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Kaunihera Taiao ki Waitaha

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Tēnā koutou,

Environment Canterbury submission on Natural and Built Environments Bill and Spatial Planning Bill.

Environment Canterbury welcomes the opportunity to submit on the Natural and Built Environment Bill and Spatial Planning Bill and requests the opportunity to speak in support of its submission.

Environment Canterbury administers the largest region in New Zealand by area with perspectives that take into account regional and local context. As a regional council, we operate at the coalface of delivery and our submission draws heavily on our experiences developing and implementing policy over the past three decades.

A smooth and successful transition to the future resource management system will require skills, knowledge and expertise from across Council, and cost-effective processes that take into account our regional context. We look forward to further engagement with the Environment Committee on these matters as it works to progress the development of these important pieces of legislation.

Yours sincerely

Peter Scott
Chair, Environment Canterbury

Introduction

1. The Canterbury Regional Council ('Environment Canterbury', 'the Council') welcomes the opportunity to submit on the Spatial Planning and Natural and Built Environment Bills. The Council recognises the significant work undertaken by the Government to get both Bills to this stage of the process but is disappointed that a short window has been provided for the development of submissions. A requirement to lodge submissions by 5 February 2023 fails to recognise the limited availability of Environment Canterbury Councillors and staff over the December / January period and reduces opportunities for community feedback.

2. Reform of the resource management system is a once-in-a-generation opportunity to shape how our towns, cities, rural and natural environments adapt to current and future challenges. Decisions made as part of resource management reform will have enduring impacts for the quality of our natural and built environments and the well-being of current and future generations.

3. Environment Canterbury agrees with the need for change and drivers[1] behind system reform but has serious concerns with the direction and detail of some proposals. Disconnects exist between the aspirations of system reform and the proposed framework to deliver on that intent, and regional council functions and responsibilities have not been appropriately recognised or reflected in the design of the system.

4. In addition, the purported shift to a future-focused, outcomes-based system is not matched by reality, with the framework a hybrid of outcomes-based planning and effects-based management through resource consents. Questions remain as to how these different approaches will integrate in practice, and if left unaddressed risks efficiency objectives being undermined.

5. Furthermore, some proposals verge on institutional reform[2] and would be better considered as part of the Future for Local Government review. Proposing new institutional arrangements through resource management reform risks misaligned approaches and the need for future amendments to legislation to realign structures, systems and processes.

6. While the Council appreciates *some* proposals have been foreshadowed in previous consultations, other new and contentious proposals have not. These include allocation regimes, new consenting pathways, automatic expiration dates for transitional consents and new frameworks to manage contaminated land. Subtle modifications have also been made to previously socialised proposals leaving the Council to question whether changes are intended or casualties of the pace of drafting.

7. Parts of the Supplementary Analysis Report (SAR) also raise questions as to the robustness of policy analysis and benefits of proposals. Statements peppered throughout include "*the pace at which the proposals have been developed means that much of the detailed policy and implementation decisions are still to be met"*, and "*there are significant uncertainties and risks in key areas including Treaty obligations, sector*

[1] Refer to Our future resource management system overview / Te Pūnaha whakahaere Rauemi o Anamata: Tirowhānui, p6

[2] (e.g. proposals related to the composition of Regional Planning Committees and employment arrangements for Secretariats)

impact, system funding requirements and changes in resource allocation" and "*there is limited quantitative evidence of the effectiveness of the chosen option*[3]*.*

8. If the Government is to be successful in delivering a more effective and efficient resource management system, it is critical sufficient time is taken to develop policy, gather informed feedback and quantify the impact of proposals. At this stage it appears much of the heavy lifting of transforming the Bills into cogent, integrated and workable pieces of legislation will fall to the Environment Committee. The Council remains concerned that tight legislative deadlines leave no room for testing and refinement and could result in a system that fails to achieve its objectives. On this point we echo the Parliamentary Commissioner for the Environment's caution that "aspirational words on the face of a statute are no guarantee of their ambition being realised."
9. Environment Canterbury has unique perspectives to offer on system design, having operated under a range of different governance models (commissioners, mixed-model, fully elected council, elected and Ngāi Tahu appointed councillors), innovated in areas of freshwater policy and implementation, and effected legislative change to enhance decision-making opportunities for mana whenua.
10. Achieving the objectives of reform will require new partnerships to be forged, existing relationships strengthened and the implementation of new and novel approaches. Environment Canterbury has significant value to offer in this space, with a long history of working collaboratively with central government, mana whenua and communities to design and deliver effective policy. There is a significant opportunity to draw on the Council's leadership, insights and experiences to design a system that is transformative, effective and implementable.
11. The Council looks forward to further discussion with the Environment Committee on these and other matters raised in its submission.

Structure of our submission

12. Environment Canterbury has prepared its submission in three parts. Part 1 sets out contextual matters, cross-cutting themes across both Bills, and matters of particular significance to the Council. Parts 2 and 3 respectively set out the Council's feedback on the Natural and Built Environment Bill and Spatial Planning Bill. A summary of relief sought across both Bills is included as Appendix 1.

Part 1 – Contextual matters, cross-cutting themes, and matters of significance

Canterbury / Waitaha – unique environments and diverse communities

13. Canterbury / Waitaha is New Zealand's largest region by area (44,000km^2). Stretching from Kekerengu Point in the north to the Waitaki River in the south, and extending from the Southern Alps in the west to 12 nautical miles eastward to the limit of New Zealand's territorial waters. All of Waitaha lies within the takiwā of Te Rūnanga o Ngāi Tahu with ten of the 18 Papatipu Rūnanga that form Te Rūnanga o Ngāi Tahu located within Canterbury's regional boundaries.

[3] Supplementary Analysis Report: The new resource management system, p17-18,

14. The region is home to world-renowned braided alpine river systems, rich freshwater resources and iconic landscapes and seascapes. Many rare or unique species call Canterbury home, including the Hutton's shearwater, orange-fronted parakeet / kākāriki, black stilt/kakī and great spotted kiwi/roro, mudfish/kōwaro, dwarf galaxis, and short-jawed kōkopu.

15. Canterbury's population is unevenly distributed with 82% of residents located in Waimakariri, Christchurch and Selwyn, and the remainder spread across smaller townships and settlements. Agriculture is a major contributor to the economy (6.7% of regional GDP[4]) and the region has a flourishing tourism industry that capitalises on the region's outstanding natural features and landscapes and its rich and diverse biodiversity.

16. Meeting Canterbury's future needs requires a resource management system that recognises the diversity of its environments and the different and varied needs of its communities. Systems and frameworks must provide a strong voice for local communities and enable planning and delivery "at-place".

Integration with other legislation

17. A seamless integration between the Spatial Planning Bill, Natural and Built Environment Bill and other government legislation is critical to the system's success. However, connections between these Bills and other legislation are uncertain or weak, resulting in a less effective and less integrated system. Areas requiring particular attention are detailed below.

Climate legislation

18. Connections between climate legislation (i.e. the Climate Change Response Act and future Climate Adaptation Bill) and the Spatial Planning Bill and Natural and Built Environments Bill must be strengthened if goals relating to emission reductions and adaptation are to be achieved. Both Bills afford relatively low weight to the National Adaptation Plan and Emissions Reduction Plan (ERP) with the National Planning Framework only required to "not be inconsistent" with each plan's contents.

19. Given the urgency of the climate crisis, and the role of the ERP in helping limit global warming to 1.5ºC, both Bills should require the National Planning Framework to contribute positively towards the achievement of emission budgets. More directive language will encourage development and adoption of emission reduction technologies, and provide a solid foundation for the development of regional spatial strategies that encourage compact urban form, low-emission multi-modal transport options, and adaptation to the effects of climate change.

20. Opportunities to deliver co-benefits of improved resilience to the impacts of climate change and the development of healthy cities and towns through blue-green infrastructure (e.g. parks and open spaces, waterways, wetlands and rain gardens) should also be promoted, with strengthened connections between climate change objectives and other climate legislation.

[4] Figures from Statistics NZ. Percentage represents contribution at the farm-gate and does not include contributions from downstream activities (e.g. manufacture or processing of agricultural products or support services).

Three Waters Legislation

21. Environment Canterbury is surprised both the Spatial Planning Bill and Natural and Built Environment Bill contain few references to the Water Services Act and Water Service Entities Bill.

22. Water service entities will need to work closely with Regional Planning Committees to ensure decisions on three waters funding and investment align with planning for growth as part of spatial planning. Delivering safe, reliable drinking water for communities whilst upholding te Mana o te Wai and te Oranga o te Taiao, will also require close liaison with Taumata Arowai, local authorities and mana whenua to ensure all relevant matters, statements and plans[5] are factored into decisions related to water supply and use. Meaningful collaboration and the two-way flow of information between all parties should be promoted through explicit amendments to both Bills.

