Planning Bill and Natural Environment Bill: Independent Adviser's Report

26 May 2026

Introduction

1. In the course of the presentation of Departmental Reports 1–3 being to the Committee, I have provided comment on many of the Ministry's responses to submissions and recommendations. These are set out in the table at Appendix 2. This report addresses in greater depth a selection of issues that continue to present challenges if these Bills are to contribute effectively to the environmental management system.

2. A summary of the recommendations made in this report is attached at Appendix 1.

3. It is worth stating at the outset that the Bills, as introduced, propose a number of changes that should result in improvements in the way the resource management system functions, notably:

   - making national direction mandatory
   - requiring a greater degree of standardisation in the way in which regulations apply
   - establishing a Planning Tribunal as a more accessible way to resolve lower-level disputes more efficiently
   - introducing mandatory regional spatial planning to ensure the better integration of urban development, infrastructure and hazard management
   - improvements to environmental monitoring, compliance and enforcement
   - introducing human health limits
   - introducing the polluter pays principle for, and improving the management of, contaminated land
   - simplifying the provisions related to designations.

4. Despite the potential for improvement that these features promise, so much is left to regulatory discretion that it is impossible to judge whether environmental outcomes will be improved as a result of the Bills' machinery. Furthermore, both Bills present significant challenges for interpretation, implementation and the overall workability of the resource management system. These shortcomings are analysed in this report under the following main headings:

- **System design**
  - Purpose and goals
  - System stability: development of national instruments, participation, costs and benefits of the Bills
  - Sequencing of plan development: establishing the system
- **Environmental management**
  - Function of environmental limits
  - Setting environmental limits
  - Managing environmental limits: resource caps, action plans, freshwater farm plans/catchment collectives
  - Regulatory relief and biodiversity
- **Aspects of the planning system**
  - Cumulative effects and permitted activities
  - Excluded effects: landscape, amenity, land use effects regulated in other legislation and light
  - Green spaces
  - Climate change
  - Designations
- **Transitional matters**
  - Existing agreements and arrangements

System design

5. From the outset of the current Resource Management Act (RMA) reform exercise, it has been taken for granted that reform would be delivered through two new Acts.[1] The advice of the Expert Advisory Group on the blueprint for reform was sought on that basis.[2] This fundamental design decision was made before any substantive policy development had commenced, for reasons that have never been clearly stated. It seems to have followed on from the two Bill solution advanced by the previous Government. This design principle has, to my knowledge, never been the subject of robust policy analysis.

6. The result of that design choice, now presented as the Planning Bill and the Natural Environment Bill, is a proposed legislative framework that is more complicated than is necessary to address what are, in any case, matters that involve significant complexity. Environmental management requires regulation to address:

- the use and protection of common pool environmental resources, like air and water, that are not privately owned;
- the inevitable conflicts that arise as a result of externalities generated by people exercising private property interests, and conflicts that arise between private property owners and the development of infrastructure that delivers public benefits; and
- providing for Treaty of Waitangi considerations and Māori interests as they relate to te taiao.

While the Bills pretend that the first two issues can be treated as distinct and separate matters, they cannot in the real world be managed without reference to one another.

7. Planning does not occur in a vacuum. Planning for and undertaking uses and activities occurs within the physical environment, which results in a clear relationship between the two Bills. The opening sentence of the Explanatory Note for the Planning Bill describes it as "working in tandem with the Natural Environment Bill." The General Policy Statement further sets out the objectives of the system created by the Bills.[3] It specifies several objectives that are designed to make it "easier to get things done" by enabling development, the delivery of infrastructure and primary sector growth, "*while also*" [my emphasis] safeguarding the natural environment and human health, adapting to climate change and reducing risk from natural hazards.[4]

8. The Ministry's Departmental Report explains that the design choice of two distinct statutes, which operate as a single and coherent system, "reflects the policy objective of avoiding internal tension and complexity, while still unlocking development *while* safeguarding the environment and human health."[5]

9. The policy rationale for the design of this system seems itself to be suffering from the very internal tension and complexity the proposed legislation is supposed to address. Notwithstanding a determination to adopt an approach that is fundamentally different to the RMA, the Ministry's explanation of the approach taken cannot escape the fact that the proposed replacement system will still have to deal with development *while* also managing the environment. That starting point has much in common with section 5 of the RMA, but one that is quickly muddied by core decision-making provisions that try to avoid that position.

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1 Cabinet Minute, "Replacing the Resource Management Act 1991: Approach to Development of New Legislation" (24 March 2025), CAB-25-MIN-0080.01, at [2].

2 See para 6 of the Report from the Expert Advisory Group on Resource Management Reform, *Blueprint for resource management reform: A better planning and resource management system*, 2025.

3 Ministry for the Environment, *Departmental Disclosure Statement: Planning Bill* (8 December 2025) p.3.

4 Also to improve regulatory quality in the resource management system and uphold Treaty of Waitangi settlements and other arrangements.

5 MfE Departmental Report – Report 3, p.10, para 30.

10. Legislation can be informed by any policy intent. But continuing with a dual-Act design will require much greater clarity and simplicity in these core provisions if their implementation is to be workable and the relationship between their provisions is to be clearly understood. The policy explanations supporting the relationship between the Bills seems to envisage a seamless interface between planning for and conducting activities *while* ensuring the natural environment can carry those activities – now and into the future. But the current design, at least as drafted, sets out a complex interface that will need near constant readjustment if the Bills are to work seamlessly in tandem. Of course, it may be that the policy intent is not as stated in the Explanatory Note and that it is intended that environmental protection should be secondary to enabling development, infrastructure and primary sector growth. This is obviously not a construction I would support. But if that is the case, then it should be made clear. Ambiguity about the relationship between the two Bills will help no one.

Purpose and goals

11. There appears to have been a deliberate choice made to draft purpose clauses that are vaguely descriptive, presumably to avoid any debate over the application of the other provisions and their interpretation. As a result, there is no overall legislated direction for the system created by the two Bills, even though (as outlined above) the General Policy Statement set out in the explanatory notes to the Bills was able to articulate exactly that.

12. The goals, described by the Ministry as the objectives of the Acts,[6] are set out in clause 11 of both Bills. These clauses require that all persons exercising or performing functions, duties or powers under this Act must seek to achieve the specified goals. On the face of it, this provision expresses the goals as an imperative that must be applied by each decision-maker or person performing statutory functions. However, this requirement is limited by the following provisions:

- Clause 12(3)(c): Circumstances where a goal must not be considered directly.
- Clause 12(4): Restrictions on considering a goal directly, even when empowered to do so.
- PB clause 45(2)(b) and NEB clause 69(2)(b): Not all goals need to be achieved in all places at all times.
- PB clause 45(2)(a) and NEB clause 69(2)(a): Goals may be prioritised through national policy direction (NPD).[7]

13. The combined effect of these provisions means the drafting of clause 11 provides no meaningful direction to decision-makers. Clause 12 is so prescriptive about the manner in which the goals are to be considered (or not considered) that a person exercising or performing functions, duties or powers cannot reasonably be expected to 'seek to achieve' the goals. It certainly vacates the application of the goals to 'all persons'. The limited scope of application for clause 11, coupled with the vague and ambiguous requirement to 'seek to achieve', makes it difficult to ascertain what, if any, direction clause 11 is intended to provide.

14. The purpose of NPD includes particularising the goals and directing how they must be achieved.[8] 'Particularise' is new and unusual language for legislation. To 'particularise' is described by the Ministry as being to further elaborate and provide direction on how the goals are to be achieved, including how to implement the intent.[9] It appears that NPD is intended to enable the Minister to settle on definitions of the goals that will, until changed by a subsequent Minister, provide detail about how the goals are to be interpreted and applied or addressed by the system.

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6 MfE Departmental Report – Report 3, p.50.
7 See the explanation of the policy intent at p.51 and p.135 of the MfE Departmental Report – Report 3.
8 PB cl 54(1)(a) and NEB cl 78(1)(a).
9 MfE Departmental Report – Report 3, p.135.

15. This means the goals (the objectives of the Acts) will only have the meaning for the time being prescribed in national instruments. But when Parliament legislates, it must mean something. If that meaning cannot be ascertained from the words of the statute, or in how matters are 'particularised' in NPD, this will remain open to interpretation – by decision-makers, people participating in the system, and ultimately the courts.

16. To summarise, the purpose clauses in each Bill are drafted so they are descriptive. That drafting seeks to ensure that the clauses provide no direction and therefore they are purpose clauses that have no purpose. Instead, we have 16 goals (nine in the Planning Bill and seven in the Natural Environment Bill, with the addition of the recommended enhancement goal). These are meant to guide decision making in some way. But how, when and in what priority those 16 goals are to be achieved is designed as a deliberately moving feast, depending on the Minister of the day. Read together as they must be, and weighed and prioritised as the Minister sees fit, there is simply no way of knowing what outcomes the Bills will provide for. This is a recipe for complexity and confusion, not simplicity and clarity. Just what the courts will make of it when asked to adjudicate – and they will be – is anyone's guess.

Option 1: Design based on objectives

17. If the Committee remains committed to the dual-Act design but accepts that the Acts must work as a cohesive legislative unit, the preliminary provisions can be redrafted to provide greater clarity for the top of the 'funnel' – providing clear direction on what the system is designed to achieve and how.

18. The purpose clause could be redrafted to reflect the intent as expressed in the General Policy Statement and provide that each purpose clause is relative to and reflective of the other. Drafting might be considered along these lines:

Planning Bill

The purpose of this Act is to enable development, high-quality infrastructure and primary sector growth within the environmental protections provided for by the Natural Environment Act.

Natural Environment Bill

The purpose of this Act is to maintain and improve the natural environment and safeguard human health, provide for the adaption to climate change effects, manage risk of natural hazards and inform planning under the Planning Act.

19. If the function of the goals is to set the scope for what the new resource management system is designed to regulate, this must be specified with much greater clarity. Prescribing how a purpose clause is applied can be achieved by connecting the purpose clause to the performance of certain functions or the exercise of powers under the Act. This approach has been applied in other statutes, most recently the Regulatory Standards Act 2025, where the purposes of the Act are given effect to by specified mechanisms in the Act.

20. A cascade could be established from the purpose clause to the goals, recast as principles, consistent with the drafting of existing legislation, which are set in order to achieve the purpose of the Act. That drafting approach is consistent with the public service principles in section 12 of the Public Service Act 2020. The principles could then be given effect through national instruments.

21. Including a specified list of goals or principles in the legislation lends itself to debate about what matters should be included in the list, and to the relative weight or priority between them. This was raised by a significant number of submitters in relation to matters that should be expressly mentioned in the goals, including critical infrastructure and food production. The problem with this is that it invites a laundry list of sectoral references. This is to be avoided. If they must be addressed by national instruments, the list should be limited to matters that are at the core of any planning system as outlined above – those necessary for environmental protection, and the management of conflicting public and private interests in resources.

22. Drafting might be considered along these lines:[10]

10 The current PB goals have been restructured in the proposed list of planning principles. Text has been added to align with the proposed design and deleted to align with the advice of this report regarding environmental limits and indigenous biodiversity. Reference to Māori interests has been abbreviated, as compared to cl 11 of both Bills, but should not be interpreted as providing a PCE view on these matters.

The Planning Bill

Planning principles

In order to achieve the purpose of the Act, the planning principles are:

(a) <u>to ensure spatial planning and land use planning is informed by the environmental protections under the Natural Environment Act:</u>

(b) to support and enable economic growth and change by enabling the use and development of land:

- (i) enabling competitive urban land markets by making land available to meet current and expected demand for business and residential use and development:

(c) to create well-functioning urban and rural areas, including by:

- (i) maintaining public access to and along the coastal marine area, lakes, and rivers;
- (ii) ensuring that land use does not unreasonably affect others;
- (iii) separating incompatible land uses;
- (iv) planning and providing for infrastructure to meet current and expected demand; and
- (v) safeguarding communities from the effects of natural hazards through proportionate and risk-based planning:

(d) to protect from inappropriate development the identified values and characteristics of:

- (i) areas of high natural character within the coastal environment, wetlands, and lakes and rivers, and their margins;
- (ii) outstanding natural features and landscapes; and
- (iii) sites significant historic heritage:

(e) to provide for Māori interests.

Natural Environment Bill

Natural environment protection principles

In order to achieve the purpose of the Act, the natural environment protection principles are:

(a) to enable the use and development of natural resources within environmental limits:

(b) to ~~safeguard~~ maintain and improve the life-supporting capacity of air, water, soil, and ecosystems:

(c) to protect human health from harm caused by the discharge of contaminants:

(d) to ~~achieve no net loss in~~ maintain and improve indigenous biodiversity:

(e) to manage the effects of natural hazards associated with the use or protection of natural resources:

(f) to provide for Māori interests.

