in excluding councils from considering management plans and strategies under other Acts. This could lead to disjointed and contradictory management of those objectives, which will be inefficient and potentially costly.	Consider adding that councils may consider management plans and strategies prepared under other Acts.

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26	Evaluation reports PB cl 87 and 88, NEB cl 107	The rationale for reducing analysis, as compared to RMA s 32 reports, is only justified if there is a comprehensive and robust process for the creation of national instruments and standardised provisions. That process was the subject of extensive submissions, which critiqued the scope of public participation, Ministerial discretion and access to justice.	The narrow scope of evaluation reports will only be justified if the process for developing national instruments and standardised provisions is amended to ensure a robust approach is applied.
29	Future provisions PB cls 93–96	The MfE response refers to the policy intent of future provisions ‘is to provide an efficient means for land release and housing growth as infrastructure comes online’. However, cl 93 does not specify that future provisions are solely for that purpose and could relate to anything that is regulated under the Act.	Consider the drafting of the relevant clauses regarding future provisions and ensure that this mechanism is confined to their purpose, as specified by the policy intent.
30	Consents changing plan provisions PB cls 97, 98, 144 and Sched 6 cl 5	This is a powerful mechanism to change plans and give rise to natural justice issues. A consent application could be seeking a plan change, which – if it proceeded under a plan change process – would have allowed those who have standing to submit. This consenting mechanism appears to be designed to exclude participation rights.	Where a consent is permitted to seek a plan change, this should be notified (similar to a regular plan change process), allowing those with standing to make a submission on the consent application.

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41	Audit of proposed plans PB Sched 3, cl 13	Plans are required to implement higher order instruments, placing a statutory obligation on local authorities to do so. No justification has been provided for the chief executive to audit proposed plans, other than for this to provide a mechanism for the Minister to intervene, if changes are recommended by the chief executive and have not been applied. This amounts to a Ministerial enforcement provision.	There is no rationale for the chief executive to conduct a compliance audit, or for the Minister to intervene. With reference to Ministerial powers and the interface with the Local Government Act, see comment in relation to DR2, MfE recs 2–5. On that basis, the Minister's power to intervene should be removed.
43	Standing to submit PB Sched 3, cl 17	Submitters have commented on the inefficiencies of limiting standing to qualifying residents. The policy intent underpinning this reform is to increase efficiency and save costs. The policy rationale for restricting eligibility to submit does not express a cost/benefit analysis that supports the limitation on participation. Based on submitters comments, it seems unlikely that the benefit of excluding participants will be outweighed by the administrative burden of proving eligibility.	The limitation on those who have standing to submit on the proposed plan is not justified by cost/benefit analysis and should be removed.
45	Decisions on IHP recommendations PB Sched 3, cl 27	The MfE response, which justifies a timeframe of 12 months on the basis of system efficiencies, lacks sufficient analysis given the significance of submissions and the practical constraints they outline. Submitters have suggested this is extended to 18 months, which is not an unreasonable extension.	In the absence of compelling policy rationale for justifying why an extra six months is not appropriate, this should be amended to at least 18 months.

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48	Appeals PB Sched 3, cls 32–35	Only the content of a standardised provision/zone is consulted on when these are developed, not the basis on which a local authority selects which standardised matters to adopt in for its plan.	Appeal should be allowed on the choice of standardised provisions/zones selected by a local authority. This is not an appeal on the merits of the standardised content, but the adequacy of the selection that has been made.
Consenting and permitting			
61	Direct referral	The MfE response has ignored significant submitters (councils and industry) who are the big resource management system users, and submit that direct referral should be continued. The fast-track approvals process is not an adequate substitute, which has limited notification/opportunity to comment. Opportunity to submit on national instruments is no substitute for the opportunity that direct referral would provide, as discussed by submitters. It is also near impossible to anticipate the matters raised by complex projects/developments, and to have these addressed by national instruments, rather than as they arise in context. If the planning system is supposed to be responsive to the need of development and industry, there is no reason to exclude access to a process that those sectors are asking remains.	Direct referral should be carried over from the RMA into the Bills.

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63	Use of ‘permit’ PB cl 105, NEB cl 127	Submitters noted potential confusion with the term ‘permitted’ – you could have a permit, permitted, and permits. And permits may refer to the consent or being allowed to do something. This leads to confusion in the terms that are used across the Bills.	Consider alternative language to avoid interpretation confusion.
73	Deferral pending application for additional consents/permits PB cl 116, NEB cl 137	The MfE response does not provide analysis to justify the assertion that there must be complete independent separation of the processes under the two Acts. It is difficult to see how separation would be more effective and efficient than if the Acts worked together. From the outset of the Bills, they are not supposed to operate independently of each other – for example, conflicts between the goals of the two Acts are to be revolved in national policy direction. For consistency and workability across the Acts, and how users will interact with the systems, cross-Act deferral is necessary and should be included. From the Expert Advisory Group report p.15 “Given the interconnected nature of planning and environmental management issues, although each Act will have its own purpose, they will have similar architecture and will need to ‘speak to’ each other in several places. Some processes are likely to be repeated.”	Submitters, the system users, have requested that cross-Act deferral is included in the Bills, where applications for additional consents/permits are sought by applicants. For effective and efficient administration of both Acts, a mechanism for cross-Act deferral should be added.

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76	Requests for information PB cls 119–122, NEB cls 140–143	Information requests are sometimes conceivably iterative processes. It is not clear from the relevant clauses or the recommendations if there is sufficient flexibility for additional information to be requested, where a new matter arises from information provided in relation to the initial request or an information deficit otherwise becomes apparent in relation to a matter.	Consider whether there is sufficient ability for additional information requests to be made in circumstances where this is appropriate.
79	Considering relevant RSP provisions for discretionary activities PB cl 139, NEB cl 156	The policy intent appears to be achieving Acts, which operate in an entirely separate and distinct manner from each other (see also comments in relation to MfE rec 73 and relevance of compliance history at MfE rec 83). But the planning system cannot be divorced from the environments in which it exists. This is acknowledged in the General Policy Statements for the Bills and their objectives. It is also reflected in the need for goals across the two Acts to be considered and conflict resolved. It will not be possible for all effects to be anticipated in plans, and broader consideration of effects will be necessary.	MfE rec 79 should not be accepted by the committee.

	MfE Recommendation/Topic	Comment	PCE Recommendation
80	Activities affecting drinking water supply sources PB cl 140, NEB cl 157	The MfE response considers it unnecessary to include a general human health consideration for sources of a drinking water supply that are not registered and otherwise would not be captured by these clauses – relying on the general requirement to have regard to any adverse effects on people when consents or permits are decided. But these clauses set out specific considerations, indicating that the general requirement does not provide satisfactory coverage. Given that there is a specific clause, this may be interpreted as excluding the general consideration and creates a regulatory gap for unregistered drinking water supply sources.	Consider including a requirement that a consent authority must have regard to the actual or potential effect of the proposed activity on human health (generally) to cover situations where the source water supply may not be registered in the Water Services Act 2021.
84	Risk of natural hazard impact on granting consents/permits PB cl 146, NEB cl 163	Blanket exclusions for infrastructure and primary production activities, whether this is prescribed in the Acts or otherwise included, perpetuates the impact of natural hazard events on communities, where those activities with highest risk of effects cannot be prevented by councils. Submitters clearly outlined why local authorities require flexibility to consider natural hazard risk when granting consents/permits. The MfE recommendation, for national standards to prevail over exclusions where appropriate, amounts to Executive overreach and merits careful scrutiny by the committee. This would be unnecessary if the discretion grant consents/permits, in consideration of natural hazard risk, was left with the decision-making authorities.	Given the increase in impacts from natural hazard events, consent/permit authorities should not be prevented from being able to refuse consents where there is a significant risk from natural hazards (e.g. landslide and consequential sediment issues related to forestry).

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101	Review of consents/permits PB cls 168–173, NEB cls 186–191	The MfE response in relation to cancellation of consents is applicant-centric and fails to address the risks to the environment. There must be a point where environmental risk overrides an applicant's interest in securing investment certainty. It is acknowledged that cancelling a consent/permit would be the last resort, having exhausted the other appropriate mechanisms to address adverse environmental effects.	There should be an ability to cancel consents/permits where those consents/permits are shown to be resulting in significant adverse environmental effects, or the environmental effects of those consents/permits are likely to be irreversible.
109	Permitted activity registration PB cl 180, NEB cl 202	Applications may not be readily assessed due to the applicable national standards, which may impose requirements, monitoring and consideration of cumulative effects. This must all be assessed within 10 working days, in addition to all other relevant considerations for registration, and cannot request further information. Assessing applications for registration may amount to a consent process, but without the tools for local authorities to manage that process properly, e.g. adequate timeframes, requesting further information.	Consider if permitted activity registration will amount to a consent process in disguise.

MfE Recommendation/Topic		Comment	PCE Recommendation
112	Information required for assessment of environmental effects PB Sched 6 cl 6, NEB Sched 2 cl 5	NZLS noted that NEB Schedule 2, clause 5 provides that an assessment of environmental effects only needs to address matters to the extent the information is relevant to the provisions of a plan or national rule. They consider this creates a disconnect with the matters a consent authority must consider when deciding an application under clause 156 in relation to the assessment of adverse effects, which does not have the same limitation. They noted that corresponding amendments to clause 156 may be necessary for alignment. The MfE response states that the limited nature of clause 5 ensures that information required in an assessment of environmental effects is not overly burdensome, and that an applicant can provide additional information. This could have the unintended consequence of every local authority, on every application, requesting further information in relation to their decision-making criteria to ensure they've met their statutory obligations.	The advice of the NZLS should be accepted, for information requirements to be set based on the statutory criteria that a consent authority is required to consider, and to ensure that relevant information based on the plan provisions or national rule is also provided.
Subdivision			
117	Interoperability of the two Acts PB cl 181, NEB cl 203	Subdivision may be the first step in cumulative fragmentation, accounting for environmental implications of each development thereafter may not always be sufficient to manage cumulative effects of land use change.	Subdivision controls should also be subject to NEB, to ensure that environmental effects of subdivision are accounted for.

MfE Recommendation/Topic		Comment	PCE Recommendation
Designations			
137	Delegated definition of ‘core infrastructure operation’ PB Sched 5, cl 1	Criteria for identifying core infrastructure operations is intended to be prescribed by regulations, which would then be captured by the infrastructure definition for designations. The report has not addressed the submission of Forest & Bird New Zealand, which sought an amendment remove the power for this to be specified in regulations.	Prescribe statutory criteria for identification as a core infrastructure operation, so that key definitions for designations are located in primary legislation.
149	Strategic need assessment, assessment of designations PB Sched 5, cl 13	In the assessment of strategic need in Sched 5, cl 24(2), this only describes what an assessment excludes, and it is unclear what must be included. A designation for land use may relate to a natural resource use that cannot be approved – for example, because of overallocation, such as a designation for a wastewater treatment plant proposed in a catchment with nutrient overallocation.	Prescribe minimum requirements for strategic need assessment. Notice of a proposed designations should include assessment for conflict with natural environment plans and environmental limits.
156	Clarify strategic need requirements, include consideration of all adverse effects PB Sched 5, cl 24	Following on from comment on MfE rec 149, Forest & Bird submitted that that the recommending authority should have regard to all adverse effects rather than just significant adverse effects in their recommendation decision.	PCE supports the Forest & Bird submission on this point.