Tuia Relationship and the Ngāi Tahu Representation Act 2022

23. Environment Canterbury fully supports proposals to improve decision-making and participation opportunities for mana whenua.

24. In 2012, Environment Canterbury and ngā Rūnanga forged a commitment towards a closer working relationship founded on principles of partnership, mutual respect, good faith, unity, environmental stewardship and kaitiakitanga. The "Tuia agreement" is the manifestation of that commitment and recognises each party's individual responsibilities and collective aspirations for current and future generations in Waitaha.

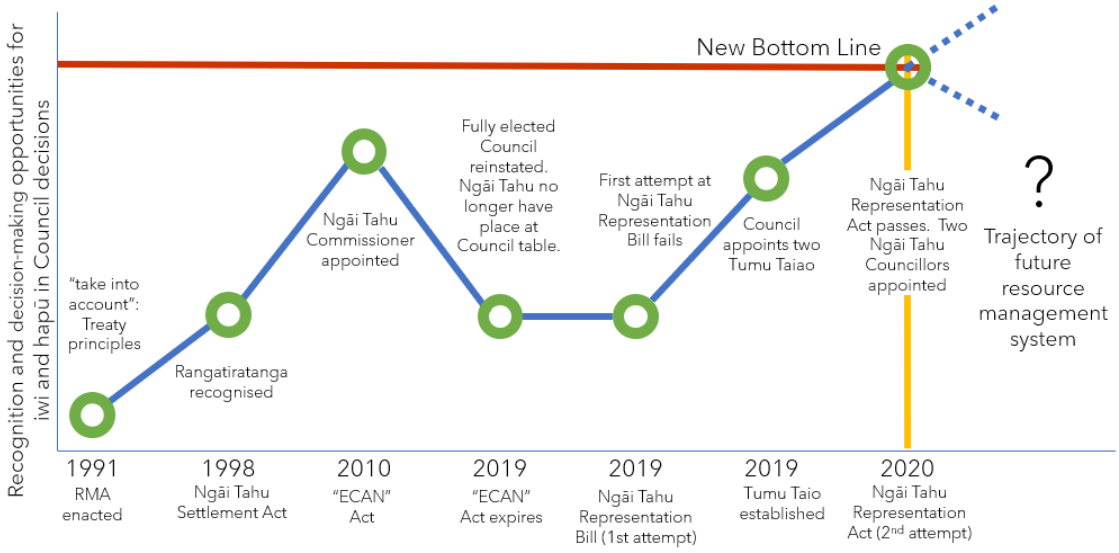
25. Central to the agreement is the acknowledgement of ngā Papatipu Rūnanga as mana whenua within their rohe, and recognition of Ngāi Tahu rangatiratanga within the takiwā as affirmed under the Ngāi Tahu Claims Settlement Act (1998). The Tuia agreement has been an important platform for co-governance of Te Waihora, the promotion of the Ngāi Tahu Representation Act (2022) (which reinstated direct representation for Ngāi Tahu at the Council table) and other programmes to build te Ao Māori capability and capacity within the Council.

26. It is critical that reform of the resource management system builds on and strengthens decision-making opportunities for iwi and hapū. Some proposals (e.g. composition arrangements for Regional Planning Committees) appear a backward step when compared to current legislative arrangements, with mana whenua afforded fewer opportunities to influence policy design.

27. As shown in Figure 1, the passing of the Ngāi Tahu Representation Act marked a shift in Environment Canterbury governance and established a new bottom-line for Ngāi Tahu participation in Council decisions.

[5] For example, statements that set out how to give effect to te Oranga o te Taiao and te Mana o te Wai and asset management plans and development plans.

Figure 1 – Our partnership journey



28. Any future system must continue the upward trajectory towards a partnership that embraces the principles of Te Tiriti. Proposals that lessen representation or constrain mana whenua's ability to exercise tikanga, kaitiakitanga or meet other obligations must be removed.

Governance, Representation and Regional Planning Committees

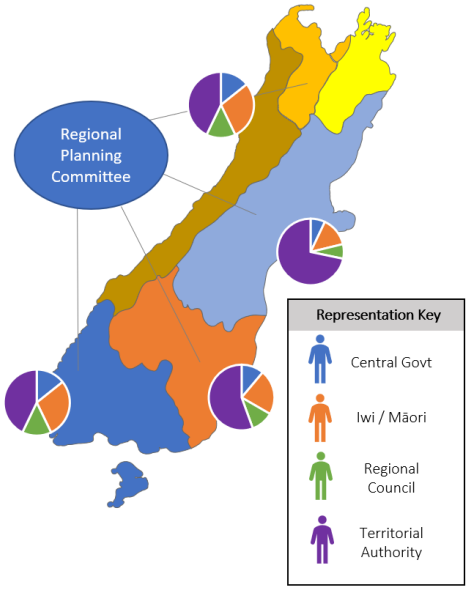
29. Environment Canterbury has significant concerns with the compositional arrangements for Regional Planning Committees (RPCs) and the implications for policy and plan development.

30. Schedule 8 of the Natural and Built Environment Bill prescribes minimum compositional arrangements. Each region is required to form a single[6] Regional Planning Committee comprising at least six representatives, with at least two representatives appointed by Māori appointing bodies. Local authorities may[7] appoint at least one representative to the Committee and a central government representative must be included for development of the Regional Spatial Strategy.

31. These compositional minimums have been derived on the basis of regions with the fewest local authorities (e.g. Southland and West Coast) and have significant implications for the level of representation afforded to different parties (see Figure 2 below). In regions with few local authorities (e.g. West Coast) central government, iwi and Māori, regional councils and territorial authorities comprise 14%, 28%, 14% and 42% respectively. However, in Canterbury this shifts to 7%, 14%, 7% and 72% with representation skewed heavily in favour of territorial authorities.

[6] Supplementary Analysis Report, p214
[7] Schedule 8, Part 1, Clause 2 of the NB Bill

Figure 2 2 – Representation for different parties if legislative minimums are adopted.



32. Poor representation of regional councils on Committees risks less integrated responses and frameworks that fail to account for the natural environmental variation between catchments (e.g. high country drylands, vs coastal lakes) and different types of issues (e.g. urban vs rural issues). Where decisions are made by vote, parties with limited representation (i.e. regional councils and mana whenua) will have less influence over policy design with implications for functions and responsibilities.

33. Furthermore, while the Council acknowledges there is flexibility to adapt the size and composition of the RPC to suit regional contexts, it relies on appointing bodies reaching agreement. Where agreement is not reached, the decision falls to the Local Government Commission, guided by criteria that includes the Purpose of the Spatial Planning Act and Local Government Act, effectiveness and efficiency, and effective representation of regional, district, urban, rural and Māori interests[8].

34. Notwithstanding the Council's desire for alternative RPC structures (see below), the criteria should be augmented to ensure the right mix of skillsets and knowledge to support effective and strategic decision-making. Additional criteria should include the need for a composition that ensures a thorough understanding of the effect of policy decisions on local authority functions (including functions that sit outside the resource management system but which may be impacted by regulatory controls, e.g. civil defence and emergency management, river and flood management, pest management, landscape protection) and mana whenua responsibilities (e.g. kaitiakitanga).

Alternative RPC models

35. Environment Canterbury and the ten Papatipu Rūnanga of Canterbury are in the process of re-designing how regional planning occurs Canterbury. Co-design of the future Regional Policy Statement and integrated Regional Plan for Canterbury will be overseen by the ten Papatipu Rūnanga Chairs and Environment Canterbury councillors.

[8] Cl3 of Part 1 of Schedule 8 of the NB Bill

The model provides a voice for local communities through 14 elected members, a voice for Ngāi Tahu through the two appointed councillors, and a voice for hapū through the ten Papatipu Rūnanga Chairs.

36. This partnership approach embraces the principles of Te Tiriti and ensures an integrated te Ao Māori approach to planning that considers different perspectives and values (urban, rural and the natural environment), knowledge (mātauranga Māori vs western science) and different functions, responsibilities and obligations of each party are taken into account when formulating policy. It also accounts for the special legislative context that applies in Canterbury / Waitaha under the Ngāi Tahu Representation Act, ensures more balanced levels of representation in decision-making, and enables a voice for local communities and hapū. Overall, it is a more effective model for achieving the reform objectives of improved participation and decision-making opportunities for iwi and hapū, and community input into place-making decisions.