23. The role of national instruments could then include reference to the principles, to provide centralised direction to the system regarding their application:

Role of national instruments (see Planning Bill, clause 44)

The role of national policy direction and national standards (**national instruments**) is to provide centralised direction to the planning system:

(a) to give effect to the planning principles set out under **section xx**:

(b) on matters relating to planning policy and regulation, including by standardising approaches to how activities are enabled and their effects regulated; and

(c) on local government processes and procedures under this Act relating to the operation and administration of the planning system.

Role of national instruments (see Natural Environment Bill, clause 68)

The role of national policy direction and national standards (**national instruments**) is to provide centralised direction to the natural environment protection system:

(a) to give effect to the natural environment protection principles set out under **section xx**:

(b) on matters relating to natural resource policy and regulation, including by standardising approaches to how activities are enabled and their effects regulated; and

(c) on local government processes and procedures under this Act relating to the operation and administration of the planning system.

Option 2: Design based on delegated direction

24. A statute is not required to have a purpose clause. Rather than draft a vanilla purpose clause that attempts to avoid any substantive legal effect and deploys vague subjective concepts, such as 'enjoyment of land', it might be preferable to do without a purpose clause altogether. Further, if the intention of the legislative design is for the goals to have no substantive effect for the operation of the system, clause 11 (and the clauses that limit and implement the effect of the goals) could be dispensed with. Clauses that are not intended to perform any significant function risk introducing unnecessary complexity with the accompanying legal risks that entails.

25. A clearer and more transparent way of carrying the stated policy intent into law could be achieved by explicitly stating that the two Bills are designed to erect a framework that enables the making of regulations by the Executive:

- The Planning Bill might be characterised as (1) creating powers to regulate for the typical frictions between property owners that were once dealt with by tort law but have been codified for efficiency reasons; and (2) creating regulations to deal with the rolling out of infrastructure. This would address designations and development that spans multiple property owners.
- The Natural Environment Bill might be characterised as creating powers to regulate those specific domains not in private ownership, such as freshwater and air, etc. This would address classical environmental externalities as they extend to common pool resources.

Recommendations

1. I recommend that the issue of whether the system design is likely to deliver a clearer simpler system or not, should be a specific point addressed in the Committee's report to the House.
2. To inform that part of the Committee's report, I recommend that the Committee seek specific legal advice on how, in their totality, the dual-Act system, descriptive purposes, clauses and multiple goals with no legislative direction, might be interpreted by system decision-makers and the courts.

Recommendations

3. The Committee should consider the options I have presented and determine if either would address risks identified by legal advice the Committee receives.
4. The Committee should also request any advice tendered to the Government, by officials or by private advisers, that makes a clear case for enacting two Bills rather than one. I am not talking about an *ex post facto* rationalisation by officials. I am talking about primary advice at the beginning of the process that advocated for two Bills rather than one. That could provide valuable insights into the intentions of the Bill's authors.

System stability

26. A significant volume of submissions commented on the risk that changes of the nature and scale that are proposed will lead to increased uncertainty and, as a result, undermine system stability. Horticulture New Zealand noted that "in many instances, the NEB (as introduced) will result in worse outcomes for growers than the [RMA]".[11] In common with Federated Farmers, Fonterra and others, Horticulture New Zealand considered that there would be a higher regulatory burden in consenting. The same message was made clear by groups in the environmental sector, though largely raised in relation to different points.

27. Despite the flaws of the RMA, the basic framework has endured. The policy rationale given for reform is that the RMA has "neither adequately protected the natural environment, nor enabled enough housing, business, or infrastructure development where needed".[12] However, these Bills will lead to even greater uncertainty about the minimum level of environmental protection that will be provided, which has been acknowledged by the Ministry.[13] With system direction left to the discretion of the responsible Minister, much will hinge on the quality of national direction and the way the Minister decides to trade-off particular goals. This carries the potential for endless churn following every change of government and resulting uncertainty for system users.

28. The potential for perpetual churn flows from the purpose and goals being completely agnostic as to the outcome of the system. As the Ministry has acknowledged, the Bills as currently designed, may be applied in a way that could deliver outcomes that promote development at the expense of the environment, or the reverse.[14] All that is required to drastically shift the direction of the outcome is a tweaking of the NPD, with little avenue for challenge other than judicial review.

11 Horticulture New Zealand submission on the Natural Environment Bill, p.4.

12 Ministry for the Environment, *Regulatory Impact Statement: Replacing the Resource Management Act 1991* (25 March 2025) p.2.

13 MfE Departmental Report – Report 3, p.389.

14 MfE Departmental Report – Report 3, p.389.

Development of national instruments

29. Frequently changing national direction has been as much a key criticism of national direction under the RMA as the absence of direction. These Bills present an opportunity to carefully assess the process for developing national instruments and strike a balance between agility and certainty for the system. The extent of Ministerial discretion across key instruments is set out in the diagram I provided to the committee on 27 March 2026.[15]

30. Submitters identified various 'guardrails' that could be added to decrease the risk of churn and increase system stability. The NZPI suggest that a technical advisory group (TAG) be mandatory for national direction development, while Eugenie Sage supported the Board of Inquiry process being reintroduced. These are both useful suggestions the Committee should consider.

31. The ability to use Boards of Inquiry to issue national direction was recently removed from the RMA by the Resource Management (Freshwater and Other System Changes) Amendment Act 2024.[16] The policy rationale cited for doing so was the fact that the process had not been frequently used. Ministers seemed to prefer changes to existing national direction kept under their immediate political control. As successive governments pursued different approaches, direction on matters such as freshwater was in a constant state of transition. The flaw in the RMA framework for national direction was not the availability of the (under-utilised) Board of Inquiry process. It was the eventual overuse of Ministerial discretion to issue or amend national direction, resulting in the system being in a state of perpetual change. Had the policy problem been accurately diagnosed, the Board of Inquiry process would likely still be on the statute books, providing a procedural option for curtailing the extent of the Minister's ability to change national direction. More positively, from the Minister's point of view, a Board of Inquiry gives the Minister a means of testing proposals in an arms' length forum, led by people with deep expertise in the practicalities of what is being advanced.

32. Issuing the initial, and any subsequent, national instruments must apply a process that results in certainty for system users and decision-makers. Plan making cannot be subjected to the amendment of national direction by successive Ministers, as experienced under the RMA. Submitters have identified legitimate options for how this could be achieved, to which the Committee should give serious consideration.

Recommendations

5. The Minister should be required to use a Board of Inquiry-style process or a TAG for the development of new national instruments. This could be applied to all national instruments, or to specified domains or topics.
6. Where the Minister chooses to depart from the recommendations of the BoI or TAG, the justification for doing so should be required to be set out by the Minister.
7. Amendment to or the removal of national instruments should remain a process led by the Minister. This should include a mandatory consideration of the significance of the proposal, a review to ensure internal consistency of the changes with the rest of the national direction, and whether a TAG should be engaged.

15 PCE Advice – Legislative design and core components, Diagram of ministerial powers and constraints on participation at the top of the system, 27 March 2026.

16 Resource Management (Freshwater and Other Matters) Amendment Act 2024, s 12, which repealed ss 47–51.

Participation

33. Opportunities for effective participation in processes that meaningfully contribute to decision-making can reduce the risk of legal challenge. Participation is also an important channel for ensuring that information available to decision-makers is of sufficient quality to support decision-making and that all relevant matters are made known.[17]

34. Submitters from across the spectrum have raised the importance of participation in the process for developing national instruments – for example, industry (Civil Contractors, Transpower), primary production (Horticulture New Zealand, Aquaculture New Zealand), local authorities, iwi and Māori. If the system design is to rely on much of the framework being set at the national level and with a greater degree of standardisation, the quid pro quo needs to be comprehensive and with robust opportunities for participation in putting that framework in place.

35. The participation process must be **accessible** for those who are to engage with it. Submitters raised concerns that the 'funnel' channels participation into processes for higher-level documents, such as national instruments, where the local effect is difficult to extrapolate and understand.[18] This concern will likely be compounded by recent announcements that encourage amalgamation of local authorities. Fewer councils will mean reduced local area representation that is currently resourced to engage with participation processes. This could further diminish public confidence.

36. The process must also be **transparent** about how feedback is to be received, considered and responded to. Simply requiring a decision-maker to provide a proposed instrument for comment, and a minimum period for feedback to be received, fails to provide sufficient clarity as to how that feedback must be considered. The Ministry addresses this in relation to NPD by shifting responsibility for receiving, considering and summarising submissions to the chief executive, who must then include this in a report to the Minister.[19] For instruments that perform a critical function for the system – providing foundational definitions which will dictate outcomes – the Minister should be required to consider far more than a summarised report from the chief executive, and should be required to provide a transparent response to the issues raised by submitters.

Recommendation

8. To minimise the risk of legal challenge and maximise access to relevant information, higher order documents, commencing with national instruments, must have the most comprehensive and robust opportunities for participation. The Committee should consider requesting further options from officials on how participation in processes for preparing national instruments and regional spatial plans can be improved to ensure robust accessibility and transparency.

17 See discussion of why participation in the process ensures that relevant information contributes to sound decisions in the PCE submission on the Resource Management (Consenting and Other System Changes) Amendment Bill, at p.6.

18 For example, local government, including Auckland Council, Kaipara District Council and Timaru District Council, and Māori authorities, including Te Uri o Hau Settlement Trust.

19 MfE Departmental Report – Report 3, MfE recommendation 92.

The costs and benefits of the Bills

37. Any regulatory system will impose costs – both on the regulator (the Government and its delegates) and those being regulated (citizens and businesses). Some level of cost is unavoidable – unless we are happy to socialise the costs of private development and resource use. The question is whether the costs imposed are no higher than is necessary to secure the benefits of regulation. While it is the Government's clear policy intention to promote a more agile, less-costly system, the proposed framework carries the risk of ongoing, or even higher, costs if some key issues are not addressed. Costs arise from (among other things):

- the need to run processes to amend direction, plans and rules;
- the need to maintain multiple systems that implement different versions of planning requirements as they change over time;
- having to amass costly information either to support the development of planning documents or support planning permissions;
- litigation driven by a need to settle interpretation and challenge public decision-making.

38. Cost savings and increased system stability may be realised with greater standardisation of regulatory provisions. But it will only be swifter and cheaper for system users if upfront investment is made in the environmental information that is required to support a highly standardised approach. If not, either applicants will remain stuck with the expensive bespoke collection of information, or that will be waived away and the environment will pay.

39. Overall, the cost of transition to the new system will be significant for local government,[20] including investments in processes, institutional arrangements and consultation mechanisms to support the transition to the new system, not to mention training and other system support. These cost pressures will emerge at the very same time that local authorities are being asked to address infrastructure backlogs, invest in upgrades to improve data and technology systems, and other government-mandated initiatives to improve community resilience. At the same time, councils face major local government reform and the threat of legislatively imposed rate caps.[21] I also caution that the transition to new planning processes comes alongside an expected uptick in consent applications given the proposed approach to extend the duration of consents. Smaller and less financially secure councils where officers are required to wear multiple hats are likely to be disproportionately affected.

Recommendation

9. A system that is developed at speed, without sufficient time and resource to be properly established, risks the need for frequent amendment, as shortcomings uncovered in the course of implementation need to be remedied. Some elements of the system may be unworkable and unable to be implemented. Others may become mired in legal challenge and processes stalled. The Committee should seek additional advice, perhaps independently from experienced practitioners, to be absolutely sure that the proposed implementation timeframes are realistic.

20 For example, see the detailed analysis undertaken by Taituarā in their submission.

21 Outside of the resource management space, many other reforms that involve local government will be placing pressure on council budgets, including in the building and construction space, emergency management, and local government reform.

Sequencing of plan development

40. In the Bills as drafted, the setting of environmental limits in natural environment plans comes after regional spatial plans have been adopted. This makes no sense at all. There is a real risk that decisions made during the spatial planning process will provide for activities either in a way that completely undermines the setting of limits or risks those activities not complying with limits that are subsequently set.[22] This undermines the 'funnel' approach to the planning system.

41. Planners and regulators across the board submitted on the challenges posed by the current sequencing of the transition from the RMA to the new system. A system based on ensuring that development is beyond question if it is within limits is unworkable, and is likely to encounter significant problems downstream, if the first generation of plans are prepared before environmental limits are in place. While there is a degree of chicken-and-egg when it comes to spatial planning and regulatory plans, the underlying biophysical reality must be known to begin any form of planning. The 'space' in 'spatial planning' cannot be a mystery – the carrying capacity of the environment must be known before use and allocation of the environment can start being assigned. High-quality, federated environmental data will be vital for generating this environmental underlay. If investment in improving environmental information and our ability to access it is inadequate, either councils and developers will have to pay to generate bespoke information (our current dilemma) or, more likely, the environment will continue to accrue the costs.