MfE Recommendation/Topic		Comment	PCE Recommendation
157	Definitions and conditions PB Sched 5, cl 25	The MfE response relies on a definition of 'no more onerous than necessary' as an outcome of FTAA litigation. The decisions of expert panels under that Act do not constitute precedent. It is assumed this response is a reference to relying on the outcome of appeals/judicial review where this aspect is litigated.	Definitions should be prescribed in primary legislation, rather than relying on the outcome of litigation that may, or may not, occur. Conditions should be able to manage all adverse effects, rather than only those adverse effects that are significant.
168, 169	Cohesive effects management for designations PB Sched 5, cls 36 and 37	It appears that the policy intent is now for the two Acts to operate separately, as independent frameworks, which cuts across the success of regimes like fast-track approvals. From the General Policy Statement, the two Acts were intended to work in tandem. For that to apply in practice, for maximum effectiveness and efficiency, considering a project in its totality (planning and natural environment matters) is logical. Allowing a process where an applicant submits concurrent applications, which inevitably rely on cross-referenced information, increases efficiency for both the applicant and the consenting authority. It also will allow the conditions to be properly considered for a proposed designation, rather than leaving effects management to a construction plan.	Consider changes to the consideration of adverse effects for proposed designations, so that it is a coherent application/notice process for system participants, and the adverse environmental effects of both the designated activity's operations and its construction are addressed at the appropriate stage of the process.

MfE Recommendation/Topic		Comment	PCE Recommendation
Compliance and enforcement			
198	Incentivising environmental protections/disincentivising destruction PB cl 254, NEB cl 278	Matters such as biodiversity require active management. It is not as simple as assessing significance at a point in time, fixing a value, compensating and leaving biodiversity to take care of itself. There must be incentive for the item of value (biodiversity) to be maintained and/or improved. Imposing obligations to that effect through specified rules is one way to achieve the outcome. However, this will increase the value for regulatory relief (factoring in ongoing obligations for landowners), and therefore the chilling effect for protection (increased cost for local authorities).	Alternatives for incentivising protection or disincentivising destruction of biodiversity is addressed in the main text of the PCE adviser's report.

MfE rec	Topic	Comment	PCE Recommendation
Functions of the Minister			
1	Ministerial intervention: Define ‘significant’ PB cl 182, NEB cl 215	Carried over from the RMA, this is a modified power, amended in a way which enables a Minister to decide what matters are significant enough to require monitoring or investigation. Different thresholds for determining significance can be applied, at the Minister’s discretion, to land use and environmental matters.	Either define ‘significant’ for land use matters and environmental or natural resources matters, or prescribe objective criteria as to what the Minister must take into account when characterising matters as ‘significant’.
2	Ministerial intervention: Investigation powers PB cl 201	See Part 10 of the Local Government Act, which provides a comprehensive suite of intervention measures to the Minister if there is a problem with a local authority (e.g. failure to comply with statutory obligations). At the low end, a request for information. At the extreme end, the Minister may call for a general election. This means that the field for Ministerial intervention in the operation of local authorities is already sufficiently covered. The policy justification for excluding matters from these Bills was where other legislation already covered the field. It is possible that the Minister of Local Government is also the Minister responsible for the new Acts, particularly with the establishment of the new Ministry for Cities, Environment, Regions, and Transport. If the portfolios are held by different Ministers, this does not inhibit reliance on the LGA powers, given Cabinet collective responsibility.	Investigation powers are covered by the Local Government Act, rendering it unnecessary to carry over these provisions from the RMA, and it is inconsistent with the underlying policy rationale for the Bills.

MfE rec	Topic	Comment	PCE Recommendation
3	Ministerial intervention: Power to intervene PB cl 202	The intervention powers of the LGA are broad but must be targeted in their application as they must specify what the problem is and the basis for the power to be exercised. The MfE response is inconsistent with the drafting and application of the intervention powers of the LGA. Exercising those powers does not need to be in application 'to the local government system' as a whole. For example, in relation to requesting information: require a local authority to provide to him or her information on the nature and extent of a problem and how the local authority is addressing or planning to address the problem if the Minister believes, on reasonable grounds, that a problem relating to the local authority may exist (section 257). There is then a suite of options to make appointments to the local authority, based on the nature and scale of the problem.	The power for the Minister to intervene is covered by Local Government Act. Clause 202 is an unnecessary duplication of Ministerial powers and should be removed.
5	Ministerial intervention: Performance monitoring PB cl 203	If there is to be performance monitoring under the Bills, which identifies a significant breach of obligations, this would constitute a 'problem' under Part 10 of the LGA and intervention powers under that Act could be applied. These clauses refer to 'issues'. This is not dissimilar from 'problem', which can be addressed by the LGA intervention powers. The policy rationale for removing provisions from the RMA and not carrying them over into the new system is that they have not been frequently used or achieved outcomes (e.g. the Board of Inquiry process for developing national direction).	Intervention based on performance monitoring is already covered by Local Government Act. Consider requesting specific examples of how often this power has been used, what the delays have been, and what outcome intervention has achieved – to provide a justification for the bespoke power.

MfE rec	Topic	Comment	PCE Recommendation
11	Delegation of Ministerial functions and powers PB cl 209, NEB cl 219	The Minister has extensive powers under the Bills to issue national instruments, otherwise direct the system and to intervene in the operation of local authorities. Not only are the scope of such powers unnecessary, but they are inappropriate to be delegable to a public servant to exercise.	Only functions, duties, and powers that are administrative in nature should be delegable by the Minister. Further advice on this would require a comprehensive list of all Ministerial functions, duties, and powers across both Acts, which the PCE does not have the resource to generate.
System performance			
13	System performance framework PB cl 210	Support: MfE rec 13, PCE is not the appropriate agency to undertake routine system performance monitoring and reporting.	Note that the Acts will come within PCE functions, as the RMA does currently.
14	Power to obtain information PB cl 211	The system performance framework relies on the extraction of information from local authorities, which can be a costly process, and will engage serious issues about data ownership and sharing. It is not clear how the proposed regulation-making power to compel the provision of information from entities outside councils would overcome those issues. It is unclear what strategy is being developed to achieve a federated data system to underpin the delivery of this reform.	Such a power would be unnecessary in a federated data system, where information could be lawfully extracted for the purpose of system performance.
15	Ministerial discretion PB cl 212	Overall, the recommendations relating to the performance framework is a matter where much of the detail is being shifted to regulations, and therefore to ministerial discretion. In the absence of any specificity, system performance reviews could be about anything.	Consider if there is minimum content that should be prescribed in the primary legislation to guide the framework, and to provide certainty and assurance of how this will be implemented.

MfE rec	Topic	Comment	PCE Recommendation
16	Strategic review reports PB cl 213	These reports will subject to the OIA, and releasable. Privacy and other matters of confidence may be addressed in the way the reports are drafted, or by withholding specific information in accordance with ss 6 and 9 of the OIA. The overall content, conclusions and recommendations should be publicly available information.	Consider asking officials for further explanation as to why these reports are not considered appropriate for publication, and how that approach is consistent with the public service principle of open government (Public Service Act s 12(1)(d)) despite being subject to the OIA.
Role of local government			
19	Responsibility for contaminated land PB cl 184, NEB cl 221	A number of submitters queried whether contaminated land would be better managed by regional councils. The MfE response does not clearly respond to submissions about this point, and where responsibilities for contaminated land should sit and why.	Consider requesting a response from officials regarding the issue of roles/responsibilities that submitters have raised.
21	Responsibility for contaminated land PB cl 186, 187, NEB cl 227	Clarity in the responsibility for contaminated land, between territorial authorities and regional councils, has been an issue under the RMA. It is difficult to separate contaminated land activities and their effects – the transition from a disturbance of contaminated soil to a discharge (discharge to land).	With reference to MfE rec 19, the MfE response does not provide analysis of where responsibilities for contaminated land should sit and why. This should be clarified in primary legislation so that it is clear who the relevant monitoring and information collection duties fall to.

MfE rec	Topic	Comment	PCE Recommendation
Independent Hearings Panel			
26	Appointment criteria PB Sched 2, cl 15	From the name given to this entity, it appears that IHPs are intended to be 'independent'. Given the volume of Executive direction of the overall system, permitting matters relating to an independent panel to be further prescribed by the Executive is inappropriate. Appointment criteria for statutory panels is a matter that is frequently specified in the statute.	Prescribe the panel appointment criteria.
27	Participation PB Sched 3, cl 24	In relation to hearings for proposed plans, submissions were made by a large number of strong submitters, from the full spectrum of interested parties – as opposed to narrowing the thresholds for participation in the plan making process and standing for appeals. Given the expanded role of central government in the proposed system, and the reduced opportunities to participate and provide input, it is reasonable to require a hearing on submissions when a submitter has requested to be heard. Hearings are also an opportunity for information to be made available to decision-makers, which might not otherwise have surfaced through the process. With the reduced volume of consents/permits, and associated limitation of further participation in consenting/permitting decisions, it is important for the plan-making process to facilitate access to all relevant information.	Consider the strength of submissions and the breadth of submitters, and whether the broad discretion of panels to hold a hearing should be limited so that a hearing is required when a submitter requests to be heard.

MfE rec	Topic	Comment	PCE Recommendation
29	Ministerial intervention PB Sched 2, cl 17 and Sched 3, cl 26	The Minister is responsible for setting the national instruments and other system matters, which are to be implemented through plans, with sufficient scope in those mechanisms to address infrastructure considerations, matters affecting the Crown, and matters of national significance. Further Executive overreach in how plans are developed, particularly an independent body tasked with recommendations, is inappropriate.	The requirement to provide the report to the Minister should be removed, and the Minister should not have a decision-making role in relation to matters set out in the RSP.
31	Ministerial intervention PB Sched 4, cl 2	The MfE response doesn't to respond to the issue outlined by submissions. The IHP are to be independent. Allowing the Minister to direct their appointment criteria undermines that independence so that it becomes pointless. These matters should be prescribed by Parliament, setting the expectations of what an independent hearing panel should consist of, and should not be left for Executive interference in a local/regional process	Remove Minister's power to direct appointment criteria. Appointment criteria (skills, experience, qualifications) should be prescribed in the primary legislation. This is consistent with the approach to specified competency thresholds for enforcement officers (see PB cl 218, NEB cl 244).
32	Ministerial intervention PB Sched 4, cl 3	Notifying the Minister of IHP appointments, described as an opportunity for the Minister to check compliance with appointment criteria, is unnecessary and inappropriate Executive overreach. If prospective panel members do not meet the appointment criteria, they cannot be appointed. This also appears to inform the Minister's decision as to further appointments to an IHP, as notification occurs prior to the Minister nominating their appointments to a panel.	With reference to MfE rec 31, the Minister should not be empowered to make direction about the membership of IHPs or the criteria, skills or qualifications required to be appointed to the IHP. IHPs perform a regional/local level function, where Executive overreach is inappropriate, and the Minister should not need to be notified of panel appointments.