37. Throughout New Zealand there will be a range of different contexts and legislative systems that need to be factored into Committee design. It is critical the Bills not preclude opportunities for use of alternative Committee models that enable planning at more appropriate spatial scales, or models that better reflect regional or local contexts. For example, Regional Planning Committees that operate at different spatial scales (i.e. north, mid, central or south canterbury) to enable the development of catchment-based solutions, or Committees aligned to takiwā boundaries to better reflect the specifics of Treaty settlements (e.g. Ngāi Tahu rangatiratanga) or structural arrangements in other Government reform programmes (e.g. Te Whatu Ora / Te Aka Whai Ora). Environment Canterbury urges the Environment Committee to amend the Bills to enable greater flexibility in Committee design, and to include clauses that allow local authorities or mana whenua to put forward alternative Committee models for consideration by the Local Government Commission.

<u>Host Local Authority and Secretariats</u>

38. Environment Canterbury considers proposals for local authorities to form, fund and resource secretariats for Regional Planning Committees could increase costs, exacerbate resourcing constraints and limit the Council's ability to participate in statutory parts of the process.

39. Regional councils are likely to bear the brunt of cost and resourcing impacts given hosting responsibilities default to regional councils if agreement cannot be reached. Given the broad range of matters covered by the Regional Spatial Strategy and Natural and Built Environment plan, staff from Environment Canterbury's science, strategy, transport, tuia, consenting, implementation, river engineering, compliance and enforcement teams will be required to inform policy development and test proposals. This will draw heavily on staff resource with impacts for the exercise of other regulatory functions (e.g. delays processing consent applications).

40. Use of in-house staff to support Regional Planning Committees could also compromise the independence and availability of staff for the development of Council submissions and evidence. The opportunity to submit and present evidence on the Regional Spatial Strategy and Natural and Built Environment plan is the only avenue available to the Council to put forward its individual, unfettered view on policy proposals. It is vital that Councils retain access to resources to support these processes.

41. Furthermore, the Council has serious concerns with the mandate and legitimacy of the proposed employment arrangements for the Director of the Secretariat and staff employed by the Director. Under s42 of the Local Government Act, powers and responsibilities for employment of local government staff lie exclusively with Chief Executives. Proposals to empower Regional Planning Committees to appoint a Director of the Secretariat as an employee of the Host Local Authority, create complex employment arrangements with accountability and liability implications. Employment decisions should instead rest with the Host Local Authority to ensure clear lines of accountability.

Roles, responsibilities and functions

42. Environment Canterbury has significant concerns that proposals to recast roles and responsibilities will have implications for the delivery of functions and responsibilities.

43. Under the Resource Management Act, clear lines of accountability recognise the different roles, functions and focus of local authorities. Regional councils have sole responsibility for the development of regional policy statements that set the strategic direction, and regional plans to promote sustainable management through enabling provisions, constraints and limits. Territorial authorities have sole responsibility for the development of district plans that 'give effect' to regional policy statements and are 'consistent with' regional plans, and that deliver on community aspirations for the built environment through place-making functions. This division of responsibilities maps directly to resource management functions under the RMA. Regional council functions are principally concerned with regional alignment, integrated management and maintenance and enhancement of the natural environment, while territorial authority functions are principally concerned with management of land, built environments and physical resources.

44. However, the proposal to shift plan-making functions to Regional Planning Committees breaks this critical link between roles, functions and accountabilities. As set out earlier, regional councils could have limited influence over the content of regional spatial strategies and natural and built environment plans but will still be accountable to communities for maintenance and enhancement of the natural environment. Historically, national direction has acted as a backstop to prevent further environmental degradation (e.g. NPSFM policies which require freshwater to be maintained or improved).). However there is no guarantee this will continue given the Minister's broad powers to grant exemptions and set limits that are more degraded than current state (see more on this later in our submission). Even where environmental limits are set at the national scale through the National Planning Framework, there remains the risk for environmental degradation at the local scale if regional councils cannot define the limits within which sustainable development is to occur.

45. If compositional arrangements for Regional Planning Committees remain as proposed, stronger planning tools will be needed to ensure <u>sustainable</u> development. This could be achieved by amending clause 107 to require Regional Planning Committees to have 'particular regard' to Statements of Regional Environmental Outcomes (SREOs) and to 'provide for' Statements of Community Outcomes (SCOs) <u>only</u> where doing so does not compromise achievement of outcomes in an SREO. In addition, community

conversations relating to the content of SCOs need to be framed in the context of what is legal, feasible and achievable. For this reason, clauses in the Bill that exempt SCOs from the need to demonstrate compliance with national direction[9], regulation and other planning documents should be deleted to avoid setting unrealistic expectations and community disappointment.

46. Finally, in the reshuffle of functions between Regional Planning Committees and local authorities the boundaries of each party's responsibilities have blurred. Clause 644 sets out the responsibilities of regional councils and these generally mirror the functions in section 30 of the Resource Management Act. However, some matters relevant to plan-making functions (i.e. control over the quantity, level and flow of water in a waterbody and setting of maximum and minimum flows) remain in the list of regional council responsibilities[10] despite regional councils no longer having a plan-making function. Conversely, some matters that should be included in the list of Regional Planning Committee functions are missing (e.g. allocation of resources, appointment of the Director of the Secretariat).

47. The Council suspects these errors are a consequence of the pace of drafting and the late addition of new areas of policy to the Bill. A thorough review of all functions and responsibilities is needed prior to the Bills being enacted to ensure a line of sight between roles, powers, functions and responsibilities.

Flexibility, System Efficiency and Administration

48. Environment Canterbury supports proposals that increase system efficiency, including expedited plan-making processes, limitations on plan appeals and proportionate evaluation reports.

49. However, some aspects of the plan-making process are process-heavy and are likely to reduce system efficiency. Examples include multi-layered planning committees (e.g. cross-regional planning committees, regional planning committees, sub-committees, freshwater planning committees). Furthermore, some proposals will significantly reduce system efficiency across other parts of the regulatory system. For example, new proposals for short-term consents during the transition period, and requirements to notify all discretionary consent applications, will add cost and increase processing times.

50. As a general comment, the system suffers from over-prescription and fails to recognise there will be multiple ways to achieve system objectives. The Bill's focus should be on establishing clear outcomes and priorities with clear criteria to guide decisions on processes and procedural arrangements. There is considerable risk in locking-in inflexible, process-heavy arrangements that can only be unwound through future legislative processes. Instead the system should include a degree of flexibility to enable local authorities to adapt in response to new information, unforeseen environmental issues, or community issues. A robust analysis of the efficiency of each of the

[9] Cl645(3) of the NB Bill
[10] Cl644(c) of the NB Bill

prescribed processes is required and processes should be removed that reduce agility, increase costs or exacerbate resourcing impacts.

Funding and Financing

51. Environment Canterbury agrees it is appropriate for local government to bear some of the costs associated with implementation of existing functions and responsibilities.

52. However, the Council has serious concerns with proposals for new and unfunded mandates as part of system reform. Examples include, requirements to host and fund secretariats, requirements to establish digital infrastructure to support hearing processes, proposals to recover costs from local authorities for investigation and/or remediation of contaminated land, and new consenting frameworks during the transitional period.

53. Additional functions and responsibilities cannot be accommodated by the Council without a commensurate increase in funding. Local authorities are already struggling to meet inflationary costs and costs associated with implementation of new national direction. Any additional costs will either need to be passed onto ratepayers, services cut, or initiatives abandoned (including those that promote outcomes sought by the Bill, e.g. environmental enhancement).

54. Central government must contribute its fair share towards transition and funding of new functions and responsibilities in the system. This must include adequate funding to iwi and mana whenua to build capacity and support participation in the system. Mana whenua must not be put in the position of having to fund participation from financial redress received as part of negotiated Treaty Settlements.

55. Resource management reform is a prime opportunity to reconsider funding mechanisms ahead of the Future for Local Government Review. Regulation alone will not achieve the goals of resource management reform and alternative funding streams, investment, subsidies and support will be required to achieve system outcomes, transition users to more sustainable land uses, and improve resilience and adaptation to the effects of climate change. Central government decisions on what, where and how much to invest must take a broader perspective and recognise the contribution that regional activities make to the national economy. There is a need to pivot away from ‘just-in-time’ reactive funding (e.g. in response to national emergencies) to proactive and strategic funding frameworks.

Transitional arrangements

56. Environment Canterbury supports a phased transition to the future system. Transitional arrangements should aim to minimise the amount of re-work required, match system capacity to resource availability and recognise regions that have made progress in addressing environmental issues.

57. However, the Council has significant concerns some transitional arrangements will exacerbate rather than alleviate capacity and resourcing constraints. Proposals to establish freshwater working groups and impose automatic expiration for consents

granted during the transition period will increase capacity shortfalls and create uncertainty for resource users.

58. Canterbury and its communities have navigated a decade of freshwater planning, consenting and consent review processes. Limits are in place for most catchments in the region and consent-holders are required to reduce resource use where over-allocation exists. There is a considerable risk that the progress made will be undermined by the proposed transitional arrangements. Set out below are the Council's key concerns and suggestions for how to improve the system.