42. In my view, the hierarchy or sequencing of spatial and regulatory plans during the transition needs to be reframed. Currently, decisions on spatial plans are made and then LUPs and NEPs are developed in parallel with no hierarchy between LUPs and NEPs. The omission of the need for alignment between these regulatory plans, particularly within the context of the policy rationale of ensuring development only occurs within environmental limits, shifts the burden of weighing incompatible plans and rules onto users of the system and consenting processes. Flexibility and deregulation of land use and development is only reasonable if that 'loosening of the reins' occurs within the carrying capacity of the environment. The later the capacity of the environment is considered in the process, the more it will come back to bite on a consent-by-consent basis, undermining the policy intent of the reform.

43. Decisions on spatial plans must be consistent with an objective minimum level of environmental quality based on the biophysical constraints of the environment. As I noted during the committee process, if the life-supporting capacity of the natural environment is exceeded due to 'strategic priorities', environmental degradation may be irrecoverable and irreversible. Continued reliance on the natural environment to carry 'strategic priorities', may not be possible.[23] Some places have biophysical characteristics or constraints that make them inherently unsuitable for certain types of land use (e.g. exotic plantation forestry on erosion prone land, intensive dairying on shallow soils or in areas of water scarcity, urban development in floodplains). If inappropriate land use in inappropriate locations is signalled or enabled before those constraints are known, it may render the setting of limits impossible, given the weight that is afforded to economic and social aspirations in the setting of limits. Once development and infrastructure corridors are signalled, and investment is made in reliance on them, I fear it will be nearly impossible to change them in the future when more information about environmental constraints becomes available. Authorities may find themselves with little choice but to set lenient limits or limits that are pointlessly non-descript to avoid breaching them at the outset.[24]

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22 For example, MfE Department Report – Report 3, MfE recommendation 142. The Ministry has recommended that the NEB is amended to clarify that the relevant RSP must be considered when setting an ecosystem health limit through a NEP, but the RSP is not determinative of where the limit is set.

23 MfE Department Report – Report 3, MfE recommendations 142 and 143.

24 As required by NEB cl 56, where no hierarchy is to be applied to the relevant matters.

44. While I agree with officials that it is not necessary to delay the preparation of RSPs until after limits are set through NEPs, if spatial planning is to operate as intended, it is *critical* that the biophysical constraints of the natural environment are identified before first-generation spatial plans have legal effect – in other words, the biophysical constraints of the environment should form the first layers of a spatial plan. This is so that the individual and cumulative impacts of land use choices can be assessed and suitable locations then identified based on those constraints. During discussion of the Departmental Report, officials explained the intent was that the first-generation spatial plans would be reviewed and updated once decisions on limits set through NEPs have been made.[25] It would be much better – and simpler – to amend the sequence of plan making and integrate it to avoid almost immediate review. First generation RSPs will do little to deliver the development or infrastructure they hope for if they may be unwound or compromised shortly thereafter because of the limits or rules and methods set in regulatory plans.

45. The sensible sequence would be to identify the key biophysical constraints that enable councils to identify 'no-go' areas and smooth the path for appropriate development in other places. These biophysical constraints are common to both spatial plans and environmental regulations – evidence, if ever it was needed, that these two Bills cannot treat land use and the environment as unrelated matters. A more sensible sequence to plan development would almost certainly reduce costs and uncertainty for the development and infrastructure sectors. Regulation could then occur in a way that is consistent with RSPs, because authorities will have a degree of comfort that rules and methods to implement spatial plans will not result in land use that exceeds the carrying capacity of the environment.

Recommendation

10. The sequence for implementation should be as follows:

    a) Assemble all the biophysical layers and pressure points that will require regulation to enable an objective understanding of the physical and environmental conditions that are in play. This will provide a common information base for both spatial plans and environmental limits. The assembly of these layers should involve a transparent, publicly accessible process.

    b) Then, lay out a broad-scale spatial plan that is informed by those biophysical facts with the awareness that regulatory backstops will need to be imposed. What those are could depend on some of the big infrastructural choices that are made, so leaving them non-finalised at this point would be reasonable.

    c) Once the spatial plan is agreed and the risks it runs are understood, environmental limits could be finalised, reflecting the trade-offs made by councils and their communities. Environmental regulations that implement those limits can then be finalised.

    d) Finally, LUPs can be developed to reflect both spatial and environmental constraints.

25 MfE Departmental Report – Report 3 discussion 7 May.

Establishing the system

46. The near-unanimous agreement among submitters on the necessity of environmental limits preceding spatial and land-use planning was only exceeded by their positions on timeframes. I recognise the Government's desire to implement changes to the system as quickly as possible, but this must be balanced with the need to ensure that the first generation of plans is robust and enduring. Sufficient time is required to ensure quality plans are delivered. The short timeframe proposed by officials risks low-quality plan-making which will potentially undermine the outcomes the 'funnel' design is intended to achieve.

47. Getting national direction right, including integration and conflict resolution which drive the outcomes the system will achieve, is critical to ensure regional spatial planning and regulatory planning can deliver clear, effective, and robust planning frameworks. Even with the extension of timeframes recommended by officials,[26] I foresee significant risk in all councils moving through the transition phase at once. There will be a significant strain on workforce capacity and the availability of experts, including hearing commissioners, planners, lawyers and scientists, as regions and councils commence the required planning phases all at once. The standing up of 17 IHPs and the resourcing required to support 17 simultaneous (or near simultaneous) planning processes will be a near impossibility. The resourcing crunch will be further compounded by fast-track approvals and notified RMA consent applications competing for those same experts. Not all experts are created equal. As demand for experts increases, so will the costs and, inevitably, the less financially secure authorities will end up with lower quality plans because of affordability or expert availability constraints.

48. Reviewing, compiling, and addressing the many current unknowns to prepare comprehensive national direction and standards to guide spatial planning within 12 months and a further 9 months to prepare and notify RSPs, is simply heroic.[27] As spatial planning is intended to be the point in the system where conflict between environmental and development aspirations (goals) is resolved, more time should be provided to get spatial planning right, to ensure that spatial plans are based on the best available information and that land use decisions are made within the biophysical constraints of the natural environment. If spatial plans are prepared within these constraints, it is then reasonable for regulatory plans to proceed under a more compressed timeframe.

49. It is an inherent part of the 'funnel' design that the transition will take time as each level falls into place. This is the main drawback of leaving so much to secondary legislation and the Minister's discretion. However, it is vital that the first generation of plans are given the best possible chance to bed in.

Recommendation

11. I cannot offer a precise view on what a 'good' or an appropriate time frame looks like, but I stress that each step in the planning process needs to have sufficient time to allow proper consideration of whatever the preceding step has set up. The focus should be on doing it once and doing it well. This will greatly minimise the risk of a cascade of immediate changes being required after the specified transition date. The Committee might consider seeking independent expert planning advice regarding appropriate timeframes for transition, to minimise the risk of system failure due to insufficient time to prepare robust instruments and plans.

26 MfE Departmental Report – Report 3, MfE recommendations 316 and 317.

27 MfE Departmental Report – Report 3, MfE recommendations 316 and 317.

Environmental management

Function of environmental limits

50. Environmental limits are a safety net to prevent degradation beyond a point where the capacity of the environment to provide the services on which we and our economy rely, is compromised. Exemptions from limits (be they activity or spatial exemptions) are akin to cutting holes in that safety net. Limits and managing activities within limits take on extra importance given that the legislative backstops to prevent pollution in sections 70 and 107 of the RMA are not replicated in the proposed system. Exemptions from limits should be kept to a minimum and, when provided for, should be tightly prescribed and be the outcome of a transparent and rigorous process. Any exemption from limits has implications for other activities and resource users. Allowing certain activities to exceed limits may reduce the resource available to other activities (those not allowed to exceed limits) in the relevant management unit. These other activities may face consequent restrictions on their resource use if regulatory action is required to address the exceedance and return the management unit to compliance with limits.

51. Limits are the primary means proposed by the new system to protect the environment. They assume greater significance given the increased threshold of effects to be considered and managed in the system. The Ministry has explained that enabling use and development within environmental limits is only one of the considerations for national direction, and that because limits have their own section in the legislation, the inclusion of limits in the goals could imply that limits have greater weight than other goals.[28] This advice gives weight to the conclusion that the NEB is actually an economic development Bill that provides for the possibility of environmental limits. In my view, environmental limits should be set and applied as the minimum objective level of environmental condition that must be maintained and beyond which, significant and potentially irreversible harm may occur.

Setting environmental limits

52. The NEB, as introduced to Parliament, provided for environmental limits to cover both human health and the natural environment, which on the face of it is an improvement over the status quo. While I generally support the framework developed for human health limits, as drafted, it is impossible to say what ecosystem health limits might be or what level of protection they might be required to achieve.

53. While the NEB appears to leave the setting of ecosystem health limits to local government, as outlined in my note on environmental limits,[29] substantial powers exist for the Minister to decide what ecosystem health limits might be and how protective they are. As acknowledged by the Ministry, the flexibility in the level of environmental protection required by the NEB compared to the RMA could mean both higher and lower levels of protection are possible.[30]

54. The proposed framework for ecosystem health limits is abstruse about the level of protection that might be achieved, and because limits need not apply everywhere, it seriously limits their 'protectiveness' for the natural environment. My key points of concern are that:

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28 MfE Department Report – Report 3, p.62.

29 PCE Advice – Environmental limits: Ministerial discretion and the relative 'protectiveness' of ecological health limits, 20 April 2026.

30 MfE Departmental Report – Report 3, p.389.

- in some cases, a Minister may decide that use and development need not occur within environmental limits[31]
- the threshold for setting ecosystem health limits is low, and is even lower than that proposed for human health limits, which is to prevent significant and irreversible harm[32]
- there is no hierarchy in economic, social and environmental considerations, meaning limits could be set lower than the biophysical constraints of the environment might allow[33]
- despite minimum acceptable levels being set by a national standard, councils can set limits lower than the minimum acceptable levels if a justification report is provided. There are limited details about how robust that justification has to be, or how it might be assessed or challenged[34]
- limits are to be set for each management unit, but there is no explicit requirement for limits to cover all of a region or, by extension, all of New Zealand[35]
- significant infrastructure would be allowed to breach environmental limits, undermining the protectiveness of limits.[36]

55. Accepting recommendations from the Departmental Report, which remove reference to environmental limits, will further weaken limits and their status in the system. Key changes of concern are:

- expunging all references to environmental limits in the goals at the top of the system[37]
- removal of reference to environmental limits throughout NEB clause 32. This means that when classifying activities, decision-makers would no longer need to consider if there was sufficient allocation to allow use and development without breaching an environmental limit[38]
- removing the requirement for the Minister to consider whether a proposed NPD enables development to occur within environmental limits, when resolving conflicts between the goals within and across the Acts.[39] NPD is the point in the system where trade-offs are required to be made (which set the outcomes the system is supposed to achieve) and where the public has some opportunity to comment on those trade-offs. Environmental limits will no longer be a specific consideration. This may result in a particularisation of the goals that provides almost unfettered priority for growth and development
- those set out in Appendix 2, with reference to the MfE recommendations 162 (timeframe for interim limits), 168–172 (expanding scope of exemptions from limits) and 173–174 (allowing permits to be granted where limits are breached) of Departmental Report 3.

56. The Ministry states "that the purpose of ecosystem health limits should be to protect an 'acceptable level' of ecosystem health (consistent with requirements for human health) and this 'acceptable level' is to be determined through consideration of a range of factors with

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31 Enabling use and development within environmental limits is just one of the goals to be achieved under both Bills, and not all goals need to be achieved in all places at all times, NEB cl 69(2)(b) and PB cl 45(2)(b).

32 Limits are set to protect the life-supporting capacity of the natural environment (NEB cl 46), which is defined in NEB cl 45 as the ability of ecosystems of the natural environment: (a) to support and sustain a diverse range of indigenous life over time; and (b) to be resilient. Issues with this definition are outlined in Appendix 2, p.39, in relation to MfE recommendation 128.

33 NEB cl 56.

34 NEB cls 54(3)(b) and 51(4).

35 NEB cl 58. This issue is also outlined in Appendix 2, p.43, in relation to MfE recommendation 150.

36 NEB cl 86.

37 This issue is outlined in Appendix 2, p.27 in relation to MfE recommendation 23.

38 MfE Department Report – Report 3, MfE recommendation 71.

39 This issue is outlined in Appendix 2, p.35, in relation to MfE recommendation 88.

no hierarchy".[40] If ecosystem health limits are to do their job of protecting the environment,[41] there needs to be an objective baseline (or minimum level of protection) that any limit must achieve. That level should be based solely on the biophysical constraints of the environment.

57. The biophysical constraints will be different in each management unit and therefore where the limit will be set will vary across the country. That does not mean there shouldn't be a nationally consistent objective statement for the minimum level at which any limit must be set. That level should be consistent with the level proposed for protection of human health, to 'protect the life-supporting capacity of the natural environment and prevent significant or irreversible harm to the natural environment'. Doing so would ensure that, at a minimum, the environment is able to continue to provide the life-supporting services on which the public and our economy rely. As outlined in my report, *Going with the grain: Changing land uses to fit a changing landscape*,[42] many environments across New Zealand are already degraded and in need of restoration. Their existing state is below anyone's reasonable definition of a 'limit'. In such cases, the legislation needs to provide a clear pathway to reduce pressures to get back to, or ideally above, the objective minimum level of protection.