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33	Ministerial intervention PB Sched 4, cl 5	The MfE response does not respond to the issue that has been raised by submitters and does not explain why the Minister needs the ability to appoint members. The power to appoint members directly affects the independence of the hearing panels. Note the expert panel process in the FTAA, which is outside the influence of the Minister, appears to be working well and suggest this is a more robust and appropriate appointment framework. If this provision proceeds, anticipating more than one appointment is outrageous. This aspect of panel appointment has been compared to the streamline planning process (SPP) under the RMA Sched 1 clause 78(4B)(c), where the Minister may appoint up to half the members of the panel. However, the SPP is only engaged on the application of a local authority, in the limited set of circumstances as prescribed. The functions of IHPs are of a much broader effect, undertaken in the context of a planning system that is already subject to extensive Executive direction through national instruments.	The Minister's power to appoint members should be removed. If the power is retained, the ability to appoint members to an IHP should be limited to only one member.
Environment Court			
69	Ex officio adjudicators PB Sched 10, cl 1	From the MfE response, it is not the policy intent for all Environment Court judges and alternative judges to be ex officio adjudicators. No explanation is provided for why that is intended.	Consider requesting the rationale for this policy decision, as it seems that this would broaden the pool of available adjudicators who are more than qualified for the role.

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Transition			
111	Progressing suspended applications PB Sched 1, cl 18	A replacement consent may be applied for under the PB/NEB, and an applicant may seek to have processing of the application suspended. The MfE recommendation that applications may be taken off suspension and continued to be processed at the applicant's request. The response and recommendation do not specify what statutory framework applies to applications that come off suspension and are processed prior to the specified transition date. It seems that this may require local authorities to process consent/permit applications in circumstances where national instruments and relevant plans are not yet in place.	Consider requesting further clarity from officials as to how replacement consents are to be processed under the Bills prior to the specified transition date.
124	Ministerial intervention: Continuation of RMA s 360I regulation making power	Plan making under the RMA is subject to the plan stop provisions (subpart 5B of Part 5 RMA). Carrying over RMA s 360I, for application prior to the specified transitional date, will empower the Minister to plan-make for RMA plans that remain in effect and inform consenting decisions during the transition period. The Minister may, by way of regulations, remove or amend plans. A Ministerial power to plan-make is completely unjustified when councils are subject to plan-stop provisions. Carrying over this power allows the Minister to bypass any consideration of priority in the goals (as possibly required when making national instruments) and, without any transparency, alter plan provisions in favour of economic growth, development capacity and employment. This hardwires a preference for particular goals during transition.	The 'safeguards' of investigation and reporting requirements of RMA s 360I do not mitigate the scope of the power and its potential impacts during the transition period. The recommendation to carry over RMA s 360I should be rejected by the committee.

MfE rec	Topic	Comment	PCE Recommendation
Water Conservation Orders			
128	Retention of Water Conservation Orders (WCOs) NEB cl 124	Support: MfE rec 128, the retention of WCOs, carrying over the framework from the RMA.	No changes recommended.
131,132	LUP consistency with WCOs NEB Sched 4, cl 3	Support: MfE recs 131, reverting to RMA wording of “maintained” and 132 (new explicit requirement for regional councils to monitor WCOs). The RMA requires both regional and district plans to “not be inconsistent with WCOs” (s 67(4) and s 75(4)). In the Bills, both Regional Spatial Plans (PB Sch 2 cl2(2)(c)) are required to be ‘consistent with’ and NEP plans (NEB cl 97(2)(c)) are required to ‘not be inconsistent with WCOs’. Land Use Plans are not addressed, despite requirements applying to district plans under the RMA.	RSPs and NEPs are required to be consistent and not be inconsistent, respectively with WCOs. Similarly, LUPs should also be “not inconsistent” with WCOs.
134	Periodic review and reporting requirements for WCOs NEB Sched 4, cl 15	Many submitters characterise WCOs as ‘national parks’ for rivers, underlining their environmental significance. While requiring councils to undertake a periodic review may seem to be good practice, there is a risk that reviews could be used as a trigger for revocation.	Any clause implementing MfE rec 134 should be separate from an ‘amending or revocation clause’, to ensure the two are not linked. Any review should, at a minimum, engage those who originally proposed and supported the WCO.
135	National rules and WCOs NEB cl 43	Support: MfE rec 135, the relationship between national rules and WCOs.	No changes recommended.

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Contaminated land			
136	Contaminated land definitions	Support: MfE rec 136, the improvements to the definitions related to contaminated land, changes to those relating to human health are improvements on the RMA provisions.	No changes recommended.
137	Contaminated land liability framework	Support: MfE rec 137, provision for a contaminated land liability framework. Confirming who is responsible for clean-up (especially use of the Polluter-Pays Principle) and providing mechanisms to help ensure they pay is a useful addition and aligns with other contamination and remediation frameworks in others Acts (e.g. Crown Minerals Act).	No changes recommended.
Existing use and hazards			
138	Modifying or removing existing use protections PB cls 20–22	Support: MfE rec 138, the ability to modify or remove existing use for natural hazards management is critical for reducing risk over time.	No changes recommended.
Urban trees			
139	Urban trees	Protection for urban trees is a topic that was always emotive under the RMA and will almost certainly continue to be so under any new system. There seems to be an erroneous assumption underpinning PB provisions that urban environments are only built and do not include natural environments. This relationship was examined in the PCE report, *Are we building harder, hotter cities?*	Consider how urban trees provide important ecological and climate services. They are critical to achieving the goal of 'well-functioning urban areas'. Inadequate ability to protect urban trees, and if there is a failure to include green spaces as part of the planning system, this will make achieving that goal harder.

MfE rec	Topic	Comment	PCE Recommendation
Dark skies			
141	Light as an effect under both Acts	While this MfE rec relates specifically to dark skies, the issue of light is much broader. Light is an environmental pollutant in its own right, both as a nuisance in the built environment, and as a disruption to nocturnal animals and bird navigation. It is not clear whether under these Bills, light pollution is adequately covered for all these aspects.	There should be more explicit provision to manage the effects of light pollution added to both NEB and PB. This could be addressed by adding a general duty to avoid unreasonable light, based on the wording in PB cl 24 for noise. Alternatively, adding 'the effects of light' to PB cl 14(2), to make it explicit that this can be managed under the Act. Noting that these recommended amendments may require careful consideration of NEB cl 14(b) so that the effects of light, as relevant to NEB matters, are not excluded.
Data			
142	Improving integration of data/digital standards	Achieving better environmental information, including data and digital standards, is frequently a finding in PCE's investigations. Submitters are clear that they want to see more explicit reference to data and digital standards. This is currently implicit but should be made explicit. The MfE response agreed to make data and digital more visible, yet there are no recommended changes.	See recommendations in relation to MfE rec 126.

MfE rec	Topic	Comment	PCE Recommendation
Consequential amendments			
149,150	Fast-track Approvals Act Waitakere Ranges Heritage Area Act PB cl 294	**Fast-track Approvals Act** The system the Bills propose is intended to increase efficiency, decrease processing times, and be a far more permissive framework for activities. The alleged absence of those aspects from the RMA contributed to the rationale for RMA consents to be included as an approval under the fast-track approvals regime. If the policy intent for the reform remains, there is no justification for the consents/permits under it to be included in the fast-track approvals legislation. The learnings and system improvements from the fast-track approvals framework should have been incorporated (as was recommended by the EAG), causing the FTAA application to these Bills to be redundant.	PB consents and NEB permits should not be treated as 'approvals' for the purposes of the FTAA.
		Waitakere Ranges Heritage Area Act The matters that are protected under this Act span not only planning considerations but matters under the NEB framework also. The MfE recs currently only replace reference to the RMA with the PB.	The Waitakere Ranges Heritage Area Act should be amended so that references to the RMA are replaced with both the PB and NEB.

MfE rec	Topic	Comment	Recommendation
Preliminary provisions			
7	Interpretation: qualifying resident PB and NEB cl 3	To address the concerns of submitters regarding the administrative burden of determining eligibility to submit, the MfE response outlines that information could be "required from a submitter in order for the territorial authority, regional council or consent authority to determine if they are a 'qualifying resident'." This approach still requires the relevant agency to assess eligibility – a review of the information provided, whether it is sufficient, to determine if the submission should be accepted. This does not address the issue raised in submissions, that this cost to resources outweighs the impact of simply accepting, and considering, all submissions.	The definition of 'qualifying resident' is unnecessary and should be removed from the operative clauses that apply this to participation processes and therefore removed from this clause.
8, 9	Purpose of the Acts PB and NEB cl 4	'Enjoyment of land' may risk being applied in interpretation of clauses across the PB, when undertaking planning processes, or decision-makers are regulating the use and development of land. 'Enjoyment' is a novel term with ideological and subjective qualities. A suitable alternative may be 'a framework for the use and development of land'. The purpose clauses of both Acts will likely be addressed in further detail in the PCE adviser's report.	Consider requesting specialist legal advice about the intended drafting of PB cl 4, when applied as a statutory interpretation tool to the other clauses of the Bill.