Freshwater Working Group

59. Environment Canterbury fully supports the Government's intent to address iwi rights and interests in freshwater. However, the proposed timing for the establishment of the Freshwater Working group and subsequent date for reporting back to the Minister (31 October 2024) are problematic and overlap with RMA timeframes relating to the development and notification of freshwater planning instruments[11].

60. Matters concerning the allocation of freshwater will be highly significant for iwi, hapū, resource users and communities. Proposals to run concurrent conversations on freshwater allocation at national and regional scales will stretch Council, iwi and hapū resources and jeopardise the delivery of a new integrated regional policy statement and regional plan for Canterbury. Choices need to be made by the Government on which conversations and processes should be prioritised. If freshwater plans under the RMA are the highest priority, then timeframes for reporting back by the Freshwater Working Group to the Minister must be pushed back to allow meaningful conversations between Council, iwi and hapū on visions, outcomes, limits necessary to 'give effect' to Te Mana o te Wai. Conversely, if addressing iwi rights and interests in freshwater (including allocation) is the highest priority, then concessions must be made with regards to the dates for notification of freshwater plans under the RMA.

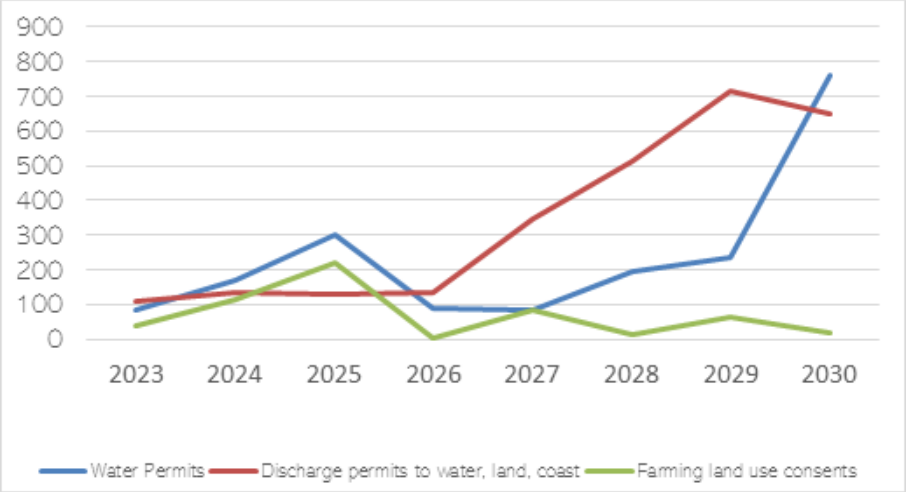
Automatic expiry of resource consents

61. Environment Canterbury has significant concerns with proposals[12] to invoke an automatic expiry for resource consents[13] granted after the Natural and Built Environment Act comes into force but before the first Natural and Built Environment Plan is notified. Under these proposals, consents granted during this transitional period expire 3 years after the notification of the region's first Natural and Built Environment Plan.

62. Environment Canterbury receives ~1500 applications for resource consent each year and is able to process ~1000 applications using a combination of in-house staff and external consultants. Between 2023 and 2030, the Council estimates ~5000 water permits, discharge permits (to water / land / coastal water) and farming land use consents will expire (see Figure 3 below).

[11] S80A of the RMA
[12] Schedule 15, cl39 of the NB Bill
[13] provisions apply to permits to take, use, dam or divert freshwater, discharge contaminants or water to water, and land use consents that give rise to a discharge of contaminants to water

Figure 3 3– Resource consents expiring between 2023 and 2030



63. If the Council notifies its Natural and Built Environment Plan near the end of the transitional period (i.e. 2030) a slug of around ~5000 consents will be due for subsequent renewal in 2033[14].

64. The Council faces a sizeable resourcing shortfall to service these consent applications. An additional 150 staff across science, consents and compliance, monitoring and enforcement would be required to provide advice, process applications and monitor consents. Environment Canterbury's departments are already heavily depleted as a result of recruitment for other Government reform and review programmes (e.g. Three Waters, Essential Freshwater, He Waka eke Noa). Where RMA timeframes for processing consent applications are not met, the Council will incur financial penalties in the form of discounts to consent applicants, and consent applicants will suffer through delays to consent processing. From the Council's perspective, blanket expiration dates fail to recognise work undertaken by the Council and its communities in setting environmental limits and establishing freshwater planning frameworks for catchments in the region. There is little to be gained from bureaucratic processes that add further cost and delays for no environmental benefit.

65. Proposals for automatic consent expiry will also impact on the delivery of essential Council services and environmental enhancement initiatives. While exemptions to short consent durations exist for some activities[15], the list does not account for all activities carried out by the Council under different Acts (e.g. Resource Management Act, Land Transport Act, Soil Conservation and Rivers Control Act, Maritime Transport Act, Biosecurity Act etc). Notable activities missing from the list include environmental enhancement initiatives (e.g. managed aquifer recharge, targeted augmentation of streams, wetlands and lagoons, denitrification beds), flood and river engineering works, biosecurity and pest control, management of pollution events (e.g. marine oil spills) and navigation and safety functions.

[14] Actual numbers subject to policy settings and rule thresholds in the new NBA plan.
[15] Schedule 15, cl40 of the NB Bill

66. Each of these activities is affected by the proposed transitional provisions because of the broad definition of an "affected resource consent"[16]. This includes all freshwater permits, all discharges (including discharges of water to water, discharges of contaminants to coastal water and geothermal water) and all land use consents that give rise to a discharge to land or water. There is a clear disconnect between the intended scope and application of the 'affected resource consent' provisions as set out in the overview document[17] and the clauses as drafted in the Bill. While the overview document states the provisions apply only to freshwater takes and discharges, the inclusive drafting of clause 40 of Schedule 15 means these provisions apply to a broad range of consents. If transitional provisions remain a feature of the Bill, then the list of exempted activities must be broadened to cover all Council activities.

67. The Council notes the Supplementary Analysis Report (SAR) fails to account for the true costs of these proposals and the different contexts that apply within different regions (e.g. regions where freshwater planning has been carried out vs regions where it has not). The consultation document states further detail on the design of an allocation framework will be developed as part of the National Planning Framework (NPF) with the opportunity to tailor policy responses to regional contexts. Given the significant financial and resourcing implications of these proposals for both the Council and communities, the Council would support deferring discussions on these matters to the NPF. This would help with ensuring a ensure a complete and robust picture of the different context and costs that apply in each region.

Te Tiriti o Waitangi and Treaty settlements

68. Environment Canterbury supports strengthened recognition of Te Tiriti o Waitangi and requirements for persons exercising powers and functions to 'give effect to' the principles of Te Tiriti. A requirement to give effect to the *principles* of Te Tiriti recognises that principles will evolve over time, that implementation is context-specific, and that an understanding of the texts, influences and events that gave rise to the Treaty is required.

69. However, the Council remains concerned at a disconnect between the Bills' aspiration and mechanisms to deliver on intent. Examples include limited representation for mana whenua on Regional Planning Committees and the ability of the Minister to exempt activities from the need to implement the effects management framework for sites of cultural heritage[18]. Both examples fall short of principles of 'partnership', 'active protection' and 'acting in good faith' when making decisions that affect the interests of Māori.

70. Furthermore, the Crown's commitment to uphold existing Treaty settlements is undermined by the narrow framing of transitional and savings provisions in Schedule 2 of both Bills. Schedule 2 states the Purpose of this schedule is to "*ensure the integrity, intent and effect of Treaty settlements, the NHNP Act* ***and other arrangements made***

[16] Schedule 15, cl28 of the NB Bill
[17] Our Future Resource Management System: Overview
[18] Cl64(1) of the NB Bill - the Minister may include provisions in the National Planning Framework that exempt activities from the need to adhere to the "effects management framework" when managing impacts on specified cultural heritage.

under the Resource Management Act 1991 *are upheld in relation to this Act"*, with Treaty Settlement defined as *"provisions of a Treaty settlement Act or Treaty settlement deed that relate to the exercise of a power or the performance of a function or duty under the* ***Resource Management Act 1991****."*

71. Including references to the "Resource Management Act" limits the scope of Schedule 2, and exempts persons exercising powers, functions and duties from the need uphold all forms of redress in Treaty settlements. In the context of the Ngāi Tahu Settlement Act this is significant as redress includes the Crown's apology and recognition of Ngāi Tahu rangatiratanga within the takiwā. This narrow framing is inconsistent with the principles of active protection, reciprocity and mutual benefit as derived from Articles 1 and 2 of the Treaty.