58. Communities may want to set the limits *higher* than that minimum level. If they do, there would likely be trade-offs that need to be considered. It is at that stage, in my view, that it is appropriate to consider economic and social aspirations to inform whether or not a higher limit should be set.

Recommendations

12. Ecosystem health limits should be set at or above an objective minimum level based on the biophysical constraints of the environment. The objective minimum level should be 'to protect the life-supporting capacity of the natural environment and prevent significant or irreversible harm to the natural environment'.
13. Trade-offs and consideration of competing social and economic aspirations should only apply if communities want to set a limit higher than the objective minimum level. It should be made clear that NEB clause 56 only applies if communities want to set limits higher than that objective minimum level of protection (as proposed above).
14. Where ecosystem health limits will differ from any minimum acceptable level, as set by national standards, those limits must be subject to a justification report.
15. Councils should **not** be able to set limits below the objective minimum level.
16. Retain the references to environmental limits as originally drafted in NEB clauses 11(a), 32 and 81(b)(ii); recommendations 23, 71 and 88 of the Departmental Report – Report 3 should not be accepted.
17. NEB clauses 85 and 86 should be retained as introduced, and the relevant aspect of recommendations 168–172 of the Departmental Report – Report 3 should not be accepted.

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40 MfE Departmental Report – Report 3, p.190.

41 As described in *Better planning for a better New Zealand: Overview of New Zealand's new planning system,* 2025, Wellington: Ministry for the Environment, p.27.

42 See p.12, https://pce.parliament.nz/publications/going-with-the-grain-changing-land-uses-to-fit-a-changing-landscape

18. Any national standard that authorises the exceedance of a limit should require, as part of an application for a permit(s) for an affected activity, an assessment of:
    a) any practicable/feasible mechanisms that could be applied to allow the activity to proceed without exceeding a limit and why they are not suitable;
    b) the measures proposed to minimise, offset or compensate for the lowered environmental quality proposed to be achieved.
19. Where an exemption from a limit is authorised through a national standard, the regional council should be required to outline how other responses will 'make up' for the exceedance of a limit in the public notice required by NEB clause 67.
20. NEB clause 164 should be retained as introduced, and the relevant aspects of recommendations 173–174 of the Departmental Report – Report 3 should not be accepted.
21. The interaction between 'human health limits' and 'ecosystem health limits' requires clarification, given that humans exist within the natural environment. Where human health limits and ecosystem health limits interact, the NEB should be explicit as to which limit applies. In my opinion, the more stringent limit should apply.

Managing environmental limits

59. A broad range of submitters expressed strong concerns about the NEB's provisions relating to caps and action plans for environmental limits. These are principally set out in NEB clauses 60–67. I agree that the provisions are unclear and confusing. They clearly need substantial redrafting, informed by further policy development about how they should operate.

60. Without clearer guardrails for their use, caps on resource use and action plans have the potential to:

- replicate environmental limits (functionally)
- cut across national instruments, and
- create a complex triple-layered framework for the management of resources: (1) limits in national instruments; (2) caps as limits; (3) action-plan restrictions.

61. While I understand MfE will be providing some suggestions to improve the structure of this part of the NEB, it does not appear that any further policy work will be undertaken to improve limits management and ensure that this framework can be implemented successfully. Rather than specific drafting, I offer the following policy suggestions that may assist the Committee's deliberations should it wish to direct officials to develop workable improvements.

Resource caps

62. Current drafting includes the concept of 'caps' in the tools for managing limits alongside action plans, which implies that the caps are to have regulatory weight, because action plans are a regulatory method. However, based on comments by officials, it appears that the policy intent is for caps to play a less interventionist role and instead is largely intended to be a communication tool. If this is the case, the Committee could consider enabling caps as a tool, to be elaborated through national instruments or regulation, which direct how they are developed and the role they might play in the system.

Action plans

63. The role of action plans as drafted in the Bill lacks clarity. Action plans appear to be both a voluntary response led by local communities to a breach or potential breach of limits, as well as a compulsory intervention to a breach of limits led by local authorities.

64. In my view, what is missing from the Bill's architecture is a two-tier system where non-regulatory action by the community and resource users is enabled but framed with a regulatory backstop. The non-regulatory approach would guide how resource users and communities will regularly operate in a way that helps ensure resource use remains within limits. This non-regulatory approach should be deployed before any regulatory mechanisms (i.e. rules) are applied. If the non-regulatory approach is not working, then regulatory action ensues. This could be structured as outlined below.

65. One such non-regulatory mechanism could be a 'community catchment plan'. Such a plan could include an assessment of how operating under national standards, existing rules in the natural environment plans, freshwater farm plans and other measures would impact on an environmental limit. The plan could then set out what changes might be made to practices and rules in that catchment to ensure resource users can move back within limits or continue to operate within limits. The plan might also be a home for what some submitters referred to as 'qualitative limits'. Such 'qualitative limits' might set community aspirations for direction of travel (e.g. 'maintain' or 'improve') relative to quantitative environmental limits.

66. Ideally, 'community catchment plans' would be developed and led by the resource users and communities themselves. That could be a catchment group, an irrigation company, some other community group or a consortium of those groups. The Bill should allow for a process that gives such groups a mandate to develop these plans. Resource users are probably best placed to identify what actions and measures are both feasible and desirable to manage within limits. For example, rather than requiring all farmers in a catchment to apply certain restrictions (such as an input control on fertiliser use) or adopt certain practices (fencing of all waterways and vegetation), the community might decide that the same outcome can be achieved more effectively another way, such as by retiring particular parcels of land or constructing a wetland for treating contaminants.

67. If a catchment is within the set environmental limits, there would be no formal requirement for community catchment plans, but the Bill should enable (or even encourage) communities and resource users to develop one.

68. Where a catchment is in breach of the set environmental limits (i.e. overallocated) and they have not previously developed a community catchment plan, they should have the opportunity to do so prior to any action plan.

69. To facilitate the implementation of 'community catchment plans', there would need to be some mechanism for funding the actions in the plan. That could be through the general rates pool, or there could be a mechanism where the community itself either self-funds or requests that the council set up a bespoke mechanism, such as a targeted rate.

70. While 'community catchment plans' would be non-regulatory tools, they would still need to be endorsed in some way by the regional council. These plans should be owned by the community and resource users, but the council could prescribe elements that must be considered. Community catchment plans would require regular review to identify trends and whether actions are achieving the desired environmental outcomes. Monitoring should be continuous and undertaken at the expense of the community and resource users that developed the plan. Community catchment plans should also have agreed reporting and review periods (e.g. yearly reporting, three-yearly progress reviews, and five-yearly outcome assessments) where the regional council assesses progress and determines whether a catchment is still operating within (or moving towards) environmental limits.

71. If the community catchment plan is not being implemented, or the trends and/or outcomes are unsatisfactory, then the regional council would be empowered to mandate an action plan, which is a regulatory tool. Hence, in the context of 'community catchment plans', 'action plans' become the backup (or regulatory 'stick') if the community's plan is not working (or if communities can't agree on an effective catchment plan). Action plans designed as regulatory backstops could and should include the option of using blunt regulatory tools, such as input and land use controls. Action plans would also apply to individual landowners that have previously opted out of participating in 'community catchment plans' to discourage free riding. Providing such a two tier-system would enable a flexible and adaptative management approach with a harder regulatory backstop to ensure that limits are complied with.

72. The Bill provides direction on the content of action plans, but no process for their promulgation. These instruments may be developed outside the NEP process, with no guaranteed public notification, submissions or hearings, yet can impose substantial economic and operational impacts.

73. While clause 61(c)(ii) states that national standards may specify the process for their development, this is a power that may not be exercised, and it provides no assurance that the views of interested parties will be properly considered. The role that action plans are intended to perform needs to be clarified and, if intended to be a regulatory tool or a tool that informs the setting of limits, the process should be set out in the legislation in a manner that provides for participation by interested parties.

Recommendations

22. Develop a two-tier system that enables a flexible and adaptative non-regulatory management approach with a harder regulatory backstop to ensure that limits are complied with.
    a) The first tier would enable resource users (e.g. catchment groups, irrigation companies, community groups, etc) to develop non-regulatory catchment-based plans to manage within limits. This would be voluntary in catchments below environmental limits and mandatory in catchments above environmental limits. As part of this first tier, a process needs to be developed to give communities and resource users the mandate to develop community catchment plans.
    b) The second tier would position 'action plans' as the backup (or regulatory 'stick') if the community's plan is not working (or if communities cannot agree on an effective catchment plan) and the catchment is in breach of environmental limits. Action plans would contain rules. These would apply if communities cannot agree on or implement a catchment plan, or if the community catchment plan is ineffective.
23. Develop explicit funding mechanisms (such as targeted rates) to support the actions contained within community catchment plans and action plans, and ensure a process is established within the legislation that provides for participation by interested parties in the development of a tiered plan approach.

Freshwater farm plans/catchment collectives

74. I question whether primary legislation is the appropriate place for an operational management tool, such as Freshwater Farm Plans (FWFPs). 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.[43] Inspiration could be drawn from the commercial forestry sector, which is currently governed by the National Environmental Standard for Commercial Forestry (NES-CF). The NES-CF mandates forestry management plans, which are similar to FWFPs, and are wholly prescribed through secondary legislation. The NES-CF also determines when a resource consent is needed, which could address some of the concerns expressed by submitters on the duplication between FWFPs and resource consents.

75. I have made several comments on the technical detail of FWFPs, which can be found in Appendix 2, in response to MfE recommendations 303–304 and 306–309 of Departmental Report 3. These changes would not be needed if FWFPs were dealt with in secondary legislation.

76. As currently drafted, the Bills do not clearly specify the interaction between FWFPs and action plans. FWFPs are also not required to consider the wider catchment context. In submissions on both farm plans and action plans, 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-scale plans and incentivise collective action by groups and landowners. Having a type of plan that identifies non-regulatory collective actions to improve the environment would fill a current gap between the requirements of action plans for environmental limits and property-scale farm plans. This is because water is a 'flow resource' that does not respect property boundaries and is therefore best managed at the catchment or sub-catchment scale.

77. Where landowners join together in their catchments to develop a catchment-scale plan (or 'community catchment plan' as proposed above, from paragraph 71), the complexity and depth of individual FWFPs could be reduced by focusing on narrower aspects of farm management. This is because the wider adverse effects of the land use and any mitigation or restoration action would be covered by the community catchment plan. Such an approach recognises that the environmental impacts of land use are difficult to measure, do not respect property boundaries and make attribution challenging. In contrast, landowners that do not develop community catchment plans or do not take part in plans developed by others within their catchment would require more complex and in-depth FWFPs. These would need to include a thorough assessment of the adverse effects of land use beyond the farm property boundaries. This would act as an additional incentive to encourage landowners towards engaging in collaborative approaches.

78. Consequently, FWFPs would need to be flexible enough so that they can be tailored to their respective catchment contexts. It does not negate the option to introduce a standardised format or approach, as long as the FWFPs can be adapted to the relevant context. If FWFPs cannot be tailored to the catchment context, they risk becoming a box-ticking exercise rather than a vehicle for improved on-farm practice.

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43 LDAC Legislation Guidelines: 2021 edition, Chapter 14.

Recommendations

24. Delegate development of the freshwater farm plan framework to secondary legislation to allow for more technical detail, flexibility and inputs from key stakeholders and experts.
25. If the framework for freshwater farm plans is retained in primary legislation, then I suggest several detailed, technical components require clarification as outlined in Appendix 2 in response to MfE recommendations 303–304 and 306–309 of Departmental Report 3.
26. Most importantly, flexibility needs to be built into the FWFP system to clarify how FWFPs take the wider catchment context into account and how they interact with action plans. My recommendations following paragraphs 63–73 (above), which propose a two-tier approach that enables non-regulatory community catchment plans backed by regulatory action plans, are directly relevant here.

Regulatory relief and biodiversity

79. This section looks at the impact of regulatory relief on the implementation of biodiversity policy under these Bills. The purpose of considering the policy's implementation is to ensure that the Bills accurately reflect the policy intent. As set out in previous advice, there are three challenges facing successful implementation of any policy to protect indigenous biodiversity:.[44]

- Biodiversity is inherently complex;
- The current information base is poor, which makes informed decision making difficult; and
- The way legislation currently addresses separate components of biodiversity results in a fragmented and inconsistent approach to a system that is interconnected.

80. Biodiversity is an interconnected system, but the law currently manages its constituent parts differently. The RMA attempted to encourage a more holistic approach in sections 6(c) and 17.