MfE rec	Topic	Comment	PCE Recommendation
13	Goals PB and NEB cl 11	Efforts have been made to avoid an operative purpose provision like the RMA, which provides a policy objective to guide the Act. Instead, as submitters have identified, the goals are specified as a long list of undefined and ambiguously aspirational collection of matters. These goals are intended to express the policy objectives of the Bills but then rely on an elaborate scheme of provisions to define and confine how the goals are not to (or how they must) be applied. This renders the MfE response, that the chapeau of the goals is intended to act as a broad directive to ensure decisions are made in a manner that is consistent with the objectives of the Bills (the goals), as an inaccurate description of how the goals will be implemented and their intended effect.	The comments provided in relation to this departmental report identify issues with the goals (and MfE recommendations) and makes recommendations for improvement. But the goals of both Bills, and how they contribute to the overall legislative design, is addressed in the main text of the PCE adviser's report.
16	Goal: Well-functioning urban and rural areas PB cl 11(1)(c)	'Well-functioning urban and rural areas' is a goal that will rely on significant articulation, as it currently fails to provide any meaningful sense of what outcome it intends. How well an 'area' functions (if areas can function) is determined in large part by the natural resource endowment that underlies it. This is more obviously the case in rural environments but remains so in urban areas too. It is doubtful if this goal is meaningful or capable of particularisation – unless it is intended as a catch-all for absolutely anything.	The overall design of the objectives of these two Acts, and the challenges that this presents for legislation, is addressed in the main text of the PCE adviser's report.
17	Goal: Competitive urban land markets PB cl 11(1)(d)	The recommendation for the goal to be redrafted to include language regarding the creation of "an abundance of development opportunities" is marketing rather than descriptive language and lacks precision.	Amend the goal to the effect of "Ensure that the regulation of land use ensures availability of land to meet current and future demand".

MfE rec	Topic	Comment	PCE Recommendation
21	Goal: Protect identified values PB cl 11(1)(g)	Land uses that would not necessarily be considered development, such as grazing or farming, may have impacts on identified values of land. Excluding the word use would make it difficult to manage those effects. We agree with many submitters that the protections should be from both “inappropriate *use* and development”, which is the current RMA phrase.	This goal should include the word ‘use’.
22	Goal: Natural hazards PB cl 11(1)(h) and NEB cl 11(b)	‘Safeguarding against natural hazard risks’ may not provide sufficient scope for either system to manage natural hazard risk and effects being created or exacerbated by activities that are consented/permitted under the Acts. It also may not provide sufficient scope for the systems to be responsive to the effects of natural hazards, rather than being just a risk-management system.	Consider requesting further clarification from officials relating to how this MfE rec would provide scope to address the effects of activities exacerbating natural hazard risks, and the expectation that the system should be responsive to the effects of natural hazards.
23	Goal: Use and development of natural resources NEB cl 11(a)	The proposal to remove “within environmental limits” from the goal to enable the use and development of natural resources” aligns with the Government’s expressed policy determination to ensure that there is no hierarchy between the goals, and not all goals need to be achieved in all places at all times. The words “within environmental limits” would have indicated that use and development will always be subject to the reality of biophysical constraints (as interpreted through limits). Far from reflecting “the intended balance within the system” as the MfE response asserts, the removal of these words enables an interpretation of the goals that can give almost unfettered priority to development.	The framing of the overall objectives of these two Acts, and how they should be designed to ensure delivery of an effective resource management system, is addressed in the main text of the PCE adviser’s report.

MfE rec	Topic	Comment	PCE Recommendation
24	Goal: Adding food and fibre production NEB cl 11(a)	The NEB is supposed to be about the use protection and enhancement of the natural environment. It has no role in managing land uses, as these are dealt with under the PB. Food and fibre production are land uses and, based on the policy rationale, should not appear in the goals of the NEB. Food and fibre production make use of the natural environment, but so does every sector. Why were energy production or tourism, for example, not recommended for inclusion? This proposed addition highlights the risk of elaborating goals to meet sector lobbying and opens the way for an ever-expanding list of uses to satisfy the desire for particular sectors to advance their interests.	Adding specific land uses to the goal for natural resource use and development is unnecessary, and the goal should not be expanded.
27	Goal: No net loss in indigenous biodiversity NEB cl 11(d)	The MfE response that the "government's policy intent with the 'no net loss' aspect of the goal is to provide a baseline recognition for indigenous biodiversity within the planning system" fails to address the problem that this is simply not workable, even if it is desirable. As discussed in PCE advice previously provided to the committee in relation to biodiversity, a baseline cannot be established without sufficient information for clear understanding of what is within scope. And as submitters point out, a definition of what constitutes 'no net loss' is also required.	The design of this objective, and the challenges of managing biodiversity, is a matter that is addressed in detail in the main text of the PCE adviser's report.
28	Goal: Support and enable enhancement NEB cl 11	In responding to submitter concerns that the core architecture of the Bill provides a weaker level of environmental protection, as compared to the RMA, MfE proposes the addition of an additional goal, "requiring decision-makers seek to support and enable enhancement of the natural environment."	The overall design issues with the objectives of the Acts are addressed in the main text of the PCE adviser's report.

MfE rec	Topic	Comment	PCE Recommendation
		This recommendation suffers from the same issues that are inflicted on all the other goals, which lie under a chapeau that only requires decision-makers to meet the ambiguous standard of seeking to achieve them. This new goal will also be subject to a raft of clauses and processes that define and confine how the goals must be applied. The net result is that the consequence of adding this goal is, at best, uncertain and provides no guarantee that the level of environmental protection being sought will be any higher.	
Foundations			
29	Key instruments and decision-making PB and NEB cl 12	While it is unclear what the system objective of listing goals in clause 11 is with the language 'seek to achieve', clause 12 of both Bills makes it clear that below national instruments, persons exercising powers and functions are not to consider the goals unless specific circumstances apply. This means that the reference to 'all persons' in clause 11 does not apply to all persons. Similar to the point raised by submitters, decision-makers may apply generous interpretations of the circumstances in cl 12(3)(c) for flexibility in how the goals are applied. MfE rec 29 considers consents and permits as requiring attention in this clause, but the MfE response has excluded referencing action plans and caps on resource use (for NEB cl 12). The difference in approach has not been explained and is inconsistent.	The interaction between goals and decision-making under the Acts is addressed in further detail in the main text of the PCE adviser's report. Consider requesting further explanation from officials regarding this MfE rec, to understand why it should only apply to consents and permits.

MfE rec	Topic	Comment	PCE Recommendation
30	Procedural principles PB and NEB cl 13	Setting out a substantial list of procedural principles, in addition to the long list of goals, creates unnecessary complexity for designing a legislative framework that is intended to be easier to implement and more efficient than the RMA. Aspects of the principles, such as timely, proportionate decision-making, are grounded in already well-understood public law principles, which apply regardless of what is drafted in the new Acts. For local authorities, if the amendments to section 10 of the LGA are passed, cost-effectiveness will be required in the performance of regulatory functions. Including this aspect in the procedural principles for the Bills is duplicative. MfE rec 30(a) recommends distinguishing between the principles but does not set out the specific principles that should come within each category. Given the implications this could have for enforceability, the committee should seek clarification about this recommendation before accepting it. The policy rationale for the 'funnel', and the design of national instruments, means that the system should have sufficient direction and guidance to achieve the necessary consistency in processes. MfE rec 30(b) is unnecessary if the legislative provisions provide the required specificity for actions that must be undertaken and key instruments are clear in the direction they provide. MfE rec 30(c) risks adding further confusion to the volume of direction that is provided to the system. National instruments should provide all the	The list of procedural principles should be reduced to avoid duplication and unnecessary complication with the other preliminary provisions in the Bills.

MfE rec	Topic	Comment	PCE Recommendation
		necessary direction for those exercising functions and powers, without having to add overly prescriptive procedural principles such as this. MfE rec 30(d) is unnecessary as national instruments and regulations will specify data and digital systems. MfE rec 30(e) may cause issues for the setting of conditions throughout the system, as this should be addressed in the applicable context. Conditions in national standards will be drafted without reference to specific activities to which they may be applied, making it challenging to satisfy an overarching requirement that they be 'no more onerous than necessary'. Additionally, with reference MfE rec 157 in DR1, 'no more onerous than necessary' was to be defined with reference to whatever outcome results from litigation of the phrase under the Fast-track Approvals Act. It is unknown exactly how this standard will be interpreted and applied.	
Effects management			
33	Excluded effects: External layout PB and NEB cl 14	MfE rec 33 attempts to ensure that the external layout of buildings is out of scope where there is no effect beyond the boundaries of the site. It is unclear how this exclusion will operate practically – will there be a temporal aspect to the assessment of effects? It is possible the combined effect of external layouts may lead to cumulative effects that exceed the boundaries of a site, but this may not be apparent on the face of one application in isolation. For example, the cumulative effects of having lots	Consider requesting further clarification from officials about the how the exclusion of these effects is intended to apply in practice, to ensure that cumulative effects of building design (on both the built and natural environment) are not excluded from consideration.

MfE rec	Topic	Comment	PCE Recommendation
		of high-density residential units, built as close as allowed to property boundaries with minimal permeable surface area, which results in the potential for stormwater management issues (e.g. increased flood risk) both on-site and beyond the boundary.	
37	Excluded effects: Amenity PB cl 14(1)(e)	There should be increased clarity of the 'aesthetic qualities, appearance and character' that officials are intending to be out of scope. Submitters (including local authorities, the urban development and landscape architecture professions) have pointed out that there is a high risk of undermining the outcomes sought to be achieved through the goals, particularly goal 11(1)(c) of the PB, if visual amenity is to be precluded from the scope of the system. This is because the aesthetic qualities, appearance and character of development can have impacts on social wellbeing, and people's experience of spaces and places. From the MfE response, it appears that there is some difficulty in characterising what aspects of visual amenity should be excluded from the system. A more pragmatic solution may be to use national instruments and regulations to restrict the specific (visual) amenity values that can be considered in plans and consenting.	Aesthetic qualities, appearance and character are synonymous with visual amenity. Removing 'visual amenity' from the clause does not make a material difference to its application and will not address the concerns of submitters. The challenges and risks of excluding these aspects (e.g. visual amenity values) from the scope of the system is addressed in the main text of the PCE adviser's report.
40	Excluded effects: Landscapes PB cl 14(1)(h)	With reference to the concerns raised by submitters and the PCE investigation report, *Are we building harder, hotter, cities?,* the exclusion of landscapes from effects management could risk eliminating planning considerations, such as shading and the reduction of urban heat.	Consider seeking further information from officials about the effects that will be excluded (including MfE's recommended changes) and how this approach will address the findings and recommendations outlined in the PCE investigation report.

MfE rec	Topic	Comment	PCE Recommendation
			The risks of excluding landscapes is a matter that is addressed in the main text of the PCE adviser's report.
42	Effects dealt with under other legislation PB cl 14(1)(j)	While the restriction on consideration of effects of land use in other legislation makes sense in terms of removing duplication of regulation, it risks narrowing the environmental lens and does not seem to recognise that, while another Act might address the same effect, it is for a different purpose and occurs in a different context than assessing environmental effects for the purposes of planning and environmental regulation.	Support: The enablement of contaminated land and natural hazards being able to be considered where they appear in other legislation (e.g. the NEB). There should be no restriction on the ability for decision makers to consider the effects of land use, even where they might be covered in other legislation to ensure there is no risk of unintended regulatory gaps being created.
46	Cumulative effects PB and NEB cl 15	The ability to manage the cumulative effects of activities that, individually may have small effects, is a critical part of protecting the environment. This is especially important in a system where the adverse effects threshold is proposed to be higher. MfE proposes (p. 89) changes to the drafting to clarify the circumstances in which cumulative effects should be considered, as an exception to the general presumption that less than minor effects are to be disregarded. However, no further detail is set out, making it difficult to understand how this will be approached. What approach is developed, and the level of detail that this considers, is critical to how well cumulative effects might be managed.	As any clarification will likely require substantive policy work, consider requesting a detailed briefing from officials on how cumulative effects should be considered before instructing amendments on this matter. It is noted that any redrafting will be carefully scrutinised, and further PCE advice may be provided to the committee on the approach that is set out.