72. Schedule 2 also fails to take into account the unique legislative context that applies in Canterbury / Waitaha. Bespoke governance arrangements apply to Environment Canterbury as a result of the passing of the Ngāi Tahu Representation Act (NTRA). Through that Act, Ngāi Tahu is guaranteed full and exclusive rights to appoint two persons to the Council with full decision-making rights, functions and responsibilities – including decisions relating to the content of regional policy statements and regional plans.

73. To address these deficiencies, changes are required to clause 6 of Schedule 2 of both Bills. Clause 6 provides for the Governor-General to make regulations to modify compositional arrangements for regional planning committees, but only where doing so would achieve the Purpose of Schedule 2. Accordingly, there is a need to amend Schedule 2's Purpose to include a requirement to uphold arrangements provided for under the Ngāi Tahu Representation Act.

National Māori Entity

74. Environment Canterbury supports Te Rūnanga o Ngāi Tahu's position that the design of the new system must recognise the role of iwi rangatiratanga within their takiwā and the associated rights and responsibilities as guaranteed under Te Tiriti o Waitangi. National Māori Entities must not become substitute bodies for direct engagement with iwi and hapū, nor usurp the role of mana whenua as decision-makers within their rohe.

75. If a National Māori entity is established, decisions regarding membership and appointment processes must involve iwi and hapū. Membership to the committee must ensure effective representation for mana whenua, and the balance of representation on the entity must take into account the breadth of the Ngāi Tahu takiwā - being the largest of any tribal authority.

Equity

76. Environment Canterbury has serious concerns with the Bill's preferential treatment of urban activities. Inequitable treatment of urban and rural activities has the potential to widen the 'urban / rural divide' and create disharmony between communities.

77. Both Bills contain enabling policy settings for urban activities[19] with exemptions to ecological limits for urban activities. In contrast, rural activities are required to comply with strict limits relating to ecological health and human health. While the Council accepts there may be some scenarios where enabling provisions for urban activities may be appropriate (e.g. enabling provisions for emergency housing), these circumstances must be narrow and tightly controlled. Broad exemptions for subdivisions are inappropriate and will encourage further loss of productive land and natural environments and the externalisation of adverse effects.

78. If reform objectives are to be achieved, it is critical the new system avoids picking winners and losers based on activity type. All activities should be encouraged to avoid, remedy and mitigate adverse effects as far as practicable.

Braided Rivers

79. Environment Canterbury has consistently advocated for the need for a resource management system that recognises the unique characteristics of braided river systems and a legislative framework that enables protection of braided river values.

80. It is therefore disappointing that the Natural and Built Environment Bill simply rolls over the Resource Management Act's reductionist approach to river management with rivers compartmentalised into their individual components ('river', 'land', 'bed' and 'margin').

81. Braided rivers are not single channel systems with clearly defined beds and banks, rather they are collections of meandering channels that frequently change course. These characteristics make identifying the transition point between the "bed" and adjacent "land" difficult, with expert hydrological advice often required to ensure a legally defensible position. Decisions on the extent of the "bed" of a river have significant financial and environmental implications given the different restrictions and presumptions applying under the RMA. Activities that disturb the "bed" of a river require express authorisation via rules in regional plans or national environmental standards, while activities carried out on land outside the bed are authorised, unless expressly controlled by rules or regulations.

82. If the values of braided river systems are to be protected and te Oranga o te Taiao upheld, a far more integrated framework is needed that recognises connections between different parts of river systems. This could be achieved by including a definition of "braided river" and "bed of a braided river" which takes into account the dynamism and unique hydrological characteristics of braided river systems.

Part 2 – Natural and Built Environments Bill

Purpose, system outcomes and decision-making principles

Purpose

83. Environment Canterbury supports the requirement to recognise and uphold te Oranga o te Taiao and to manage use and development in a way that supports inter-generational

[19] e.g. subdivisions and infrastructure

well-being, promotes outcomes, achieves compliance with limits and requires adverse effects to be managed.

84. However, some parts of the Purpose are weak, ambiguous or undermined by operational components of the Bill. Examples include the disconnect between the Bill's aspirational Purpose which enables use and development in a way that "*complies with environmental limits and associated targets*" and clause 44 which enables the Minister to grant exemptions to environmental limits for specified activities. Other weaknesses include the failure to require "sustainable" use and development and requirements to simply "manage" adverse effect, rather than avoid, remedy or mitigate effects. Changes should be made to the Purpose to address these shortcomings.

<u>System outcomes</u>

85. Environment Canterbury considers the failure to prioritise system outcomes a key weakness of the Natural and Built Environment Bill and a backwards step from the RMA's hierarchical framework which distinguished matters of national importance (s6), matters to have particular regard to (s7) and matters to take into account (s8).

86. There are significant risks with relying on the National Planning Framework to resolve conflicts between system outcomes, with the potential for future tinkering to suit the political agenda of the Government of the day. Frequent, ad-hoc changes to the National Policy Statement for Freshwater Management, National Environmental Standard for Freshwater (2020) and Stock Exclusion Regulations (2020) have resulted in changed policy settings and provide an example of the churn that could occur if outcomes can be changed through secondary legislation. Since its introduction in the 2011, the NPSFM has been amended four times, with significant cost implications for regional councils and resource users. Environment Canterbury has spent $60 million over the past decade promulgating plan changes (and subsequently amending them) to keep its framework consistent with changed NPSFM direction with costs for resource users in the form of additional resource consents as a consequence of changed regulatory settings.

87. If resource management reform is to achieve its objectives of increased certainty, increased efficiency and reduced litigation, choices must be made on which system outcomes to prioritise and these set out in the Bill. Outcomes relating to existential threats (e.g. climate change, natural hazards) and protection of the restoration of the natural environment should be prioritised to ensure healthy environments that support human well-being. Conflicts between competing system outcomes must also be addressed within the Bill to aid implementation. Examples include tensions between outcomes that promote an "ample supply of land for development to avoid inflated land prices" and which encourage growth at peri-urban boundaries, and outcomes that support "emissions reduction and compact urban form".

<u>Decision-making principles</u>

88. Environment Canterbury supports the inclusion of principles to guide decision-making under the Act, including principles that require decision-makers to apply a level of environmental protection that is proportionate to the risk and effects where information is uncertain or inadequate.

89. However, there would be benefit in applying these decision-making principles to a broader range of decision-makers. Clause 6(1) restricts application of the principles to decisions made by the Minister and Regional Planning Committees. However, there will be situations where other decision-makers need to make hard calls between competing proposals. For example, independent hearing panels may need to weigh up the relative benefits of different policy options when making recommendations on an RSS or NBA plan, and consent authorities may need to make merit-based decisions on who to allocate resources to for applications lodged via "affected application pathway". Expanding the clause to a broader range of decision-makers would assist with more consistent decision-making and accordingly changes should be made to clause 6.

Environmental stewardship (effects management framework and environmental limits, targets and exemptions)

90. Environment Canterbury considers healthy and ecologically functional environments essential to prosperous and thriving communities. First principles dictate that the design of the environmental management framework should aim to achieve the Bill's Purpose, prevent further environmental degradation and incentivise good stewardship.

91. However, the Council considers proposals for interim limits, exemptions and narrow application of the effects management framework, undermine parts of the Bill's Purpose which require "compliance with limits", "upholding of te Oranga o te Taiao" and "management of adverse effects". Specific comments on each of these matters is provided below.

Mandatory limits and interim limits

92. Environment Canterbury supports mandatory limits for air, indigenous biodiversity, coastal water, estuaries, freshwater and soil, the ability to take into account different data and knowledge sources (including mātauranga Māori), and flexibility to set limits as either a minimum biophysical state or maximum amount of harm.

93. However, the Council has significant concerns with clauses that allow the Minister to set interim limits that allow for a greater level of harm or stress or which represent an environmental state that is more degraded than existed at the commencement of the Act. These provisions undermine system outcomes relating to protection and restoration of the natural environment and are incompatible with statements[20] in the consultation document that promote a 'no-degradation' framework.

94. The Council fully accepts there will be instances where declines in environmental attributes or state will occur due to time-lags between actions and observed environmental effects. For example, in some parts of Canterbury groundwater nitrate-nitrogen concentrations are expected to rise in the short to medium-term despite improvements in on-farm actions and reductions in nitrate leaching. These future increases are a consequence of the 'nitrate in the post', and the ability to set interim limits that take into account past events is both appropriate and pragmatic.

[20] "the purpose of environmental limits is to prevent the ecological integrity of the natural environment degrading from its current state and "limits and targets must ensure no loss of ecological integrity."

95. However to avoid opening the door to further environmental degradation, the circumstances in which interim limits can be set that are more degraded must be narrow and tightly controlled. Catchments should be required to demonstrate progress towards environmental targets over time, with a definition of environmental target included in the Bill and defined as an environmental state that that supports and upholds te Oranga o te Taiao.