81. From the design of the Bills, it is difficult to understand how a holistic approach to biodiversity management will be possible, as so much of the detail is left to national instruments. This could potentially return us to the pre-RMA situation where the law doesn't address biodiversity as a whole. We would be left with different laws that address biodiversity's constituent parts quite differently. The current mosaic includes (or omits):

- most vegetation, including indigenous ecosystems on private land, does not have specific legal protection, but there are specific exceptions. For instance, harvesting native timber is strictly controlled under the Forests Act
- indigenous vertebrates receive much more legal protection. For instance, most indigenous birds and reptiles have been protected under the Wildlife Act for decades. Some non-indigenous fauna is also protected
- the legal situation is fuzzier for indigenous insects and other life forms.

82. The NEB introduces a goal to 'achieve no net loss in indigenous biodiversity'. However, the goals of the Bill do not provide clear obligations or requirements on decision-makers and, when implemented through national instruments, the goals can be balanced against each other in any way the Minister sees fit. Further, there is no definition of or baseline for measuring 'no net loss' (I will return to the information challenges below). Overall, I don't see this goal as providing any practical protection for indigenous biodiversity at all.

44 PCE Advice – Biodiversity challenges, 27 March 2026.

83. The 'enjoyment of property rights' is a guiding principle of the reform. The Bill allows councils to protect biodiversity, but any rules that are reasonably likely to have significant impact on the reasonable use of land may require 'regulatory relief' to be provided to landowners. Regulatory relief only applies to "Significant Natural Area" (SNA) style protection, which is done on the basis of mapping. Other 'non-mapping' rules to protect biodiversity (for instance, a general prohibition on clearance of indigenous biodiversity) could possibly be prescribed in national standards or NEPs, although whether the Government would sanction this, given its emphasis on the enjoyment of property rights, is doubtful. In my view, it is important that – given the importance of biodiversity – careful thought is given to imposing national standards. Otherwise, the risk is that a 'postcode lottery' of different levels of biodiversity protection will emerge around the country.

84. The practical reality is that many local authorities will be unable to afford to protect more than a fraction, if any, of their existing significant indigenous biodiversity through identifying SNAs and providing regulatory relief. This is particularly likely to be the case for councils with low rating bases and a lot of biodiversity to protect or restore, such as the West Coast, Tairāwhiti and Northland. Rates capping and a determination to focus council activities on 'core services' will make it harder still. Ways to reduce this risk are discussed in the options below, but in the absence of significant national funding to support the implementation of regional NEPs, councils will have little incentive to continue with rules to protect biodiversity.

85. Unless other statutory protections for biodiversity aspects apply (see paragraph 83),[45] and absent any specified rules, property owners will be free to remove existing indigenous flora on their properties.[46] Without prescriptive direction for biodiversity protection, the Bills establish a framework that could allow for a more significant loss of indigenous biodiversity than has occurred under the current Act.[47]

Options for clarifying the policy intent of the Bills

86. The above analysis indicates that if all biodiversity protection must be compensated via regulatory relief, achieving the goal of no net loss will be very challenging, if not impossible. There are two main options to deal with this issue:

Option 1 (preferred option) – Clarify biodiversity protection tools

87. Adopting the Ministry's recommended changes to the Bills, it would be possible to implement tools to protect biodiversity that don't trigger regulatory relief, provided they don't involve mapping.[48] The simplest example would be a general 'no clearance' rule. Under such a rule, clearance of any significant biodiversity could be either completely banned for specific biodiversity types, managed via permits or through an offsetting arrangement. Any of these options could operate alongside a regulatory relief regime for mapped SNAs. I assume a complete ban without compensation would not be considered as it would offer local authorities a significant loophole in regulatory relief provisions. Absent a complete ban, landowners would retain the right to do whatever they like with their property, provided they are willing to purchase a permit or offset from a regulated market. This approach would amount to a marginal erosion of landowners' enjoyment of their property rights. It would, however, make it possible to overcome several implementation challenges:

45 For more detail, see also PCE Advice – Biodiversity challenges, 27 March 2026.

46 Vegetation clearance may need to consider the impact on native fauna that are present on the property. Removing habitat may not directly kill fauna, but depending on the local context (e.g. the species in question, competition for resources between those species and connectivity to other habitat), it could threaten their survival. In this case, the landowner may fall foul of the Wildlife Act.

47 The Ministry acknowledges that the proposed legislative scheme is less directive on environmental protection and could allow more environmental harm than under the RMA, see the MfE Departmental Report – Report 3, p.389.

48 See Appendix 2, in response to MfE recommendations 177–206.

a) A national offsetting regime, in particular, could operationalise the goal of 'no net loss'. New Zealand's biodiversity is rich and complex. Creating a credible offsetting regime would not be a simple undertaking. It is not just a question of trading similar- sized blocks of 'bush'. The implementation of offsetting and compensation has in the past been controversial as there hasn't been a consistent approach across regions and monitoring has been poor (although, anecdotally, large projects have tended to fare better in recent years).[49] There are precedents in the UK and Australia that could be drawn on to improve the rigour of system design. Setting up a similar scheme in New Zealand would require an up-front investment in information and design. For this reason, a national system would be far more robust than if local authorities had to set up their own systems to be operationalised in NEPs. Similarly, region specific 'no clearance' rules could lead to a complex postcode lottery of protection.

b) The information issues could be overcome through rules to require any significant biodiversity to be assessed as to whether it complied with the rules on offsetting process before being removed. Any significant biodiversity that was assessed as being too rare to clear could then be protected as an SNA and compensated for through the regulatory relief scheme.

c) The cost of regulatory relief would be reduced as compensation would only be needed to make up the difference between the value of foregone development and the cost of meeting the rule or offsetting. Offsetting would also provide a revenue source for the protection and enhancement of biodiversity. Nonetheless the cost of regulatory relief could still be disproportionately large for some councils.

d) As part of any compliance with rules or offsetting arrangement, the landowner would need to relocate any protected indigenous fauna, complying with the relevant Wildlife Act requirements and consent/permit conditions.

Option 2 – Clarify property rights vs. removal of biodiversity

88. Without introducing other non-mapping tools to protect biodiversity, such as those discussed above, it is highly unlikely that the goal of 'no net loss' will be achieved. If that is accepted, then to be meaningful 'no net loss' would have to be redefined to apply, for example, only to public land or to high-value ecosystems. That would in turn require a definition of 'high-value ecosystems', but that would at least allow the goal of no net loss to be limited to whatever protections are put in place and compensated with regulatory relief. The downside of this approach would be that the system settings would guarantee a net loss of indigenous biodiversity in the general sense (e.g. native land cover and connectivity).

89. There are also likely to be significant implementation challenges with this approach:

a) Giving landowners a default right to clear existing indigenous flora on their land could create an incentive to remove that biodiversity before information to identify high-value ecosystems is gathered. While many landowners want to look after biodiversity, some see the threat of biodiversity protections (e.g. previous attempts at SNAs) as a barrier to development, particularly where alternative land uses exist (e.g. quarrying, sub-division, farming). Clearing any indigenous flora before information is gathered by councils that can identify high-value ecosystems would remove that barrier. To prevent this, the development of any rules in the biodiversity section of regional NEPs (and therefore the implementation of the regulatory relief regime) would need to be paused, pending completion of information gathering.

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49 Brown, M. A., Clarkson, B. D., Barton, B. J., & Joshi, C., 2013. *Ecological compensation: an evaluation of regulatory compliance in New Zealand. Impact Assessment and Project Appraisal, 31*(1), 34–44. https://doi.org/10.1080/14615517.2012.762168

b) As noted above, the costs of regulatory relief to protect high-value ecosystems could be large for some councils. If this option is progressed, then two drafting changes are recommended to reduce the cost for local authorities:

   i) Only require regulatory relief for new protection. This involves carrying over any existing RMA-based rules that protect biodiversity on private land into the new system, without the requirement for regulatory relief; and

   ii) Provide national funding for regulatory relief incurred in order to meet a nationally prescribed limit. Local authorities should only be required to fund protections that are truly the result of a local decision. The PCE has previously discussed options for raising revenue to invest in landscape-scale biodiversity restoration in the report, *Going with the grain: Changing land uses to fit a changing landscape*.[50] Options include using auction revenue from the New Zealand Emissions Trading Scheme (NZ ETS) (this would require reducing the supply of forestry units to ensure there is auction revenue) or placing a resource rental on the use of fresh water.

c) If the policy intent is to provide landowners with a default right to clear indigenous flora on their land, then the framework will need to clarify that section 53 of the Wildlife Act does not apply. Otherwise, landowners could be unlawfully harming protected species.

Recommendations

27. A long-term investment needs to be made to provide the information needed to inform decisions about protecting indigenous biodiversity. The best way to make this investment is in partnership with landowners and iwi.

28. The policy intent of the Bills with respect to biodiversity should be clarified. National standards should specify the use of non-mapping biodiversity protection tools (e.g. an offsetting regime) operating alongside regulatory relief.

29. Failing that, the right to remove biodiversity needs to be paused and a transitional regime put in place to prevent the loss of biodiversity while the necessary information is gathered to identify high-value ecosystems. Previous protection of indigenous biodiversity under the RMA should also be carried over to the new regime and national funding provided to local authorities to help them achieve nationally prescribed biodiversity limits.

50 See p.43–49, www.pce.parliament.nz/publications/going-with-the-grain-changing-land-uses-to-fit-a-changing-landscape/

Aspects of the planning system

Cumulative effects and permitted activities

90. While amendments recommended in the Departmental Report have largely addressed submitter concerns about the administrative burden of mandatory registration of permitted activities,[51] the approach to effects management remains unclear. What is clear is the Government's intent for permitted activities to take on an expanded role in the proposed system. While the recommended amendments would reinstate controlled activities under the NEB,[52] registered permitted activities (or even permitted activities) will replace controlled activities in the PB. This will require changes to existing national standards, for example the NES-CF, the National Environmental Standards for Electricity Transmission Activities (NESETA), and the National Environmental Standards for Managing Contaminants in Soil to Protect Human Health (NESCS) – all of which contain controlled activities related to territorial authorities.

91. The way permitted activity registration is set out in the Bills causes it to appear like a quasi-consenting process. Requirements for registered permitted activities seem to fall somewhere between the certification of activities or management plans by suitably qualified persons and a simple notification for monitoring purposes. The process is described as a 'checklist' exercise with authorities given no ability to challenge the robustness of any assessments or to evaluate the validity of any third-party approvals.[53]

92. An increasing reliance on permitted activities and registered permitted activities raises challenges for the management of cumulative effects and how the effects of these activities are to be accounted for when setting and enforcing limits. This is particularly concerning given the recommended removal of consideration of environmental limits when classifying activities, addressed in the section on environmental limits above.[54] The rule-making stage, which classifies activities, is the critical point for ensuring that the cumulative effects of permitted activities will not breach environmental limits. The registration of permitted activities will allow rule-makers greater flexibility to permit more activities to occur without a consent or permit, increasing the risk of cumulative effects and their impact on environmental limits. This makes it vitally important that the classification principles in NEB clause 32 retain the requirement to consider allocation and limits.

93. Managing cumulative effects requires linking two information flows – what is happening in a management unit, and the state and trend of the environment in that area. It then requires a mechanism to intervene. To date, that mechanism has been first in, first served consents. The ability to manage the cumulative effects of activities that, individually, may have small effects is a critical part of protecting the environment. Cumulative effects are often discussed in relation to the natural environment – for example, the combined effects of sediment or nutrients from primary production activities across a catchment, or ecosystem fragmentation as a result of incremental habitat loss ('death by a thousand cuts'). But cumulative effects also affect the built environment. For example, fragmentation from allowing urban development that does not align with council growth planning, or that leads to reductions in resilience to natural hazards, or exacerbation of their effects due to poorly located, designed or serviced urban development, may all lead to adverse social and economic outcomes.

51 MfE Departmental Report – Report 3, MfE recommendation 77, p.133.

52 MfE Departmental Report – Report 3, MfE recommendation 71(f), p.126–127.

53 MfE Departmental Report – Report 3, p.132.

54 MfE Departmental Report – Report 3, MfE recommendation 71(d), p.126–127.

94. While effects on the natural environment can be managed, if the environmental limits framework is appropriately designed and it is known how much headroom for use or allocation of resources exists, the same cannot be said for cumulative effects in the built environment. These effects are difficult to manage on a consent-by-consent basis and there is no framework to set limits or enforce them.

95. Managing cumulative effects becomes even more important when, as is proposed, the adverse effects threshold for both the built and natural environment is proposed to be higher. Changes have been recommended 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.[55] However, no further detail is provided, making it difficult to understand how this will be handled. Appropriate management of cumulative effects is integral to the success of the proposed system. The approach developed and the level of detail that this considers, will be critical to how well cumulative effects might be managed.

Recommendations

30. See recommendation 16. The drafting of NEB clause 32, as introduced, should retain reference to allocation and environmental limits.
31. As noted in my advice on the Departmental Report,[56] the Committee should request a detailed briefing from officials on how cumulative effects are to be defined and managed in the proposed system before instructing amendments on this matter.
32. The Committee should request advice from officials about the safeguards that will apply to the registered permitted activity process. Any information provided in support of registered permitted activity applications should be legitimate and suitably robust, given the limitations on councils to verify the veracity of any information provided. Councils should be given explicit power to decline permitted activity registrations where they are not satisfied with the quality and veracity of the information provided at registration.