MfE rec	Topic	Comment	PCE Recommendation
Māori interests and Treaty provisions			
48-67		PCE has not undertaken a detailed review of the provisions regarding Māori interests or Treaty clauses, due to the lack of in-house expertise on these matters.	Given the constraints on the PCE's expertise, the committee has been previously advised that it should seek independent expert advice on these matters rather than relying solely on advice from MfE.
Activity classes			
71	Principles for classifying activities PB cl 31, NEB cl 32	Support: MfE rec 71, the introduction of a controlled activity classification in the NEB, and associated principles for classifying activities as controlled activities. Matters that are prescribed in legislation are law. If something is set out in legislation, an interpretation is favoured where it can be construed that Parliament must intend for it to be applied as the law, not as an optional guide. This means that guidance is best suited to administrative instruments, such as the guidance that will be provided to support implementation (see MfE response at p.68 in relation to community engagement in submissions processes, and at p.362 in relation to farm plan implementation). Though MfE also intends for guidance to be issued through national instruments (see MfE response at p.380 in relation to the management of heritage).	To avoid interpretation risks, and ensure that law-making is approached appropriately, the classification of activities should not be described in the law as a 'guide'. This should be set out as specified criteria for each activity status, which may not be exhaustive. It is suggested that the classes of activities, as set out in RMA s 87A, provide a useful comparison.
77	Registering permitted activities PB cl 38, NEB cl 39	Support: MfE rec 77, clarification of the requirements for registration of permitted activities. However, registered permitted activity assessments are described as intended to be a 'checklist' exercise in the MfE response (p. 132). If	Consider requesting advice from officials about the safeguards that will apply to the registered permitted activity process, to ensure that any information provided in support of registered permitted activity applications will be legitimate and suitably robust, given the limitations on

MfE rec	Topic	Comment	PCE Recommendation
		expert assessment and approval of third parties will be components of registered permitted activity requirements, it is unclear what scope local authorities will have to challenge the robustness of such assessments, or to evaluate the validity of third-party approvals, if these are 'checklist' only assessments.	councils to verify the veracity of any information provided.
National instruments			
78	Purpose of NPD PB cl 27 and NEB cl 78	Submitters highlighted issues with the introduction of new language to the purpose of NPD to 'particularise' the goals. This has not been addressed in the MfE responses throughout the report, with respect to how this is consistent with the procedural principle regarding the use of plain language that can be readily understood by the public.	Consider requesting further explanation from officials as to the meaning of 'particularise' and consult with the PCO to determine if there is plain language that can be drafted to provide a clearer understanding for the purpose of NPD.
85	Resolving new conflicts PB cl 45(5) and NEB cl 69(5)	If conflicts are to be resolved in sequence, the addition of new national instruments means that the whole NPD should be reviewed so that any intra-Bill conflicts are first addressed, and subsequently inter-Bill conflicts resolved.	The aspiration of achieving 'a coherent set of national instruments' has not addressed the amended sequence required for conflict resolution in the goals. This potentially introduces a complex, time consuming- and highly disruptive process for national instruments. The committee might consider seeking further clarity from officials about how achieving a coherent set of national instruments vs. the sequence of identifying and resolving new conflicts will be managed in practice.
88	Removing NPD considerations	The MfE response states that NPD directs 'how' goals are achieved but recommends removal of consideration of whether a proposed NPD enables	MfE rec 88 should not be accepted. If the intent of the recommendation is to ensure the Minister's considerations are to be of more

MfE rec	Topic	Comment	PCE Recommendation
	PB cl 57(1)(b)(i) and NEB cl 81(1)(b)(i)	development within environmental limits. Specifying ‘within environmental limits’ ensures a basic, but critical, baseline is applied to considerations. This consideration is also consistent with the overall policy objectives of the Bills, as set out in the General Policy Statement.	strategic expression, this could be redrafted to reflect the purposes of the Acts, to a consideration of: “whether a proposal provides for the use and development of land, within environmental protections and limits.”
91	Consideration of adverse effects and effects management in NPD PB cl 45, NEB cl 69	The recommendation excludes the Minister’s consideration of adverse effects in setting NPD – this is in addition to MfE rec 88 removing consideration of environmental limits. The recommendation would enable NPD to direct the effects management approach that should be applied. This would require the Minister to consider the appropriate effects management approach without considering the environmental circumstances (including limits) and adverse effects of the proposed direction. Without these considerations being specified, there is no evidence base to make that determination.	Retain consideration of adverse effects for NPD, not only national standards as MfE rec 91(a) suggests.
92	Consideration of submissions PB cl 45(3) and NEB 69(3)	Much of the policy rationale provided in response to concerns about narrowing the scope for participation in processes (plan making, consenting and permitting, see DRs 1 and 2) has been focussed on the justification that full participation is possible higher in the ‘funnel’, at national instrument level. But this recommendation will make it clear that the decision-maker (the Minister) is **not** required to consider submissions, thereby undermining any claim that participation at higher levels is a meaningful substitute for the loss of participation opportunities at lower levels.	Consider the inconsistency that this recommendation presents, in light of how other responses to submissions have been addressed. If it is accepted that the Minister should not have to review submissions, the committee should revisit decisions and instructions regarding participation in plan making and consenting/permitting, so that limitations on eligibility to submit are removed.

MfE rec	Topic	Comment	PCE Recommendation
93	Pre-notification of national instruments PB cl 46, NEB cl 70	The recommendation states that pre-notification would apply to relevant sector groups and stakeholders, but the analysis does not specify what would qualify as a relevant ‘sector group’ or ‘stakeholder’. This provides a power to pre-notify groups/entities that have successfully lobbied for the Minister’s attention and pre-notification. Given the risk of perceived corrupt practice, a list of minimum persons for pre-notification should be specified in the Bills. See cl 17 Sched 6 of the COVID-19 Recovery (Fast-track Consenting) Act 2020 for an example of specifying persons who must be invited to comment, which provides a useful basis to determine a list for pre-notification.	Consider requesting further information from officials regarding the ‘relevant sector groups and stakeholders’ that this recommendation is intended to refer to and should prescribe a minimum list of pre-notified persons in the Bills. This might include ‘any other person the Minister considers appropriate’.
94	Matters for consideration PB cl 46 and NEB cl 70	A description of how intra- and inter-Bill conflicts are identified and resolved may be delivered through: MfE rec 79(b) – Requiring the purpose of NPD to identify key conflicts between the goals and how these are to be resolved. MfE rec 85 – Adding to the Minister’s considerations that they are satisfied that they have resolved conflicts with the goals of the Bill first, before resolving conflicts across the Bills. It is unclear if the summary of the Minister’s response to the matters for consideration when preparing national instruments will include the explanation relating to conflicts, or if this will be part of the NPD itself, or both. It should be clear where the Minister’s response to the matters that must be considered should be recorded and made publicly available.	Consider requesting further clarity from officials regarding the recommendations, and how conflicts (and their resolution) will be set out in the NPD and other documentation requirements.

MfE rec	Topic	Comment	PCE Recommendation
99	National standards and plan provisions PB cl 48 and NEB cl 72	It is unclear if this is intended to be the mechanism for prescribing standardised provisions/zones, from which local authorities may choose for their plan-making, or, if this is to mandate specific provisions that must be included in plans. If it is the latter, this is inconsistent with the procedural principle that unnecessary repetition in key instruments is to be avoided, and the requirement for this should be removed. If a matter is prescribed by national instruments, and they are empowered to do so, this should not need to be replicated in plans.	Consider requesting clarification from officials about the intended application of this mechanism for plan provisions. If it is intended that specific plan provisions might be required by national standards, the committee should seek explanation as to how this is consistent with the procedural principles that plan-making authorities are required to comply with.
103	Must always be NPD PB cl 53, NEB cl 77	The MfE response states that the 'cross-cutting ability of the NPD to address the goals of both Bills will mitigate the need for a single document across both Bills'. This overlooks the issue that overarching topics for NPD will engage the goals of both Bills and will result in matters that need to be considered in plans and process under both Bills. This means that many topics may need to be dealt with twice in the separate NPD (e.g. natural hazards, REG, biodiversity, anything involving land use – see the MfE example on p 155–156, which illustrates the confusing arrangement of these directions). NPD under one Bill may issue directions for particularisation/achievement of a goal in the other Bill, adding further confusion to the system. This is the outcome of the policy intention that requires two separate and distinct regulatory systems that cannot avoid interfacing with one another. The split architecture imposed by two Bills is likely to throw up ongoing challenges for the workability of the proposed framework. As such, it works directly against the underlying policy intent for a simpler system.	Consider requesting further explanation, and examples, from officials about how NPD will be set out – to get a clearer understanding of how NPD under each Bill will lay out topics, provide direction, and resolve conflicts, without resorting to one set of NPD. The consequences of splitting resource management matters between two Bills will likely be addressed in the PCE adviser's report.

MfE rec	Topic	Comment	PCE Recommendation
Environmental limits			
122	General matters for environmental limits NEB cls 45–67	The MfE response (p.174) describes environmental limits as a complex new aspect of the planning system in the NEB that interacts with national standards, RSPs, NEPs, LUPs and permitting. PCE agree that limits is a complex new aspect of the system. PCE notes that the commentary from officials related to interaction with LUPs appears inconsistent with commentary in, and discussions on, previous DRs (e.g. MfE recs 21, 32, 117 and 147 of DR1), where officials explained that there is no need for land use activities regulated by the PB to consider environmental limits.	Consider requesting clarification from officials as to which elements of LUPs interact with environmental limits and how each of those interactions will occur. Support: The recommendation to undertake further work with PCO to improve the workability of the environmental limits framework.
125	Function of an interim limit NEB cl 45	Support: MfE rec 125, clarification that the function of an interim limit is to allow a stepped pathway to achieving an environmental limit over time and can be included in a NEP at the same time as an environmental limit, without first having to be proposed in an action plan. However, the process for interim limit setting seems unclear, if it is intended to be the same as the process for limits. It is also unclear how interim limits interact with any minimum acceptable levels that may be set.	Consider requesting clarification from officials regarding the process that applies to setting interim limits and how interim limits are intended to interact with minimum acceptable levels.
128	Defined terms NEB cl 45	Submitters suggested that the term ‘abundant’ is a useful clarifier for the definition of “life-supporting capacity”. But this does not capture the ecological complexity for the application of this definition, the elements of which are set out as follows:	The definition of life-supporting capacity should be amended to remove duplicative terms and align language with their ecological application: to support species diversity in indigenous ecosystems over time.