Exemptions to limits

96. Environment Canterbury also has significant concerns with clauses[21] that allow the Minister to exempt activities from compliance with environmental limits for ecological integrity. Exempted activities range from nationally significant proposals that provide public benefit (e.g. critical infrastructure and essential lifeline utilities) to small-scale activities with localised and privatised benefits (e.g. subdivisions). The ability to exempt any activity that gives rise to particular effects[22], further extends the breadth of activities that could be enabled through the exemptions framework.

97. Broad exemptions risk indiscriminate and widespread environmental degradation. There are few environmental safeguards included in the Bill with the Minister only precluded from granting an exemption where current state is "unacceptably degraded" or where granting the exemption would lead to "irreversible loss of ecological integrity." Consequently, environmental risks are greatest in pristine areas or in environments with high ecological integrity. Overall, these criteria set an extraordinarily low bar with the potential for incremental and cumulative loss of ecological integrity through a 'death by a thousand cuts' scenario. The criteria should be tightened to avoid the potential for exemptions being granted in response to lobbying of Ministers.

98. It is highly concerning that entry to the exemptions framework is not subject to gateway tests (e.g. requirements for proposals to be of national or regional significance with demonstrable public benefit) and that consultation[23] with mana whenua and regional councils is not required before requests for exemptions are made by Regional Planning Committees. The Council notes the decision to request an exemption will be influenced by the composition and aspirations of the Regional Planning Committee. To ensure all relevant perspectives are taken into consideration, the Bill should require Regional Planning Committees to seek direction from mana whenua and regional councils prior to requests for exemptions being submitted to the Minister.

Effects management framework

99. Environment Canterbury supports codification of an 'effects management framework' into the Natural and Built Environment Bill but is concerned with the framework's narrow application, applying only to management of adverse effects on "significant biodiversity areas" and "specified cultural heritage". This appears to be at odds with the Bill's

[21] Cl44 - 46 of the NB Bill

[22] E.g. Cl66(1)(f) of the NB Bill - "activities in a place identified as a significant biodiversity area"; cl66(1)(j) – "activities required to deal with a very high risk to public health or safety"; and cl66(1)(o) "activities that will provide nationally significant benefits that outweigh any adverse effects of the activity"

[23] to understand the impacts of proposals on the ability of regional councils to deliver on maintenance and enhancement of ecosystems and ability of mana whenua to deliver on kaitiakitanga responsibilities

Purpose which seeks to enable use and development subject to management of adverse effects.

100. Furthermore, the broad circumstances in which the Minister can set aside the effects management framework further weakens the overall effectiveness of these provisions. Exemptions can be sought where there is a functional or operational reason for an activity to be sited in a particular location, and as established through case law[24] 'operational need' can include consideration of a broad range of factors. From the Council's perspective, all activities should be subject to the effects management framework to aid with achieving system outcomes related to protection and restoration of the natural environment.

101. As a final point there is also a need for alignment between the "effects management framework" as described in the Bill, and the "effects management hierarchy" as defined in the National Policy Statement for Freshwater Management (NPSFM 2020) and the draft National Policy Statement for Indigenous Biodiversity (NPSIB 2022). The Bill adopts the concept of "redress" into the effects management framework, while the NPSFM and NPSIB use the term "compensation". At face value "redress" appears a more expansive term that potentially includes "compensation". If this is the intent it would be helpful to clarify this through explicit amendments to the Bill.

Allocation and use of natural resources

102. Environment Canterbury is surprised to see an allocation framework included at such a late stage of the Bill's development. Resource allocation is a notoriously vexed issue with decisions on how much to allocate to different uses having significant implications for resource users and the environment. Where freshwater allocation is concerned, matters relating to the volume, rate, timing and cessation of takes, infrastructure, ecosystem needs, and impacts on downstream users need to be considered in the design of the allocation system.

103. It is therefore very disappointing that consultation on allocation was not carried out prior to publication of the Bill. There are considerable risks with including a skeleton allocation framework in the Bill but deferring detailed decisions on the design of the system to the National Planning Framework. Once allocation proposals are 'locked-in' to the Act, future changes can only be made through an amendment Bill.

104. Environment Canterbury considers a robust understanding of the allocation issues and contexts that apply in each catchment, and consultation with affected iwi and hapū, resource users, communities and local authorities must occur before allocation frameworks are locked in. Through its review the Council has identified a number of questions which highlight the need for further consideration and engagement with affected parties (see below).

[24] Te Rūnanga o Ngāti Awa v Bay of Plenty Regional Council [2019] NZEnvC 196 – operational need can include a broad range of considerations including technical and logistical needs.

Resource allocation principles

105. Clause 36 of the Bill includes a set of allocation principles to guide decisions on resource allocation. While at face value the proposed principles of 'sustainability', 'efficiency' and 'equity' appear reasonable, questions remain with regards to how these principles will be applied in practice. For example, are all principles to be weighted equally or are some afforded primacy (and if so which ones?) and what is the relationship of these principles to the hierarchy of obligations in the National Policy Statement for Freshwater Management 2020?

106. In over-allocated catchments, decisions on the hierarchy and weighting of principles will have direct and significant impacts for the environment and resource users. There is a high possibility for perverse outcomes if allocation principles are simply inserted into the Bill without a full appreciation of the potential implications that could arise. By way of example, water bottling is a very "efficient" use of water, but some communities consider the activity unacceptable due to adverse effects (e.g. impacts on the mauri of waterbodies with implications for kaitiakitanga responsibilities). Similarly, what constitutes "equitable" apportionment of resources is subjective and depends on the perspective and values held by the viewer and the relative prioritisation afforded to different considerations (e.g. access to resource vs prior investment).

Allocatable resources

107. Environment Canterbury notes gravel is missing from the list of "allocatable resources", but it is unclear if the omission is deliberate or accidental.

108. Gravel should remain an allocatable resource to ensure the Council is able to exercise functions under the Spatial Planning Act, Natural and Built Environment Act and Soil and Conservation Act. Previous High Court decisions[25] have confirmed gravel as an allocatable resource and the Council relies on rules in the Canterbury Land and Water Regional Plan to allocate gravel and ensure sustainable extraction, preservation of river bed values and management of the flood-carrying capacity of rivers. Amendments should therefore be made to the Bill to include gravel as an allocatable resource and to enable effective management of Canterbury's braided river systems.

Allocation methods for freshwater

109. Environment Canterbury considers the proposed freshwater allocation methods in the Bill complex and reductionist with implications for integrated management of resources.

110. Freshwater quality and quantity are managed through different allocation methods, with market-based allocation systems allowed for discharges and land uses that affect freshwater, but precluded for takes, uses and diversions. One of the drawbacks of this separatist framework is it fails to recognise the relationship between land use, water use and freshwater quality. Takes, uses and diversions of freshwater are often a precursor to land use change takes and uses of freshwater often having impacts for freshwater quality.

[25] Christchurch Ready Mix Concrete Ltd v Canterbury Regional Council, CIV – 2011-049-001501

111. Furthermore, the rationale for enabling market-based allocation mechanisms[26] for discharges and land uses that affect freshwater, but not for takes, uses and diversions is unclear. Presumably use of market-based allocation systems for takes, uses and diversions is precluded to avoid new users from being priced out of entry to the market. However if this is the case, it is unclear why market-based allocation systems are enabled for discharges and land uses that affect freshwater. Access to pollution rights and / or discharges allowances will be required where freshwater use gives rise to discharges of contaminants or land use change. This illustrates the complexity of matters that need to be considered in the design of the allocation system and the need for a system that considers all inter-related effects.

Consent pathways for allocation of resources

112. Proposals for a 'consensus-based' allocation system also raise questions as to how the system will work in practice. Matters that need to be clarified include: at what stage of the process consensus be reached (plan-making or consent application), who must reach consensus (community members, resource users, members of Regional Planning Committees), what processes must be followed to try and reach consensus, and what happens if consensus cannot be reached?

113. Similar questions with respect to the proposed 'affected application pathway' which requires decision-makers to weigh up the merits of competing applications when allocating resources. Questions requiring clarification include: what criteria should be taken into account by decision-makers when assessing the merits of each application, and how should economic, social and environmental outcomes be factored into decision-making?

Concluding comments on allocation

114. Each of the issues outlined above demonstrates the complexity and contested nature of resource allocation and the need for further thought and consideration. There is little benefit (and significant risk) in establishing a skeleton allocation framework without due consideration as to how the framework will apply in practice. A better approach would be to consider all matters relating to the design of an allocation framework as part of development of the future National Planning Framework. This would enable further time for conversations and the development of policy responses that are tailored to the individual circumstances of each region.

Natural hazards and existing land uses

115. Environment Canterbury supports a strengthened framework to address risks associated with natural hazards but considers some changes are required to support effective implementation.