Excluded effects

Landscapes and amenity

96. The scope of the effects able to be considered in the Bills is significantly curtailed, with a list of effects that must be disregarded in the new system prescribed under PB clause 14.

97. Clause 14(1)(a) excludes the internal and external layout of buildings on a site – for example, the provision of private open space. While amendments have been recommended that split the clause to separately address the internal layout and external layout of buildings on a site, and to clarify the external layout of buildings is only out of scope where there is no effect beyond the site boundary, it is unclear how effective this clause will be at managing the potential cumulative effects of the external layout of buildings.[57] It is possible the combined effect of external layouts may lead to cumulative effects beyond the boundaries of a site, but this may not be apparent on the face of one application in isolation or numerous applications over different time horizons. For example, the cumulative effects of having lots of high-density

55 MfE Departmental Report – Report 3, MfE recommendation 46(b) and discussion p.89.
56 Appendix 2, p.33, with reference to MfE recommendation 46.
57 MfE Departmental Report – Report 3, MfE recommendations 32 and 33.

residential units, built as close as allowed to property boundaries with minimal permeable surface area, could result in the potential for stormwater management issues (e.g. increased flood risk) both on-site and beyond the boundary.

98. Submitters noted that the exclusion of visual amenity and landscape effects have the potential to undermine the achievement of the goals of the system.[58] Notably, submitters, including the Resource Management Law Association, New Zealand Institute of Landscape Architects and New Zealand Institute of Urban Designers, expressed concern that the goal of creating 'well-functioning urban and rural areas' will be difficult to achieve if visual amenity effects cannot be considered, and I agree. Submitters, including NZPI and local authorities, have expressed how difficult it is to isolate visual amenity effects from (neighbourhood) friction effects. I note that the Ministry has recommended removing 'visual amenity' and 'physical features' from cl 14(1)(e), but seeks to retain reference to 'character', 'appearance' and 'aesthetic qualities' as effects that are to be excluded from the system, on the basis these terms are less subjective.[59] While on paper this may be seen as an improvement, I consider 'character', 'appearance' and 'aesthetic qualities' are synonymous with 'visual amenity' and that this proposed change makes no material difference to the application of this clause as introduced to Parliament. This is because the character, appearance and aesthetic qualities of development are core parts of 'visual amenity' that can have impacts on social wellbeing and people's experience of spaces and places.

99. I also caution that, in addition to compromising achievement of the well-functioning urban and rural environment's goal, excluding these effects from the system may make it difficult to achieve the goal to ensure land use does not unreasonably affect others. Clear guidance will be needed from central government on exactly what is meant by 'aesthetic qualities', 'appearance' and 'character' if the exclusion of such effects is retained in the Bill.

100. Landscape effects are important for maintaining and enhancing the character of the built environment, which forms part of the identity and wellbeing of local communities. This extends to a community's or region's 'brand' in the context of tourism, and sense of place and spiritual connection in the context of cultural or local landscapes. Excluding landscape effects from the system will limit the ability to consider how development may affect local values, which will differ from place to place. It is important to retain the ability to identify and manage those values at a local level in the plan-making process. As outlined by submitters, including the Queenstown Lakes District Council,[60] councils have invested significant time, resources and legal effort to develop, test and defend overlays for landscape values (including those that are not outstanding) and associated land use controls in plans.

101. Removing consideration of the effects of landscape from the system prevents councils from imposing provisions that support some important economic activities such as tourism. New Zealand may live to regret failing to protect the visual experience that tourists (and the local community) currently enjoy in places like Queenstown or the Bay of Islands. It will also undermine long-established and hard-fought case law recognising the importance of character, identity and open-space values that many New Zealand communities value. Not everything can be easily reduced to property rights.

102. The middle ground in our communities is probably one that opposes costly micro-interventions in people's homes and businesses but accepts the need for preserving broad, widely appreciated character and landscape values. This is not an exact science, and councils need to ensure they have wide community support before embarking on matters touching on visual amenity and landscape values. Rather than excluding effects on visual amenity and landscape values from the system, a more pragmatic solution could be to use national instruments to give

58 PB cls 14(1)(e) and 14(1)(j).

59 MfE Departmental Report – Report 3, MfE recommendation 37.

60 See p.10 of the Queenstown Lakes District Council submission.

clear guidance on aspects of visual amenity and landscape that can be considered and those which should be excluded. This direction would then be reflected in plans, with only those matters explicitly provided for in national instruments able to be considered during consenting and designation processes. Committee members might like to reflect on the strong reaction in Auckland and, in particular, some inner-city suburbs to recent densification proposals. These have as much to do with visual amenity and character as anything else. It would be naïve to believe that New Zealanders in less privileged settings feel any less deeply about some of the landscapes they have grown up in. There is a middle ground.

Recommendation

33. Retain visual amenity and landscape (in broad terms) as effects within the scope of the system and use national standards to prescribe how visual amenity and landscape effects are to be managed in the proposed system.

Land use effects regulated in other legislation

103. In terms of matters proposed to be excluded from the system, of particular concern is PB clause 14(1)(j), the effect of which is that local authorities will be unable to consider certain land use effects where they are regulated in other legislation. This may seem sensible in terms of removing duplication of regulation, but it risks narrowing the environmental lens and does not 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. While I acknowledge the recommendation to not exclude the land use effects of natural hazards and contaminated land, even where they are managed by other legislation, I am concerned that this provision will still result in avoidable regulatory gaps.[61]

104. Decision makers are likely to lose the ability to require changes to development proposals or to impose conditions that manage broader environmental impacts where their consideration is not explicitly allowed, especially where those impacts are related to land use activities, leading to poorer environmental outcomes. In short, the restriction in clause 14(1)(j) risks creating a fragmented approach where potentially relevant issues cannot be addressed in the round, increasing the risk of gaps in environmental protection.

Recommendation

34. Enable decision makers to consider the environmental effects of an activity, even where the land use effects may be addressed by other legislation

61 MfE Departmental Report – Report 3, MfE recommendation 42.

Light

105. Light is a small but important environmental issue that received little attention in the Departmental Report, with no changes recommended.[62] However, light can be a vexing externality, and it is not adequately addressed in the Bills. Effects related to lighting include, but are not limited to:

- in urban areas, a resident excessively lighting their property can cause a nuisance to neighbouring properties
- in rural and natural environments, artificial lighting can interrupt normal animal behaviour, such as bird navigation. For example, streetlights have caused juvenile Westland petrels (which are classified as an 'at risk' species) to become disoriented and crash land.[63] Some of these grounded birds are found dead or die from collision injuries and/or exhaustion.[64] International guidelines have been developed to help manage light pollution for migratory species that include shielding light from spilling upwards and using low-intensity lights as much as possible[65]
- the cumulative effect of lighting from urban settings can also dim or obscure the night sky. If not adequately managed, light pollution could threaten dark skies reserves, such as the one around Tekapo, which are important for science and tourism.

106. While the RMA did not specifically address the issue of light pollution in the primary legislation, its 'integrated approach' to environmental effects management enabled light pollution to be managed in both urban and natural environments. However, the different approach taken by these Bills means light may no longer be able to be managed in the new system.

107. Similar to noise, light is a negative externality and pollutant. Light could be managed similarly to noise, whereby a general duty to apply the best practicable option to avoid or minimise its impacts could be applied. Such an amendment is relatively easy for the PB. It is more difficult in the NEB as it does not contain a comparable clause for noise. This is another example of the problems caused by the dual-Act architecture. The exclusion of noise from the NEB makes it hard to deal with the negative environmental effects of noise for biodiversity, such as marine mammals, bats and birds which use sound to navigate or communicate.

108. For dark skies, the current dark sky reserves have not been promulgated as an Outstanding Landscape or Feature through plans developed under the RMA to date. In my view, a 'dark sky reserve' could qualify as an outstanding natural feature on the basis of its scientific, scenic, tourism and community values. If this was the case, their protection would already be adequately covered by the exception that clause 14(2) provides. Depending on their nature, protections might still trigger the severely impair threshold and engage regulatory relief obligations.

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62 MfE Departmental Report – Report 2, MfE recommendation 141.

63 Waugh, S.M. & Wilson, K-J. 2017. Threats and threat status of the Westland Petrel Procellaria westlandica. Marine Ornithology 45: 195–203.

64 K L J Simister, *Statement of Evidence in Chief of Kate Simister* before the Hearings Panel RC-2020-0159; LU 2926/20 16 August 2021 at [12].

65 United Nations Environment Programme. 2024. *CMS international light pollution guidelines for migratory species* UNEP/CMS/Resolution 13.5 (Rev.COP14).

Recommendations

35. Ensure 'light' is an effect that is able to be managed under both Bills.
36. Include a general duty to avoid unreasonable light spill into the PB – this could be crafted in a similar way to clause 24 or clause 24 could be modified to include light.
37. Include a general duty to avoid both unreasonable noise and light spill in the NEB – this could be separate clauses for each effect or one clause covering both noise and light.

Green spaces

109. While the Ministry recognised the importance of green spaces for well-functioning urban environments and their amenity value, its recommendation was for no change to be made to the Bills.[66] However, in my report, *Are we building harder, hotter cities?*, I found that both public and private green spaces are important for providing vital environmental services in urban areas. Those services include stormwater management and flood attenuation, heat attenuation (especially important to avoid extreme heat risks) and urban habitat for biodiversity (think of the bird life around Wellington, for example). Green spaces, particularly urban ones, contribute to a number of the goals to be promoted under the Bills. In addition to well-functioning urban and rural environments, green spaces can contribute to infrastructure, biodiversity and managing the effects of natural hazards. The Bills should more explicitly acknowledge the role of green spaces as a form of infrastructure.

110. The Ministry's response to submissions defends the lack of any explicit reference to green space in the Bills on the basis that this will be included in national instruments.[67] The NPS Urban Development is indicated as the likely starting point, and that this policy includes reference to natural spaces and open spaces. While that is true, it is worth pointing out that the NPS-UD makes a distinction between 'additional infrastructure' (which includes public open space) and 'development infrastructure' (namely water and transport networks).[68] Local authorities are required to provide sufficient amounts of the latter, but need only be satisfied that the former is likely to be available. While the Ministry has recommended that a general definition of 'infrastructure' is included in the Bills, there is no indication of what this might comprise.[69]

Recommendations

38. Ensure the definitions of infrastructure include green infrastructure and green spaces.
39. Explicitly acknowledge the role greenspaces play in managing the effects of natural hazards and in contributing to well-functioning urban and rural environments. If this cannot be done in the Bills themselves, the Committee's report should recommend that it be made explicit through national instruments.

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66 MfE Departmental Report – Report 3, MfE recommendation 321.

67 MfE Departmental Report – Report 3, p.392.

68 PCE, 2023. *Are we building harder, hotter cities? The vital importance of urban green spaces,* p.7.

69 MfE Departmental Report – Report 3, MfE recommendation 18.

Climate change

111. In recommendation 319 of Departmental Report 3, officials recommended "that you amend the PB and NEB to clarify that greenhouse gas emissions (either discharges or associated with land use) are not an adverse effect regulated under either Bill. We recommend these amendments make clear that the positive effects and benefits of activities that reduce or displace GHG emissions are however within scope of the Bills." Considering only the benefits of a project and ignoring the costs would never pass muster in an economic assessment, as we have seen with the experiences under the Fast-track Approvals Act. It is hard to see why the Committee is being asked to do just that in respect of climate change. For example, it would mean that an agricultural land-use change requiring a consent would be able to point to the climate benefits of tree planting in support of the change but wouldn't have to account for any increase in emissions.

112. I agree that a price on carbon should be the principal policy tool for reducing emissions, and that it doesn't make sense to start enquiring into the emissions of businesses that are able to internalise ETS prices into their business models. But policy makers have been unwilling to let prices rise to levels that would have a significant impact on emissions. Even if the carbon price did rise significantly, it wouldn't have a sufficient impact in some sectors (e.g. transport) and would have too much impact in others (trade-exposed sectors where no technological alternatives exist). There is an important role for so-called complementary policies that can influence emissions in settings where prices are less effective. The coal boiler ban is one such complementary policy. The Ministry's recommendation would effectively remove it, without providing any analysis of the impact on emissions.[70] A carbon price also provides a very weak signal for the emissions associated with networks and different spatial footprints. How we design our transport networks and where we locate land uses, such as landfills and quarries, influences the shape or form of both urban and rural environments. Differing spatial forms can yield very different emissions (and network costs). ETS prices alone are unlikely to cause the emissions intensity of different options to be assessed. Those should be relevant considerations that can be taken into account in both RPSs and LUPs.