MfE rec	Topic	Comment	PCE Recommendation
		‘Abundance’ is a term that ecologists commonly use when explaining ecosystems, but there are two types: absolute abundance and relative abundance. ‘Richness’ is typically defined as the total number of species found at a location. ‘Species diversity’ means a metric used to examine ecosystem function based on a combination of *relative abundance* and species *richness*. Abundance is a subset of species diversity.	
130	Who sets ecosystem health limits NEB cl 47	The Bills contain significant powers for Ministerial intervention to advance economic imperatives. But the NEB leaves the setting of ecosystem health limits to local government. A minimum acceptable level is referred to as ‘consistent national baselines’ in the MfE response (p. 179). A minimum acceptable level or baseline should remain just that – the minimum acceptable. If a level is considered a baseline, and is to be consistent, there is no justification for the level of protection to be lowered.	Minimum acceptable levels, and limits generally, should be derived from a sound, measurable scientific assessment of the biophysical circumstances – they should in effect be a biophysical bottom line. The power for local authorities to lower the level of protection below the minimum acceptable level should be removed.
134	How to set ecosystem health limits in plans NEB cl 51	Submitters expressed uncertainty about the ability to set more stringent limits than a minimum acceptable level and the requirements that apply when more stringent limits are set. This does not appear to have been addressed by officials. With regard to the considerations in cl 56 and 57, which require assessments to be undertaken, it is unclear where the analysis and evaluation for setting environmental limits to be proposed in NEPs will be set out.	All limits, regardless of whether they are more or less stringent than a minimum acceptable level, should be subject to a justification report.

MfE rec	Topic	Comment	PCE Recommendation
139–141	Methodologies for setting ecosystem health limits NEB cl 54	For MfE rec 141, the MfE response states that in being "satisfied that the methodology supports the purpose of the ecosystem health limits" the level of ecosystem health that the Minister must be satisfied is supported is "an acceptable standard" and that this standard be based on consideration of clauses 56 and 57 with no hierarchy set in the legislation between environmental, social and economic factors. PCE strongly opposes this position. If Parliament does not impose any guard rails, it is leaving it to the Minister to fill in whatever weightings or preferences may be preferred. The "needs or aspirations of communities for the economy, society, and the natural environment" is completely open-ended and its elements can be given preferential weight if the Minister so chooses. What is an 'acceptable standard' should not be determined by consideration of a range of factors with no hierarchy. It should be based on the biophysical constraints of the natural environment derived from a sound, measurable scientific assessment. Support: Fish & Game New Zealand's submission, that ecosystem health limits should be subject to the same baseline protective requirement that applies to human health limits (i.e. to prevent significant or irreversible harm (NEB cl 53(1)(b)).	As a minimum, add the phrase, 'prevent significant or irreversible harm to the natural environment' to the definition or purpose of ecosystem health limits. Any determination of what an 'acceptable standard' is should be based solely on the biophysical constraints of the natural environment, and not subject to the considerations in NEB cl 56 and 57.
142, 143	Developing ecosystem health limits	The purpose of environmental limits is to protect the life-supporting capacity of the natural environment, through ecosystem health limits (cl 46(b)). The life-supporting capacity of the environment is not a matter that can be made subject to spatial plan	RSPs should be informed by the biophysical constraints of the natural environment. In relation to MfE rec 143, as per MfE rec 141 above, any 'acceptable standard' should be determined based solely on the biophysical

MfE rec	Topic	Comment	PCE Recommendation
	NEB cl 55	‘strategic priorities’. The MfE response (p.191–192) is misguided in stating that such priorities are important when setting limits. If the life-supporting capacity of the natural environment is exceeded due to ‘strategic priorities’, environmental degradation may be irrecoverable and irreversible. And continued reliance on the natural environment to carry ‘strategic priorities’, may not be possible. RSPs should not be finalised until the capacity and constraints of the natural environment have been determined, including consideration of any relevant environmental limits. Further, the emphasis on measurable, science-based attributes of limits would be lost if the layer of subjectivity that comes with an “acceptable standard” is retained.	constraints of the natural environment and not subject to the considerations in NEB cl 56 and 57.
144–146	Assessing impact of an environmental limit NEB cl 56	This clause is probably most determinative in how protective an environmental limit is to be. Submitters raised concerns that the assessment could be used to impose quite weak environmental limits. These concerns should be taken seriously if limits are to achieve their purpose. Part of the problem lies in the fact there is no clear objective minimum for setting ecosystem limits. If there was, the considerations set out in cl 56 could then be used to determine how much stricter than the minimum the proposed limit might be. Saying there is no hierarchy between economic, social and environmental considerations is contrary to the purpose of environmental limits, which is to protect the environment.	It should be made explicit that local authorities must – at the absolute minimum – set ecosystem health limits at a level that protects the life supporting capacity of the natural environment (as revised to reflect abundant and diverse indigenous life) and prevent significant or irreversible harm. As noted in MfE rec 141, this should be based solely on the biophysical constraints of the natural environment. The considerations set out in cl 56 should only apply where a local authority wants to propose an ecosystem health limit that is stricter than the absolute minimum described above. The committee should not accept MfE rec 146. Environmental objectives should have priority given the purpose of environmental limits.

MfE rec	Topic	Comment	PCE Recommendation
147–149	Assessing existing capacity of natural environment NEB cl 47	Support: MfE rec 147-149, clarification that 'capacity' in the context of this clause relates to ecological tolerance and recovery and not production or development capacity. Any assessment of the capacity of the natural environment should be based on the best information that is reasonably available. Where there is uncertainty, a precautionary approach should apply. If this applies, any conclusions or judgements made on 'capacity' should be appropriately conservative.	Where information is limited or uncertain, a precautionary approach should apply to any evaluation of the 'capacity' of the natural environment.
150	Management units NEB cl 58	The Bill as drafted doesn't require management units to provide comprehensive coverage of a region or by extension all of New Zealand. This could mean that environmental limits may not apply in some places or have limited geographic coverage. That defeats the purpose of limits.	Clause 58 should be amended to require that the management units for each domain comprehensively cover each region (and therefore New Zealand) or an equivalent drafting solution.
151–152	Best obtainable information NEB cl 59	Best obtainable information refers to only that information that is available at the time. This is too rigid and precludes the ability for councils (or the Minister) to obtain additional information that might be cost effective or easy to obtain, and that would result in a more robust decision. Support: MfE rec 152, the general recommendation to clarify that best obtainable information applies to all relevant decision-making processes in Subpart 4 – Environmental Limits.	Best obtainable information should not be limited to only that information available at the time, but that it should extend to additional information that can be reasonably obtained to support good decision making.
153–165	Action plans and caps on resource use	These clauses are unclear and confusing. That is clearly supported based on the volume and nature of submissions on this part of the Bill from a spectrum of submitters. Despite discussing this	These aspects of the Bill require further policy analysis to inform drafting, to ensure the system will be workable for implementation. Consider requesting officials undertake further

MfE rec	Topic	Comment	PCE Recommendation
	NEB cl 58–65	part of the Bill with officials early in the committee process, aspects remain confusing. MfE's proposals to further define the role of action plans (MfE rec 159–161) and clarify the use of caps (MfE rec 156–158) are improvements, but overall this will remain difficult to implement, even with the proposed changes. Caps are described as a non-regulatory tool. If they have no regulatory weight, it is hard to see how they will be useful except for determining allocation of resources. As allocation mechanisms are proposed to be deleted (MfE rec 240–241), caps may become redundant. If caps are just information tools (as described on p.202), they may not need to be specified in the primary legislation. There seems to be a disconnect between how some submitters (mostly from the primary sector) view action plans (as a community owned tool to manage resources within limits) and MfE's vision that action plans are a tool to respond relatively quickly to limit breaches or the risks of breaches (e.g. cl 67(3)(a)). This could be solved by introducing a tiered-plan approach to limits, a community led non-regulatory tool to manage resources within limits, with a regulatory backstop that is triggered if there isn't a community led plan or if that plan is not working.	work, the PCE is available to assist with this.
153	Tools for managing resources to which limits apply NEB cl 60	The interface between national standards and caps on resource use is unclear. For example, the NES-CF is an activity-based standard. If there is a cap on, for example, sediment (a visual clarity or deposited sediment cap for a management unit),	Consider requesting advice from officials about the ability to effectively manage the effects of diffuse discharges if they are not able to be managed via regulatory tools in NEPs.

MfE rec	Topic	Comment	PCE Recommendation
		how will the cap interact with the NES-CF, which sits outside of the NEP (and is the tool that manages resource use to fit within the cap)? It is also unclear how the amount of headroom is calculated for activities not allocated under a cap. For example, how do you calculate whether the combination of activities regulated by a cap and those not regulated by a cap will not breach a limit. Of additional concern, the changes recommended by MfE in MfE rec 153 appear to imply that diffuse discharges, which are typically difficult to quantify and link to impact, might not be managed by caps. If not managed by caps, diffuse discharges may only be managed by action plans, which have had mixed success in terms of improving environmental conditions. An inability to regulate for diffuse discharges is likely to lead to worse outcomes for the environment.	
155	Consultation on action plans NEB cl 61	If action plans are to be of maximum effectiveness, they must have maximum buy-in from people. To achieve that, consultation is essential. Proportionate consultation would undermine the intent of action plans. Ideally, action plans would be equally driven from the ground up through catchment initiative.	Consultation should be required for all action plan proposals, not only those that directly affect permits.
159	General content of action plans NEB cl 63	MfE suggest action plans do not have regulatory effect (p. 203), other than permitting decisions having regard to them under cl 156. However, action plans may also be relevant during the consideration of RSPs and changes to NEPs, not only permitting decisions. This is recognised in NEB cl 97(4), which requires NEPs to have regard	Consider requesting advice from officials as to whether action plans should be relevant to the review of RSPs and clarification as to whether actions plans have a regulatory effect with regard to the consideration of NEPs.