116. The definition of 'natural hazards' is broader than the definition included in the RMA, and includes "soil that contains concentrations of naturally occurring contaminants that pose an on-going risk to human health". This more expansive definition would capture large tracts of land in Canterbury where background concentrations of some

[26] 'Market-based allocation method' means auction, tender, or any other method by which the allocation of a right to apply for a resource consent is determined through a process involving competing offers.

contaminants (e.g. arsenic) are naturally elevated due to underlying geology (e.g. parts of North Canterbury where arsenic concentrations are high). A more targeted definition focused on natural hazard events (e.g. wind, fire, flooding earthquakes etc) is needed, and accordingly clause (b) of the definition should be omitted.

117. Environment Canterbury supports clauses[27] in the Bill that require existing land uses within the jurisdiction of territorial authorities to comply with plan rules relating to the reduction, mitigation or adaptation of risks associated with natural hazards. This addition, alongside other clauses[28] which enable local authorities to review existing land use consents where is a risk of significant harm or damage to property, is appropriate and should enable more effective risk reduction responses. Criteria should be developed as part of the National Planning Framework to guide decision-makers on the circumstances and level of risk that must be met before initiating a consent review.

118. Finally, changes to clause 644 (which sets out regional council functions relating to the use of land) are required to define the scope of responsibilities. Under the RMA, regional council functions include "control" of the use of land for the purpose of avoidance or mitigation of natural hazards. The term "control" is important and provides the basis for inclusion of policies and methods in regional planning instruments that control land use. However, clause 644 states regional councils are "responsible for the use of land for the purpose of managing or reducing risks from natural hazards". The phrasing implies regional councils have a responsibility to actively manage land, and is inappropriate. Changes should be made to clause 644 to narrow the provision.

Water Conservation Orders, National Planning Framework and Natural and Built Environment Plans

Water Conservation Orders

119. Environment Canterbury supports the proposal to strengthen the weight given to Water Conservation Orders (WCOs) in plan-making processes. Several waterbodies in Canterbury are subject to a Water Conservation Order (Rakaia River, Te Waihora / Lake Ellesmere, Ahuriri River, Rangitata River) and the requirement for NBA plans to 'give effect' to WCOs is appropriate given the values of these waterbodies. Connections between system outcomes and WCOs should be strengthened by making amendments to clause 5 to require the protection and restoration of waterbodies with outstanding amenity or intrinsic values.

120. However, there will be practical challenges with implementing these provisions through plan-making processes. NBA plans are required to "give effect"[29] to both WCOs and the National Planning Framework[30], and all persons performing functions and duties must "give effect"[31] to the principles of te Tiriti o Waitangi. It is possible that "giving effect" to te Tiriti may require enabling takes and uses of water from outstanding waterbodies for cultural reasons (e.g. tikanga), whilst protection of outstanding, amenity

[27] Cl26(2) of the NB Bill
[28] Cl26(2) of the NB Bill
[29] Cl397 of the NB Bill
[30] Cl97 of the NB Bill
[31] Cl4 of the NB Bill

or intrinsic values of a waterbody may require the cessation of all takes. Implementation of these requirements through plan-making processes would be aided by including clauses in the Bill which clearly state which provisions take primacy in the event of conflict.

121. The Council has also identified a number of inconsistencies that need to be addressed in the drafting of these provisions. Clause 397(1) states plans must give effect to Water Conservation Orders, yet clause 102 only requires plans to "give effect" to Water Conservation Orders applying to rivers within a region. Reference to "rivers" should be deleted given there are a number of operative and proposed WCOs that apply to other types of waterbodies (e.g. Te Waihora / Lake Ellesmere and the proposed WCO for Te Waikoropupū springs).

122. Finally, it would be helpful to define the term "amenity" for the purpose of WCOs. A definition of "amenity" has been excluded from the Natural and Built Environment Bill on the basis that "preserving amenity has been used to stifle development"[32]. However, given the Purpose of a WCO is to "recognise and sustain the outstanding amenity or intrinsic values", a definition for this term would aid implementation. The Council notes there are likely to be other situations where amenity effects may arise and where consideration of amenity may be necessary to achieve system outcomes and manage effects (e.g. dust and odour discharges).

Natural and Built Environment Plans

123. Environment Canterbury supports the intent for a more efficient and agile planning system but considers the development of a single NBA Plan for Canterbury will be challenging given the number of local authorities (11) and Papatipu Rūnanga (10) in the region and the diverse social, economic, cultural and environmental conditions.

124. Many territorial authorities across Canterbury are in the process of reviewing and updating existing district plans. In addition, Environment Canterbury has initiated its own comprehensive review of the regional policy statement, land and water plan, coastal plans and catchment-based water allocation plans and intends to notify a revised regional planning framework by the end of 2024. The process to co-design a new integrated plan with mana whenua will draw heavily on resources within, and outside of, Council.

125. There is a significant risk that the Canterbury's local authorities will not be able to deliver on dual planning obligations under the RMA and future SPA and NBA, and that considerable cost, time and effort will be expended for marginal benefit. There is little value in continuing to develop RMA plans if these have a short shelf-life and if outputs are not maximised in the future system. There is a prime opportunity to include clauses in the Bill to direct first generation NBA plans and regional spatial strategies to utilise recently developed regional policy statements and plans as blueprints for the development of future planning documents.

[32] Supplementary Analysis Report, p3

Development of NBA Plans

126. As noted earlier, decisions on the composition and makeup of Regional Planning Committees will have a strong bearing on the outcomes, policies and methods included in NBA Plans. There is a risk that NBA Plans could fall victim to the pursuit of outcomes that suit the majority of the Committee at the expense of other outcomes. This risk is heightened given requirements for NBA Plans to "resolve conflicts between environmental outcomes"[33] which inevitably requires trade-offs to be made.

127. The consolidation of all regional and district plans into a single plan also has the potential to result in 'one-size-fits-all' planning responses that aren't responsive to the issues or needs of local communities. For NBA plans to be effective, policies must be targeted at the principal resource management issues in a catchment and outcomes, policies and rules applied at the appropriate spatial scale. For some matters (e.g. coastline or landscape management), regional or cross-catchment responses may be needed, while for others catchment-based or localised solutions may be appropriate. Changes should be made to clause 102 to require planning responses to be developed at the spatial scale that is most appropriate to the resource management issue at hand.

128. s Furthermore, plan development processes must strive to engage local communities. While at face value proposals[34] to establish NBA sub-committees appear a suitable response that will ensure local voices are reflected in planning documents, in reality sub-committees will have little influence over plan content. With the exception of freshwater sub-committees, NBA sub-committees are not mandatory and can only be established through a decision by the Regional Planning Committee. Furthermore, sub-committees are limited to "providing advice"[35], with clauses[36] in the Bill explicitly precluding sub-committees from making decisions on plans. Overall, these constraints weaken the role of communities in plan development and changes should be made to allow sub-committees to make recommendations to Regional Planning Committees which can be factored into decision-making prior to notification of the NBA plan.

129. Finally, the Council considers the plan development timeframes[37] to be highly ambitious for new and untested legislation. It is inevitable that the first tranche of NBA plans will be subject to debate as to the meaning of terms and the application of legislation and national direction. Over time as case law is developed, plan development processes *might* speed up, but even so timeframes must not be so compressed that they jeopardise meaningful engagement with communities. At a minimum timeframes should be extended by at least two years in recognition of the complexity of issues and the need to bed-in new processes.

Scope and content of NBA Plans

130. Environment Canterbury supports the requirement for NBA Plans to "give effect" to the National Planning Framework but considers a requirement for NBA plans to "be consistent with the relevant regional strategy" a weak statutory test. A weak test risks

[33] Cl102(2)(e) of the NB Bill.
[34] Schedule 8, cl32(1) of the NB Bill
[35] Ibid
[36] Schedule 8 cl31(2) of the NB Bill
[37] 2 years to develop and notify a plan and 2 years for submissions, recommendations and decision.

decisions made on the Regional Spatial Strategy being re-litigated at the NBA plan-making stage.

131. A more appropriate requirement would be for NBA plans to "give effect to regional spatial strategies insofar as their content is relevant to NBA plans". A complementary change should also be made to clause 104 which requires NBA plans to be "consistent with the regional spatial strategy, except where new information is made available or where there is a significant change in circumstances". Including a cross-reference to clause 49 of the Spatial Planning Bill (which requires the Council to develop a policy and criteria to define a "significant change") would also be helpful for ensuring use of consistent criteria when making decisions on the "significance" of a change.

132. Changes are also required to clause 102(2)c which requires plans to "achieve environmental limits (including interim limits) and targets"[38]. The drafting fails to recognise factors outside a Council's control that will have a bearing on whether environmental limits are achieved. Examples include climate change and the ability of the Minister to grant exemptions to environmental limits for specified activities.