Recommendations

40. The committee should reject recommendation 319 of the Departmental Report 3 and make it clear that if any climate benefits are to be assessed, their costs should be as well.
41. The Committee could request an explanation from the Ministry about how the negative emissions consequences of different network configurations would be evaluated under the two Bills (e.g. transport systems that affect urban form and system-wide emissions).

Designations

113. While the designation provisions in PB, Schedule 5 attracted limited opposition from submitters, they nevertheless pose the potential for substantive impacts on the natural environment and on property owners and communities. Given the Government's stated purpose of RMA reform is to better protect private property rights and promote the enjoyment of land, it is ironic that designating authorities (formerly requiring authorities) appear to have had their power to substantially cut across private property rights significantly strengthened.

70 MfE Departmental Report – Report 3, recommendation 319.

114. Designations confer significant power on non-elected entities to cut across the rights of property owners. Being able to challenge those claims is critical. It is difficult to comprehend how the need to consider alternative sites, alignments or methods can be dispensed with in favour of an unspecific and untested 'strategic need' assessment. While this may be intended to streamline assessments to focus on the merits of a proposed location, I agree with Tauranga City Council, which considers that 'strategic need' cannot be meaningfully assessed without at least a proportionate comparative evaluation of reasonable alternatives.[71] The consideration of reasonable alternatives is an established practice that supports robust decision-making, transparency and confidence that the chosen location best meets the identified need. As 'strategic need' as currently framed poses interpretation and litigation risk, the Committee should consider introducing a definition of strategic need. In the alternative, the Committee could consider whether 'operational need', as applied under the RMA and supported by interpretation through the courts, is not a better way to go.[72]

115. It defies logic that not all the relevant environmental impacts of a designation can be part of the considerations about whether a particular designation in a particular place should be confirmed. The direct effects of construction activities on biodiversity (e.g. vegetation clearance, earthworks, construction noise) may be subject to management through rules in NEPs. But it is more challenging to see how the long-term effects of designations on biodiversity, for example, (e.g. operational noise, vibration, effects of lighting) would be managed. Effects at the interface between the planning-based designation effects assessment, and the more specific provisions of the Wildlife Act (that are only triggered where direct impacts on wildlife occur), could continue to fall through the cracks. This includes indirect cumulative effects on biodiversity.[73] This is an issue in current practice that the proposed Bills do not address and may risk aggravating the issue. There is no guarantee that natural resource permits for impacts on biodiversity will be required and therefore effects on biodiversity may not be assessed and adequately managed.

116. Alongside the restrictions on the consideration of land use effects under other legislation,[74] I am concerned that designations could be approved with no statutory obligation to consider the effects of the activity on environmental limits or provisions controlling effects on biodiversity under the NEB. Designations could be used to justify an exceedance of environmental limits (not just biodiversity limits), environmental limits could be compromised by designation decisions in areas not signalled by RSPs, or designations could be approved only for projects to be unable to proceed due to conflict with or exceedance of environmental limits.

117. There are key differences between the approach to designations under the RMA, and the PB, which may result in unintended consequences for the environment and communities. These are: raising the threshold of effects, and restrictions applying to the setting of conditions on a designation.

118. The threshold of adverse effects able to be considered is raised, and there is an apparent shift in responsibility for assessing the adverse effects. The significance of any adverse effects is seemingly left to the designating authority to determine, with recommending authorities only able to assess significant adverse effects in their recommendation decisions.[75] This means projects may be approved with unidentified, undisclosed, or downplayed impacts that will

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71 Submission of Tauranga City Council p.82

72 Operational need is defined in the National Planning Standards 2019 as the need for a proposal or activity to traverse, locate or operate in a particular environment because of technical, logistical or operational characteristics or constraints.

73 For example, this includes long-term indirect effects that may impact behaviour or the attractiveness of a certain habitat for species, leading to biodiversity loss from an area.

74 PB cl 14(1)(j).

75 PB sch 5 cl 13; and PB sch 5 cl 24.

impose costs on people and the environment. An assessment of all adverse effects, rather than focusing solely on 'significant' effects, is critical. Various effects may not reach the significant threshold, including incremental or temporary impacts that can combine to create substantial and long-lasting degradation (including cumulative effects).

119. Where an adverse effect is not significant, the designating authority can state that it will be managed through conditions or a construction project plan (CPP). Limited information is required to support this, and the ability for recommending authorities to obtain further information is curtailed.[76] It also appears that CPPs are intended to be used tomanage the effects of designations, rather than conditions. While the content of CPPs largely replicates that of an Outline Plan of Works (OPWs), [77] the context in which CPPs operate in the proposed system is less prescriptive than for OPWs under the RMA.

120. Under the RMA, conditions are used to define the mandatory environmental standards that must be met and the legal obligations which apply – they create the 'envelope of effects' within which a designation can operate. The requiring authority then demonstrates through a management plan or the OPW 'how' effects will be managed within that envelope. OPWs in practice act as a tool to confirm detailed design matters and generally sit within or under a suite of conditions, which establish the 'limit' or the ceiling of the effects that are authorised under the designation. There are no restrictions or limitations on the conditions that can be imposed on a designation. However, under the Bill, a recommending authority is limited in the conditions it may recommend. Only significant adverse effects can be managed by conditions, and only when the relevant effect is not something that can be more appropriately addressed through a CPP.[78] This is a substantive change from the RMA, which required a comprehensive consideration of all relevant effects, not only those reaching a specific significance threshold. There is no analysis provided in the Departmental Report or the Regulatory Impact Statement of the implications this change may have for the built or natural environment.

121. I am concerned that the combined effect of raising the threshold of effects and restricting the ability to impose conditions on a designation may mean that limits or ceilings on effects may no longer be able to be set by recommending authorities. This leaves any 'limits', and the management of effects within those limits, to the CPP process after a designation has been confirmed. This means that the substantive consideration of the significance of a proposal's effects will come after a designation has been confirmed – potentially creating a secondary approval process. Moving these important considerations to a CPP (a secondary process) reduces the opportunity for the public to scrutinise limits and effects management, because consideration of CPPs is undertaken between the designating and recommending authorities. There is also limited availability of enforcement pathways in respect of CPPs.

122. Committee members should reflect on the fact that designating authorities are usually large, extremely well-resourced entities whose activities can be highly disruptive to communities and to individual landowners. Our society accepts the need to facilitate these activities because of the wider economic and social benefits they deliver. The quid pro quo for exercising their extraordinary powers should be a process that enables recommending authorities to take full account of the impacts their communities may face. If that is not the case, infrastructure may lack the foundation of public trust and acceptance required to fulfil its role in supporting growth and economic development.

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76 PB sch 5 cl 21.

77 RMA s 176A.

78 PB sch 5 cl 25.

Recommendations

42. The minimum requirements for what a 'strategic need' assessment must include should be prescribed in the Bill, perhaps in the form of a definition for 'strategic need'. Alternatively, the 'strategic need' test could be replaced with the more familiar 'operational need' test for designation proposals.

43. Both designating authority applications and recommending authority decisions should be required to assess all adverse effects and consider whether the proposed designation is consistent with environmental limits.

44. The Bills must ensure that the adverse effects of proposed designations on biodiversity can be managed in situations where a natural resource permit is not required.

45. Where a designating authority applies for a project that will, or is likely to, result in the exceedance of an environmental limit, the designation application should include an explanation of the consequences of any exceedance, and what this might mean for both the allocation and recovery of common pool resources in the future.

46. Retaining the use of CPPs for designations to impose limits on effects and the management of those effects, requires an opportunity for scrutiny to be added to ensure that CPPs do not operate as a secondary approval process.

47. Remove restrictions on designation conditions, so that conditions can be imposed to manage any scale of adverse effect, not only significant adverse effects.

Transitional matters

Existing agreements and arrangements

123. The current form of the Bills may jeopardise many significant existing agreements and arrangements relied upon by councils and communities to protect both existing investments and the environment. As Grant Eccles identified in his submission, if mechanisms like the Lake Taupō nitrogen cap and trade scheme are not grandparented, the system will be off to a false start with a drawn-out period of relitigation and inoperative plans.[79] Bespoke solutions, such as the Taupō scheme, are the result of tens of millions of dollars' expenditure and years of community consultation. They do not grow on trees.

124. This will be of particular importance for arrangements with iwi Māori, such as Te Ture Whaimana, through the Waikato River Authority. The governance arrangement in that example is not specifically with a single PSGE and therefore not be captured by the Bills. The Healthy Rivers Plan Change (Plan Change 1 to the Waikato Regional Plan) giving effect to this arrangement has taken 10 years and cost upwards of $30 million for all involved, with more costs expected to come following decisions by the Environment Court. There are many other hard-fought freshwater management arrangements throughout the country, such as in the Hawkes Bay, Canterbury and Otago, where investment in irrigation and water allocation schemes and environmental protection rely on the certainty planning provisions afford. Bespoke arrangements for aquaculture and geothermal activities are also in place throughout the country.

125. Similarly, hard-won private plan change provisions and activity specific provisions for nationally or regionally significant or unique activities in district or unitary plans will be 'back on the table'. This may lead to relitigating the bespoke protections managing reverse sensitivity for major infrastructure, such as those for noise around ports and airports. As touched on in the section on landscape and amenity above, the Queenstown Lakes Operative District Plan includes bespoke rules and supporting provisions to protect landscape values in unique locations, such as Arrowtown, Mount Cardrona and Remarkables Park.

126. To support a smoother, faster, transition I support the suggestion of Mr Eccles that authorities and officials should work together to identify and confirm a list of provisions that are so critical to the integrity or functionality of the resource management system and represent so much sunk investment, that they may be incorporated into the new system (either unchanged or with minor amendments).

127. Given the timeframes, it may not be possible to finalise and incorporate such a list as a Schedule to the Bills. At a minimum, the Bills should include a mechanism for this to be developed as a national instrument(s) during transition.

79 Grant Eccles submission, paras 27–34.

Recommendation

48. Criteria to identify current bespoke regulatory settlements that are critical to the integrity and functionality of the resource management system should be rapidly developed so that these arrangements can be incorporated directly into the new planning documents.

49. Identified arrangements should be included in a Schedule to the Bills, with all the necessary amendments to enable the integration of the arrangements into the new framework. Alternatively, the Bills should include a mechanism for this to be achieved through national instruments during the transition.

Rt Hon Simon Upton

Parliamentary Commissioner for the Environment
Te Kaitiaki Taiao a Te Whare Pāremata

Appendix 1: Summary of recommendations

No.	Recommendation
System design	
Purpose and goals	
1.	I recommend that the issue of whether the system design is likely to deliver a clearer simpler system or not, should be a specific point addressed in the Committee's report to the House.
2.	To inform that part of the Committee's report, I recommend that the Committee seek specific legal advice on how, in their totality, the dual-Act system, descriptive purposes, clauses and multiple goals with no legislative direction, might be interpreted by system decision-makers and the courts.
3.	The Committee should consider the options I have presented and determine if either would address risks identified by legal advice the Committee receives.
4.	The Committee should also request any advice tendered to the Government, by officials or by private advisers, that makes a clear case for enacting two Bills rather than one. I am not talking about an ex post facto rationalisation by officials. I am talking about primary advice at the beginning of the process that advocated for two Bills rather than one. That could provide valuable insights into the intentions of the Bill's authors.
Development of national instruments	
5.	The Minister should be required to use a Board of Inquiry-style process or a TAG for the development of new national instruments. This could be applied to all national instruments, or to specified domains or topics.
6.	Where the Minister chooses to depart from the recommendations of the BoI or TAG, the justification for doing so should be required to be set out by the Minister.
7.	Amendment to, or the removal of national instruments should remain a process led by the Minister. This should include a mandatory consideration of the significance of the proposal, a review to ensure internal consistency of the changes with the rest of the national direction, and whether a TAG should be engaged.
Participation	
8.	To minimise the risk of legal challenge and maximise access to relevant information, higher order documents, commencing with national instruments, must have the most comprehensive and robust opportunities for participation. The Committee should consider requesting further options from officials on how participation in processes for preparing national instruments and regional spatial plans can be improved to ensure robust accessibility and transparency.

The costs and benefits of the Bills

9. A system that is developed at speed, without sufficient time and resource to be properly established, risks the need for frequent amendment, as shortcomings uncovered in the course of implementation need to be remedied. Some elements of the system may be unworkable and unable to be implemented. Others may become mired in legal challenge and processes stalled. The Committee should seek additional advice, perhaps independently from experienced practitioners, to be absolutely sure that the proposed implementation timeframes are realistic.

Sequencing of plan development

10. The sequence for implementation should be as follows:

    a) Assemble all the biophysical layers and pressure points that will require regulation to enable an objective understanding of the physical and environmental conditions that are in play. This will provide a common information base for both spatial plans and environmental limits. The assembly of these layers should involve a transparent, publicly accessible process.

    b) Then, lay out a broad-scale spatial plan that is informed by those biophysical facts with the awareness that regulatory backstops will need to be imposed. What those are could depend on some of the big infrastructural choices that are made, so leaving them non-finalised at this point would be reasonable.

    c) Once the spatial plan is agreed and the risks it runs are understood, environmental limits could be finalised, reflecting the trade-offs made by councils and their communities. Environmental regulations that implement those limits can then be finalised.

    d) Finally, LUPs can be developed to reflect both spatial and environmental constraints.