MfE rec	Topic	Comment	PCE Recommendation
		to any relevant provision in an action plan. For example, an action plan may propose changing land use in some areas of a management unit to manage nutrient or sediment loads (e.g. transition from productive uses to native plantings or to more residential use) and may propose rules or methods to be considered for inclusion in a NEP.	
162	Requirements for action plans to remedy breach of environmental limits NEB cl 65	The proposed ten-year timeframe for an interim limit is too long. If an interim limit is a stepping stone, the implication is that remedying breaches will take at least 20 years, or longer if a Council wants to set multiple interim steps. While it may take 15 to 20 years for some environmental indicators to show improvement, five-year steps are more reasonable and will allow for more adaptive and agile management.	The committee should not accept MfE rec 162. The default timeframe for interim limits should be five years.
166	Avoiding breach of environmental limit NEB cl 66	As a cap is not a regulatory mechanism (described by MfE p.202) and is not required to be prescribed in plans, there seems little value in reviewing a cap on resource use. This is unless the review of the cap is also a trigger for reviewing either the limit that informs the cap or the regulatory controls developed to manage resource use to fit within the cap.	Consider requesting clarification from officials about how, in practice, reviewing and revising a cap on resource use may avoid the breach of an environmental limit.
168–172	Ensure national standards only within limits NEB cl 85	Any exceptions to environmental limits will undermine their ability to protect the natural environment. MfE's response to submitters (p. 212–13 of DR3) is inconsistent with the safeguards in s 107 of the RMA and will effectively allow permits to be granted, regardless of the effects on	Clause 85 should be retained without amendment. Any exceptions or exclusions from compliance from limits should be restricted to exceptional circumstances (e.g. nationally significant infrastructure or activities that have an

MfE rec	Topic	Comment	PCE Recommendation
	Exceptions in national standards to limits NEB cl 86	the environment, if a national standard allows that activity to breach a limit. It is concerning that MfE is suggesting (p.213) that rather than remedying a breach of a limit, councils may prefer to just revise the limit to account for the activity allowed by the standards and are recommending ways to make this more accessible to councils. The effect of MfE's recommendations is to widen the ability of the Minister to override limits set by local authorities. That was previously constrained to significant infrastructure but could now be used for *any* activity that qualifies under an undefined public benefit test to justify an exception to limits. In effect, the legislation gives regional councils the power to set limits, but simultaneously gives the Minister power to undermine them. Such discretion is likely to lead to system instability as different Ministers provide different direction as to the extent activities should be able to exceed limits.	overwhelming public benefit). Clause 86 should be retained as drafted and the committee should not accept MfE recs 168, 169, 170, 171 and 172.
173–174	Must not grant a permit if a limit would be breached (with some exceptions) NEB cl 164	Clause 164 is an important safeguard for environmental limits and it should be retained. As noted for MfE recs 168–172, any exceptions should be tightly constrained and PCE strongly opposes the proposal to expand the scope of activities that are allowed to breach limits (via national standards). Allowing new permits to be approved when a limit is breached, even if they would comply with an interim limit, would be allowing the situation to worsen and make remedying the breach harder.	The amendments to cl 164 should not be accepted. The scope for exceptions should be more tightly constrained rather than expanded.

MfE rec	Topic	Comment	PCE Recommendation
Regulatory relief			
177	Obligations relating to regulatory relief PB cl 92, Part 4 of Sched 3, NEB cl 111	A significant number of submitters raised the point that local authorities should not have to pay for regulatory relief as a result of specified rules arising from national instruments. This issue has not been addressed by the MfE response.	Where a plan is implementing the requirements of national instruments, the fiscal cost of regulatory relief should fall on central government rather than local government. For clarity and certainty, this should be explicitly set out in the appropriate legislative instrument.
179	Specified Topics: Terrestrial Indigenous Biodiversity and Significant Natural Areas PB cl 92, Part 4 of Sched 3, NEB cl 111	Requiring regulatory relief for terrestrial native biodiversity implicitly creates a right for landowners to remove biodiversity on their land, and is a concerning development for environmental management. This change is interpreted as allowing for national standards or NEP to put in place rules (other than mapped significant natural areas) that protect biodiversity without a need for regulatory relief. For example, there could be a blanket requirement to offset any loss of indigenous biodiversity in order to operationalise ’no net loss‘. If this change is made, whether or not landowners have a right to destroy biodiversity on their land would depend on national standards and/or NEPs.	If the MfE recommendation allows for tools that protect indigenous biodiversity (other than mapped significant natural areas) to be applied without regulatory relief, then this is supported.
181	Interaction with environmental limits PB Sched 3, cl 92 and NEB cl 111	As per the discussion in MfE rec 177, if regulatory relief arises as a result of managing environmental limits, then funding from central government should be provided.	Support: Except the exclusion of terrestrial indigenous biodiversity.

MfE rec	Topic	Comment	PCE Recommendation
186	Betterment and regulatory relief	If betterment is excluded, then there is the potential for the cost of regulatory relief to increase when changes in zoning or potential alternative land uses (e.g. potential for quarrying) increase the opportunity cost of protection. For example, a local authority designates a significant natural area on land zoned as rural and compensates the landowner with regulatory relief. Over time, the land around the SNA is rezoned as residential. Does the local authority then need to increase regulatory relief in recognition of higher value land uses?	Consider requesting further information from officials to understand if MfE rec 186 means that the cost of regulatory relief will increase over time as zoning and potential land uses change.
196	Transitional provisions PB Sched 3, cl 68(6)–(8)	As noted by submitters, with the first plan under this regime having to evaluate all rules on specified topics as though they were entirely new will significantly increase eligibility for regulatory relief, and therefore the cost and complexity for local authorities.	A regulatory relief framework should not be required for specified rules that are materially the same as those that were operative under the preceding RMA plan.
199	Who covers the cost of relief PB Sched 3, cls 69 and 70	See comments ref MfE rec 177. Financial constraints on local authorities will be further exacerbated if rates are also capped and no funding is provided from central government.	See recommendations for MfE rec 177.
203	Requests for further information PB Sched 3, cl 75	Under the Bills, biodiversity is a domain that requires a limit. Given that firstly we know much of the country's rarest biodiversity is on private land and secondly that there is a lack of systemic information on biodiversity, there needs to be a right for local authorities to ground-truth biodiversity on private land to see if it is worth protecting. There is some precedent for this with exploration permits under the Crown Minerals Act.	Local authorities, or their authorised agent, should have a power to enter property/premises for the purpose of collecting information on biodiversity.

MfE rec	Topic	Comment	PCE Recommendation
206	Environment Court may give direction in respect of certain planning controls PB cl 105, NEB cl 122	Submitters have raised significant risks from the change in wording, compared to RMA s 85, increasing the scope of eligibility and other significant unintended consequences. It is inevitable that this will be tested in court and have significant implications for the financial liability associated with relief that local authorities may be required to grant. With reference to the MfE response at p.251, clause 105 is aligned with Government policy and decisions. If central government is comfortable with accepting the extraordinary risks that significant submitters have outlined, central government should fund relief that is granted pursuant to this clause.	The threshold be returned to the drafting of RMA s 85. If cl 105 is retained by the committee without amendment, relief granted pursuant to cl 105 should be funded by central government.
Regional spatial plans			
	RSPs: General recommendation	Officials on p.252 state that "in addition to the recommended amendments to the PB outlined in the sections below, we will work with the PCO to amend the spatial planning clauses to improve clarity and better align with other parts of the PB. We anticipate this will involve reordering, restructuring and streamlining of Subpart 1 of Part 3 and Schedule 2 of the PB." Support: The concept of RSPs generally and the recommendation of officials on p.252 of DR3 to amend RSP clauses and to clarify their role in the PB framework. However, it is unclear what form RSPs might take and how they might be presented in regards to the level of detail that spatial plans may go into – it is clear from submissions that some	In addition to reviewing the spatial planning clauses in the PB framework, the committee should request that officials review and clarify the relationship of RSPs with the NEB framework, specifically the relationship between RSPs and environmental limits. This is further commented on in relation to the MfE recs relating to RSPs.

MfE rec	Topic	Comment	PCE Recommendation
		submitters are having similar challenges visualising the form of RSPs. It is noted that officials have previously stated RSPs will not only be visual (maps) but will include some directive words to articulate policy intent.	
211	How RSPs promote integration PB cl 68	See previous comments regarding the relationship between RSPs and NEPs (e.g. MfE recs 122, 141, 216–218). It is unclear how RSPs can promote integration if they are not required to adhere to the biophysical constraints of the natural environment and relevant environmental limits. As a minimum, there needs to be an understanding of where the receiving environment is at and how much headroom there is expected to be before environmental harm occurs and before decisions on the allocation of land or resources to specific activities can be signalled through RSPs.	RSPs should not be concluded until after the capacity and biophysical constraints of the natural environment have been determined. This may include consideration of any relevant environmental limits.
217–218	Contents of RSP PB Sched 1, cls 1–4	The MfE response (p. 267) states that it is not necessary to delay the preparation of RSPs until after ecosystem health limits are set through the NEPs because RSPs are long-term strategic documents and will not 'lock in' future infrastructure or development at a detailed level. Growth and change (as referenced by officials in MfE recs 209 and 217) are somewhat vague notions, and the idea that 'growth and change' can be usefully understood and characterised spatially, without an understanding of the biophysical underlay, is in our view misguided. Any constraints on development, or use of land or the CMA, should be informed by the biophysical constraints of the natural environment identified or determined when	See MfE rec 211, RSPs should not be finalised until the capacity and constraints of the natural environment have been determined. This may include consideration of any relevant environmental limits.

MfE rec	Topic	Comment	PCE Recommendation
		developing limits for the purpose of NEPs. Support: The recommended requirement for spatial plan committees to consider new information as it becomes available, to identify whether and when to initiate a review of the RSP.	
223, 224	Process for preparing RSPs PB Sched 2, cls 9–14	With reference to MfE rec 29 of DR2 and PCE's previous advice regarding concerns about the extent of ministerial discretion, the requirement for the Minister to audit a RSP is unnecessary and is another example of Executive overreach across the Bills.	The requirement for the Minister to audit a draft RSP should be removed.
225–229	Decisions on IHP recommendations PB Sched 5, cls 18–21	With reference to MfE recs 29, 30 and 31 in DR2, the ability for the Minister to change IHP recommendations is an inappropriate intervention given the 'independent' nature of IHPs. If national instruments are appropriately directive as to what the Minister intends, then there is no need for the Minister to have this power.	The committee should not accept MfE rec 226 and should remove any requirement for the Minister to make decisions on IHP recommendations.
231–232	Appeals PB Sched 2, cls 24–28	Throughout the select committee process, officials have described the policy intent behind RSPs as being the point in the system where trade-offs between development and environmental goals and conflicts resolved through the NPD will be implemented (i.e. where development should and shouldn't be enabled)[1] – merits appeals on all decisions on an IHPs recommendations for a RSP are appropriate on that basis.	Merits appeals should be possible on all RSP decisions.

[1] For example, implementing national instruments under both Acts in a way that helps to resolve any conflict between them (p.256).

MfE rec	Topic	Comment	PCE Recommendation
		As noted in MfE recs 225–229, the Minister should not have a role in making decisions on a draft RSP.	
236, 237	Review and amendment of RSPs PB Sched 5, cls 31–35	The MfE commentary (p.288) suggests that RSP review processes do not require consultation unless changes are proposed. This raises questions about how information regarding the performance/success of a RSP can be appropriately evaluated or tested if there is no requirement for consultation during a review process.	RSP committees should be required to consult during a review of an RSP. This could be constrained to a minimum list of persons or stakeholders who need to be consulted, similar to the approach for pre-notification of national instruments recommended in MfE rec 93 of DR3. The triggers for review of a RSP, what the review is required to cover, and reporting requirements should be clearly prescribed in primary legislation and not left to regulations.
Allocation			
240	Market based allocation NEB cls 87, 100, 204–207, 315, 316, 335	Current drafting of the MfE response is unclear on what is being proposed: “We will be doing further work on how these allocation methods could be applied in future. In line with the Government’s approach, we recommend removing market-based allocation processes from the NEB.” How can more work be done when these clauses are being removed from the NEB? And what is the Government’s approach? Removal of market mechanisms entrenches existing allocation. This disadvantages new entrants and favours current users based on an historic first-come, first-served. Ideally the option to use market mechanisms should be retained and the detail worked through in national direction. It also reduces the ability of councils to flexibly	Consider requesting more information from officials on what ’further work’ they will be doing (given that market-based allocation and comparative permitting are being removed from the Bill), what the ’Government’s approach‘ is that this recommendation is ’in line with’. Pending further information, it is recommended that the clauses are retained and Māori rights and interests in freshwater are addressed – for example, applying the Freshwater Working Group as per ss 96–100 of the Natural and Built Environment Act.

MfE rec	Topic	Comment	PCE Recommendation
		manage within environmental limits, and potentially unnecessarily restricts approval of new uses where a limit is at risk of being breached. However, realistically, this approach is mostly relevant to water allocation (quantity rather than quality) and will be a difficult exercise unless there is a commitment to resolve Māori rights and interests in freshwater.	
241	Comparative permitting NEB cls 100, 208–214	Removal of comparative permitting entrenches existing allocation. This disadvantages new entrants (especially those with lower environmental impact) and favours current users based on an historic first-come, first-served. It also reduces flexibility for councils to manage within environmental limits and look for optimal ways to achieve multiple outcomes. Submitters recognised these points, but the MfE response (p. 295 refers to allocation response at p.293 discussed above) states that further work will be done on how these methods could be applied in future, and that removing clauses from the Bill is in line with the Government's approach. However, no detail is provided in response to submissions to explain what the Government's approach is, and why these methods are being removed entirely from the scheme of the Bill.	As per MfE rec 240, consider requesting more information from officials and, in the meantime, the clauses should be retained.
242	Other allocation NEB cl 99	The MfE response (p.296) notes that this clause does not need to explicitly state that allocation must occur within environmental limits because allocation occurs through rules in plans and permits, both of which must comply with environmental limits.	Express reference that allocation must occur within environmental limits, unless otherwise authorised by a national standard, should be included.

MfE rec	Topic	Comment	PCE Recommendation
		However, national standards can allow activities to breach environmental limits, and this would also extend to allocation, meaning that allocation may not always be within environmental limits.	
Notification, submissions and hearings (consents and permits)			
251	Notification NEB cl 146, PB cl 125	Given that the NEP deals with publicly owned resources, the threshold for public notification of 'significant' adverse effects is inappropriate. There is no substantive reasoning provided in the MfE response (p.308) for why this threshold was selected, and why it is different to the threshold applied under the PB, and the proposal to increase the effects threshold remains unjustifiable. The administrative burden of requiring a local authority to identify all persons potentially affected and favour targeted notification will impose additional cost without any real benefit. The committee should listen to the weight of submissions on this point.	The threshold for public notification under the NEP should be 'more than minor' adverse effects.
259	Hearings PB cls 134–136, NEB cl 153	With reference to MfE rec 27 in DR2 and previous advice PCE has provided to the committee regarding participation and natural justice considerations, the restrictions on hearings being held are considered inappropriate. To ensure all relevant information is made available to a decision-maker, there should be increased scope for a hearing to be mandatory.	It should be mandatory to hold a hearing if a hearing is requested by a submitter.

MfE rec	Topic	Comment	PCE Recommendation
Coastal matters			
267, 268	Fisheries Act 1996 interface	The PCE submitted on the Resource Management (Consenting and Other System Changes) Amendment Act 2025 and did not support the amended requirements for rules that control fishing, as the amendments muddied the clarity that the 2019 Court of Appeal decision (*Motiti*) has provided.[2] The Fisheries Amendment Bill that is currently being considered by the Primary Production Select Committee seeks to make changes that will limit how the purpose of the Fisheries Act and the environmental principles will apply to fisheries decisions. This will mean that the efficacy of the Fisheries Act to control the effects of fishing on biodiversity in the CMA may be constrained. On that basis, it is even more important that regional councils retain the ability to impose rules controlling fishing, returning to the RMA provisions prior to the 2025 amendment Act.	The PB and NEB should incorporate the ability for regional councils to impose rules controlling fishing, based on the RMA provisions prior to the 2025 amendment Act.
Freshwater farm plans			
299	General submissions on freshwater farm plans	In submissions on both farm plans and action plans (under environmental limits), many submitters called for greater collaboration at a catchment level, including by catchment groups. There is a real missed opportunity to regularise the use of catchment management plans and incentivise collective action by groups of landowners. Having a type of plan that identifies non-regulatory collective actions to improve the environment would fill a current gap between the	Community-owned catchment management plans, that set out non-regulatory actions to improve the environment at the catchment level, should be recognised in the Bill – as an option to bridge the gap between action plans and farm plans.

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

MfE rec	Topic	Comment	PCE Recommendation
		requirements of action plans for environmental limits and property-scale farm plans. They would provide an opportunity to improve coherence between individual farm plans. The plans could be driven by catchment groups, irrigation schemes, other community groups or a combination.	
300	Freshwater farm plans NEB cl 125	Primary legislation is not the appropriate place for an operational management tool like freshwater farm plans. Developing a freshwater farm plan framework will require technical detail, flexibility and inputs from key stakeholders and experts, and is therefore better placed in secondary legislation. This is consistent with the methodology behind what is appropriate for primary legislation vs what should be left to secondary legislation promulgated by LDAC and referenced by MfE (see para 35). FWFPs are a similar management tool to those in the NES-CF for certain forestry activities, which is prescribed wholly through secondary legislation. The other recommendations in this section provide examples of the technical detail involved with farm plans and illustrate why secondary legislation is a more appropriate home.	The freshwater farm plan system should be delegated to national instruments or other appropriate secondary legislation.
303 - 304	Geographic application of schedule and freshwater farm plans replacing permits NEB cls 3–5	As currently drafted, there is no requirement for Freshwater Farm Plans (FWFPs) to be mandatory across the country and there is a broad discretion for the Minister to decide where such plans should apply. If FWFPs are to replace consents (or permits in the new system), then they should be mandatory across the country. The degree to which FWFPs could replace permits will strongly depend on what is contained within national standards. National standards regulating land use	Consider requesting more information to clarify how and the extent to which FWFPs may replace permits or not, once national standards are set. If FWFPs are to replace some permits, they should be mandatory across the country for farms that meet the land use threshold.

MfE rec	Topic	Comment	PCE Recommendation
		activities would need to include provisions to accommodate for higher risk settings (e.g. farming on ‘hotspots’, such as on highly erodible land or in nitrate priority sub-areas) with specific requirements. Some activities (e.g. water takes, point-source pollution) should always require a consent/permit due to their impact on environmental management.	
306	Considering the wider catchment context NEB cl 7	FWFPs are currently not required to actively consider the catchment context and their interaction with action plans remains unclear. Freshwater does not respect property boundaries and therefore catchment or sub-catchment processes are critical for effective water management, particularly for cumulative effects or when farming on ‘hotspots’.	Consider seeking clarification from officials as to how FWFPs account for the wider catchment context as well as how FWFPs are expected to interact with action plans.
307	Auditing freshwater farm plans NEB cl 9	Auditing freshwater farm plans is a key safeguard to ensure the integrity of the system. This should apply a risk-based approach – the question is not whether a farm is audited, but how frequently. The frequency with which farm operations are audited could depend on their most recent audit grade (e.g. grade A to D). Farmers who have passed their audit would be audited less frequently. Farmers that have failed their audit would be audited more frequently at their own cost. This would help encourage best practice.	The committee should not accept MfE rec 307 and instead introduce a risk-based approach to determine the frequency of audits, not whether a farm plan is audited at all.
308	Sharing of information from Freshwater farm plans	For context, this comment is based on the assumption that government investment in information alongside these reforms will make it easier for farmers to prepare FWFPs.	There should be a mechanism for sharing data and information from FWFPs with local authorities subject to appropriate protocols.

MfE rec	Topic	Comment	PCE Recommendation
	NEB cls 10–12	Environmental data and information are critical for effective environmental management. As a quid pro quo for the public investment in information, selected information contained in freshwater farm plans on land use and on aspects relevant to the wider catchment should be able to be shared with the relevant local authority.	
309	Ability of industry organisations to certify and audit freshwater farm plans NEB cl 13	Industry organisations or processors should be able to certify freshwater farm plans. However, auditing FWFPs should be reserved for uninterested, independent parties, as there is otherwise a risk of biased auditing.	While industry organisations should be able to certify freshwater farm plans, their ability to audit them should be removed.
Other matters			
312	Precautionary principle NEB cl 166	It is prudent to act with a degree of caution when available information is uncertain or inadequate. This does not mean delaying action, it means making decisions under uncertainty. The precautionary principle clause (cl 166) provides a basis for environmental decision-making and should not be removed. The precautionary principle, which advises taking protective action against serious or irreversible threats despite scientific uncertainty, is enshrined in several international treaties to which New Zealand is a signatory. These international conventions include the 1992 Rio Declaration on Environment and Development (Principle 15), the 1992 United Nations Framework Convention on Climate Change (UNFCCC) (Article 3, Principle 3), the 1992 Convention on Biological Diversity (CBD) (Preamble), the 2000 Cartagena Protocol on	The committee should not accept MfE rec 312, and retain clause 166, with a precautionary approach applying throughout the system when information is uncertain and risks environmental or human harm.

MfE rec	Topic	Comment	PCE Recommendation
		Biosafety (Introduction and Objective 1), the 2001 Stockholm Convention on Persistent Organic Pollutants (Article 1).	
Transition and implementation			
316, 317	Transition sequence and timeframes PB Sched 1, cl 5	Even with the extension to timeframes, this remains ambitious.	Consider how realistic the timeframes are, specifically the time necessary for ensuring that environmental limits and standardised planning provisions will be in place, with sufficient time for their incorporation into the RSPs.