Establishing the system

11. I cannot offer a precise view on what a 'good' or an appropriate time frame looks like, but I stress that each step in the planning process needs to have sufficient time to allow proper consideration of whatever the preceding step has set up. The focus should be on doing it once and doing it well. This will greatly minimise the risk of a cascade of immediate changes being required after the specified transition date. The Committee might consider seeking independent expert planning advice regarding appropriate timeframes for transition, to minimise the risk of system failure due to insufficient time to prepare robust instruments and plans.

Environmental management

Setting of environmental limits

12. Ecosystem health limits should be set at or above an objective minimum level based on the biophysical constraints of the environment. The objective minimum level should be 'to protect the life-supporting capacity of the natural environment and prevent significant or irreversible harm to the natural environment'.

13. Trade-offs and consideration of competing social and economic aspirations should only apply if communities want to set a limit higher than the objective minimum level. It should be made clear that NEB clause 56 only applies if communities want to set limits higher than that objective minimum level of protection (as proposed above).

14. Where ecosystem health limits will differ from any minimum acceptable level, as set by national standards, those limits must be subject to a justification report.

15. Councils should **not** be able to set limits below the objective minimum level.

16. Retain the references to environmental limits as originally drafted in NEB clauses 11(a), 32 and 81(b)(ii); recommendations 23, 71 and 88 of the Departmental Report – Report 3 should not be accepted.

17. NEB clauses 85 and 86 should be retained as introduced, and the relevant aspect of recommendations 168–172 of the Departmental Report – Report 3 should not be accepted.

18. Any national standard that authorises the exceedance of a limit should require, as part of an application for a permit(s) for an affected activity, an assessment of:

    a) any practicable/feasible mechanisms that could be applied to allow the activity to proceed without exceeding a limit and why they are not suitable;

    b) the measures proposed to minimise, offset or compensate for the lowered environmental quality proposed to be achieved.

19. Where an exemption from a limit is authorised through a national standard, the regional council should be required to outline how other responses will 'make up' for the exceedance of a limit in the public notice required by NEB clause 67.

20. NEB clause 164 should be retained as introduced, and the relevant aspects of recommendations 173–174 of the Departmental Report – Report 3 should not be accepted.

21. The interaction between 'human health limits' and 'ecosystem health limits' requires clarification, given that humans exist within the natural environment. Where human health limits and ecosystem health limits interact, the NEB should be explicit as to which limit applies. In my opinion, the more stringent limit should apply.

Action plans

22. Develop a two-tier system that enables a flexible and adaptative non-regulatory management approach with a harder regulatory backstop to ensure that limits are complied with.

    a) The first tier would enable resource users (e.g. catchment groups, irrigation companies, community groups, etc) to develop non-regulatory catchment-based plans to manage within limits. This would be voluntary in catchments below environmental limits and mandatory in catchments above environmental limits. As part of this first tier, a process needs to be developed to give communities and resource users the mandate to develop community catchment plans.

    b) The second tier would position 'action plans' as the backup (or regulatory 'stick') if the community's plan is not working (or if communities cannot agree on an effective catchment plan) and the catchment is in breach of environmental limits. Action plans would contain rules. These would apply if communities cannot agree on or implement a catchment plan, or if the community catchment plan is ineffective.

23. Develop explicit funding mechanisms (such as targeted rates) to support the actions contained within community catchment plans and action plans, and ensure a process is established within the legislation that provides for participation by interested parties in the development of a tiered plan approach.

Freshwater farm plans/catchment collectives

24. Delegate development of the freshwater farm plan framework to secondary legislation to allow for more technical detail, flexibility and inputs from key stakeholders and experts.

25. If the framework for freshwater farm plans is retained in primary legislation, then I suggest several detailed, technical components require clarification as outlined in Appendix 2 in response to MfE recommendations 303–304 and 306–309 of Departmental Report 3.

26. Most importantly, flexibility needs to be built into the FWFP system to clarify how FWFPs take the wider catchment context into account and how they interact with action plans. My recommendations following paragraphs 63–73 (above), which propose a two-tier approach that enables non-regulatory community catchment plans backed by regulatory action plans, are directly relevant here.

Regulatory relief and biodiversity

27. A long-term investment needs to be made to provide the information needed to inform decisions about protecting indigenous biodiversity. The best way to make this investment is in partnership with landowners and iwi.

28. The policy intent of the Bills with respect to biodiversity should be clarified. National standards should specify the use of non-mapping biodiversity protection tools (e.g. an offsetting regime) operating alongside regulatory relief.

29. Failing that, the right to remove biodiversity needs to be paused and a transitional regime put in place to prevent the loss of biodiversity while the necessary information is gathered to identify high-value ecosystems. Previous protection of indigenous biodiversity under the RMA should also be carried over to the new regime and national funding provided to local authorities to help them achieve nationally prescribed biodiversity limits.

Aspects of planning system

Cumulative effects and permitted activities

30. See recommendation 16. The drafting of NEB clause 32, as introduced, should retain reference to allocation and environmental limits.

31. As noted in my advice on the Departmental Report, the Committee should request a detailed briefing from officials on how cumulative effects are to be defined and managed in the proposed system before instructing amendments on this matter.

32. The Committee should request advice from officials about the safeguards that will apply to the registered permitted activity process. Any information provided in support of registered permitted activity applications should be legitimate and suitably robust, given the limitations on councils to verify the veracity of any information provided. Councils should be given explicit power to decline permitted activity registrations where they are not satisfied with the quality and veracity of the information provided at registration.

Excluded effects – Landscapes and amenity

33. Retain visual amenity and landscape (in broad terms) as effects within the scope of the system and use national standards to prescribe how visual amenity and landscape effects are to be managed in the proposed system.

Excluded effects – Land use effects regulated in other legislation

34. Enable decision makers to consider the environmental effects of an activity, even where the land use effects may be addressed by other legislation.

Excluded effects – Light

35. Ensure 'light' is an effect that is able to be managed under both Bills.

36. Include a general duty to avoid unreasonable light spill into the PB – this could be crafted in a similar way to clause 24 or clause 24 could be modified to include light.

37. Include a general duty to avoid both unreasonable noise and light spill in the NEB – this could be separate clauses for each effect or one clause covering both noise and light.

Green spaces

38. Ensure the definitions of infrastructure include green infrastructure and green spaces.

39. Explicitly acknowledge the role greenspaces play in managing the effects of natural hazards and in contributing to well-functioning urban and rural environments. If this cannot be done in the Bills themselves, the Committee's report should recommend that it be made explicit through national instruments.

Climate change

40. The committee should reject recommendation 319 of the Departmental Report 3 and make it clear that if any climate benefits are to be assessed, their costs should be as well.

41. The Committee could request an explanation from the Ministry about how the negative emissions consequences of different network configurations would be evaluated under the two Bills (e.g. transport systems that affect urban form and system-wide emissions).

Designations

42. The minimum requirements for what a 'strategic need' assessment must include should be prescribed in the Bill, perhaps in the form of a definition for 'strategic need'. Alternatively, the 'strategic need' test could be replaced with the more familiar 'operational need' test for designation proposals.

43. Both designating authority applications and recommending authority decisions should be required to assess all adverse effects and consider whether the proposed designation is consistent with environmental limits.

44. The Bills must ensure that the adverse effects of proposed designations on biodiversity can be managed in situations where a natural resource permit is not required.

45. Where a designating authority applies for a project that will, or is likely to, result in the exceedance of an environmental limit, the designation application should include an explanation of the consequences of any exceedance, and what this might mean for both the allocation and recovery of common pool resources in the future.

46. Retaining the use of CPPs for designations to impose limits on effects and the management of those effects, requires an opportunity for scrutiny to be added to ensure that CPPs do not operate as a secondary approval process.

47. Remove restrictions on designation conditions, so that conditions can be imposed to manage any scale of adverse effect, not only significant adverse effects.

Transitional matters

Existing agreements and arrangements

48. Criteria to identify current bespoke regulatory settlements that are critical to the integrity and functionality of the resource management system should be rapidly developed so that these arrangements can be incorporated directly into the new planning documents.

49. Identified arrangements should be included in a Schedule to the Bills, with all the necessary amendments to enable the integration of the arrangements into the new framework. Alternatively, the Bills should include a mechanism for this to be achieved through national instruments during the transition.

Appendix 2: PCE Comment on Departmental Reports 1–3

Departmental Report – Report 1

MfE Recommendation/Topic		Comment	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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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).
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	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.
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, 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.

MfE Recommendation/Topic		Comment	Recommendation
149	Strategic need assessment, assessment of designations PB sched 5 cl 13	In the assessment of strategic need in Schedule 5, clause 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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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.
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.

Departmental Report – Report 2

	MfE Recommendation/Topic	Comment	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 Recommendation/Topic		Comment	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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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 may 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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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 and 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.
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, it is	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 Recommendation/Topic	Comment	Recommendation
		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.	
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 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).

MfE Recommendation/Topic		Comment	Recommendation
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.
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 Schedule 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.

MfE Recommendation/Topic		Comment	Recommendation
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.
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	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 Recommendation/Topic		Comment	Recommendation
		transparency, alter plan provisions in favour of economic growth, development capacity and employment. This hardwires a preference for particular goals during transition.	
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 cl 2(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 (LUP) 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.

MfE Recommendation/Topic		Comment	Recommendation
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 Recommendation/Topic		Comment	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 Recommendation/Topic		Comment	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.

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MfE Recommendation/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.
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 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.

MfE Recommendation/Topic		Comment	Recommendation
		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.	
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".
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'.

MfE Recommendation/Topic		Comment	Recommendation
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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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." 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.	The overall design issues with the objectives of the Acts are addressed in the main text of the PCE adviser's report.

MfE Recommendation/Topic		Comment	Recommendation
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.
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.	The list of procedural principles should be reduced to avoid duplication and unnecessary complication with the other preliminary provisions in the Bills.

MfE Recommendation/Topic	Comment	Recommendation
	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 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.	

MfE Recommendation/Topic		Comment	Recommendation
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 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.	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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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. 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 Recommendation/Topic		Comment	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.

MfE Recommendation/Topic		Comment	Recommendation
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 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.	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 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.

MfE Recommendation/Topic		Comment	Recommendation
88	Removing NPD considerations PB cl 57(1)(b)(i) and NEB cl 81(1)(b)(i)	The MfE response states that NPD directs 'how' goals are achieved but recommends removal of consideration of whether a proposed NPD enables 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.	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 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 Recommendation/Topic		Comment	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 Schedule 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, 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 Recommendation/Topic		Comment	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 Recommendation/Topic		Comment	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: ‘Abundance’ is a term that ecologists commonly use when explaining ecosystems, but there are two types: absolute abundance and relative abundance.	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 Recommendation/Topic		Comment	Recommendation
		'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 Recommendation/Topic		Comment	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 NEB cl 55	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 '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	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 constraints of the natural environment and not subject to the considerations in NEB cl 56 and 57.

MfE Recommendation/Topic	Comment	Recommendation
	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.	
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 Recommendation/Topic		Comment	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 NEB cl 58–65	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 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.	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 work, the PCE is available to assist with this.

MfE Recommendation/Topic		Comment	Recommendation
		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.	
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), 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	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 Recommendation/Topic		Comment	Recommendation
		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 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.	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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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 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.	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 overwhelming public benefit). Clause 86 should be retained as drafted and the Committee should not accept MfE recs 168, 169, 170, 171 and 172.

MfE Recommendation/Topic		Comment	Recommendation
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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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.
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 Recommendation/Topic		Comment	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 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.	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 Recommendation/Topic		Comment	Recommendation
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 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.	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.
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.

MfE Recommendation/Topic		Comment	Recommendation
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. As noted in MfE recs 225–229, the Minister should not have a role in making decisions on a draft RSP.	Merits appeals should be possible on all RSP decisions.
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.

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

MfE Recommendation/Topic		Comment	Recommendation
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 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.	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.
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	As per MfE rec 240, consider requesting more information from officials and, in the meantime, the clauses should be retained.

MfE Recommendation/Topic		Comment	Recommendation
		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.	
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. 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.	Express reference that allocation must occur within environmental limits, unless otherwise authorised by a national standard, should be included.
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.

MfE Recommendation/Topic		Comment	Recommendation
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.
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 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 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.	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 Recommendation/Topic		Comment	Recommendation
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 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.	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 Recommendation/Topic		Comment	Recommendation
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 NEB cls 10–12	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. 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.	There should be a mechanism for sharing data and information from FWFPs with local authorities subject to appropriate protocols.
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.

MfE Recommendation/Topic		Comment	Recommendation
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 Biosafety (Introduction and Objective 1), the 2001 Stockholm Convention on Persistent Organic Pollutants (Article 1).	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.
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.