Activity classifications

133. Environment Canterbury has significant concerns with clause 154(4) which directs activities to be classified as prohibited if the activity would "*breach a limit specified in the national planning framework or a plan (either taken in isolation or, if allowed to be carried out in addition to consented activities that have existing rights or are permitted) or if it would not contribute to relevant outcomes."*

134. If implemented as drafted, all activities that contribute to a breach of environmental limits would need to be classified as prohibited in future NBA plans. In some parts of Canterbury nitrate concentrations exceed the NPSFM national bottom line of 2.4mgN/L, but steps have been undertaken to address over-allocation with nitrate losses capped at historic levels and requirements to further reduce nitrate leaching over time.

135. These issues arise because of a failure to distinguish between the different types of limits that exist. Regional plans typically include both environmental limits (often expressed as a maximum contaminant concentration or minimum environmental state for a receiving waterbody) and activity or resource limits (implemented through policies and plan rules to manage effects or allocate resources). Activities should only be classified as prohibited where they fail to comply with limits in a framework rule or plan rule and where the proposal would be contrary to the achievement of NPF or NBA plan outcomes, and accordingly a change should be made to reflect this distinction.

[38] Cl102(2)(c) of the NB Bill

Resource Consents

Public notification

136. Environment Canterbury supports the proposal for a more effective and efficient consenting system where the majority of policy decisions are made up-front at the plan-making stage.

137. However, the proposal to require Regional Planning Committees to decide which activities should be publicly notified[39] could lead to a less effective and efficient consenting system. While this may be possible for simple proposals that involve use of the built environment (where effects are known and readily identified) it will be a far more challenging for proposals involving use of the natural environment (where effects are less certain and visible).

138. Furthermore, there is a significant risk that requiring RPCs to make public notification decisions at the plan-making stage could lead to conservative NBA plans with more activities classified as 'discretionary' and subject to public notification requirements. This risk is heightened given clauses in the Bill that direct public notification where there is "*sufficient uncertainty as to whether an activity could meet or contribute to outcomes*", where there are "*relevant concerns from the community*" and where "*the scale or significance (or both) of the proposed activity warrants it*".[40] For activities that involve use of natural resources, there is a high chance that one or more criteria will apply with more applications needing to be publicly notified than is necessary, and cost and resourcing implications for consent applicants and consent authorities.

139. Plans cannot, and should not, try to anticipate every proposal that may be put forward as part of a consent application. Instead plans should establish the framework to guide resource management decisions (via outcomes, policies and methods) leaving consent authorities to make notification decisions using the best available information. We can be confident that the state and sensitivity of the environment will change over time, and that new and innovative proposals and mitigations will be developed that are not anticipated by the plan. What's required from a future resource management system is a framework that acknowledges this uncertainty but equips decision-makers with the tools and processes to make decisions. This can only be achieved if decisions regarding public notification are made by consent authorities at the consent decision stage.

Consideration of resource consent applications

Outcomes vs effects-based framework

140. Environment Canterbury considers that if the transition from an 'effects-based' system to an 'outcomes-based' system is to be successful then this must be reflected in the design of the consenting system.

[39] Cl203, 204 and 205 of the NB Bill. Controlled activities must be processed without public notification, unless a plan or NPF states otherwise, while discretionary activities must be processed with public notification unless the NPF or plan states otherwise.
[40] Cl205 of the NB Bill.

141. Clause 223 sets out a list of matters consent authorities must have regard to when considering a consent application. The list is comprehensive but fails to prioritise outcomes in the National Planning Framework and Natural and Built Environment Plans. Currently there are few incentives for consent applicants to invest in actions that promote "outcomes" (e.g. restoration, pest management) but which do not directly relate to management or mitigation of effects. Consequently, changes should be made to clause 223 to prioritise outcomes in the NPF and NBA plans to ensure holistic consideration of proposals and to incentivise applicants to invest in actions that contribute to broader outcomes.

Ability to 'refer back' to the National Planning Framework or Act's Purpose

142. Environment Canterbury supports the proposal to allow consent authorities to 'refer back'[41] to the National Planning Framework or the Act's Purpose when a matter is not "adequately dealt with" by the NBA Plan.

143. However, the circumstances in which a consent authority may 'refer back' to the NPF or Act's Purpose should be clarified. It is unclear the opportunity to refer back is only available where the Plan contains areas of invalidity, incomplete coverage or uncertainty (as per established case law[42]) or whether it includes scenarios where a matter is addressed in the NPF or NBA Plan but where strict adherence would not achieve the Purpose the Act. Examples include situations where new information (e.g. science or data) is available which demonstrates NPF or NBA outcomes will not be achieved through strict adherence to plan provisions. If the intent is for a narrow scope, then this should be reflected in the drafting ideally using phrases and tests set out in established case law. However, if the intent is to allow decision-makers to refer back in a broader range of circumstances then this should be made clear through explicit amendments.

Matters for which consent must not be granted

144. Environment Canterbury has significant concerns with the wording of clause 223(11) which states a consent authority must not grant a resource consent if it is contrary to "an environmental limit or target".

145. Again, there appears to be a misunderstanding of the difference between "environmental limits" and "activity and resource limit". In catchments where environmental limits are exceeded (e.g. in over-allocated catchments), consent authorities would be required to decline applications even where applicants comply with plan rules or propose mitigations that contribute to the achievement of plan outcomes and target attribute states. This could result in applications to discharge sewage from community wastewater systems or applications to take and use freshwater for drinking water being declined despite these activities being prioritised in national direction[43] and plans. Other aspects of clause 223 that are ambiguous include subclause 11 which directs the consent authority to "not grant a resource consent if granting it would be

[41] Cl223(10) of the NB Bill
[42] Environmental Defence Society Inc v New Zealand King Salmon Co Ltd ([2014] NZSC 38, [2014] 1 NZLR 593), R J Davison Family Trust v Marlborough District Council ([2018] NZCA 316, [2018] 3 NZLR 283).
[43] e.g. NPSFM 2020 hierarchy of obligations prioritises water to meet the health needs of people above other uses.

contrary to a restriction on a discharge permit, or a restriction on a coastal permit". Exactly whose permit is referred to and the types of restrictions referred to is unclear.

146. Given the above issues, a thorough review of all matters in clause 233 is required. If left unaddressed there is the potential for perverse outcomes and reduced system efficiency as consent authorities struggle to navigate their way through unclear provisions, with cost implications for councils and consent applicants.

Hearings

147. Environment Canterbury opposes clause 215(1) which gives consent authorities the power to decide not to hold a hearing (even where requested by the applicant) if the consent authority has "sufficient information to make a decision on the application".

148. The opportunity for consent applicants to put forward their case, and for submitters to speak in support of submissions, is a fundamental principle of natural justice. Precluding opportunities risks disenfranchising consent applicants and submitters, and increases the risk that a decision by a consent authority not to hold a hearing will be judicially reviewed. Furthermore, hearings often expose new information that can assist informed decision-making. For example, older planning documents often do not account for changed environmental conditions and the ability to hold a hearing and present new information and evidence ensures decisions are made using the best available information. For these reasons, changes should be made to the Bill to enable consent applicants the ability to request a hearing of their application.

Consent Duration

149. Environment Canterbury does not support proposals to limit the maximum consent duration for activities that involve use of the natural resources to 10 years[44]. Short consent durations will lead to more frequent reconsenting with cost implications for applicants and capacity impacts for Council. Furthermore, 10 year consent durations fail to provide the required certainty for investment to occur and could stymie proposals that would help improve resilience to the effects of climate change (e.g. water storage). Decisions on consent duration are best made at the regional or local scale taking into account relevant social, economic, cultural and environmental conditions.

150. The Council also agrees longer consent durations for activities (e.g. critical infrastructure) with demonstrable public benefits (e.g. critical infrastructure) are appropriate. However, the list of activities[45] exempted from a 10-year consent duration is too narrow. If short-term consent durations remain, the list of exempted activities should be expanded to include activities related to regional council functions, for example activities relating to the establishment, maintenance and operation of local authority flood management scheme and activities associated with biosecurity functions (e.g. discharges of substances for pest management purposes). Changes are also required to clauses 266 and 275 to address inconsistencies relating to consent durations for land use consents. Clause 266 allows land use consents to be granted for an unlimited duration, however clause 275 which restricts land use consents that give rise to discharges to a 10-year maximum. The misalignment could be addressed by

[44] Cl275 of the NB Bill
[45] Cl275(3) of the NB Bill

making an amendment to clause 266 to explicitly exclude land use consents that are within the jurisdiction of regional council functions.

Consent Reviews

151. Environment Canterbury supports the proposal to allow the National Planning Framework to direct a review of the duration of a consent[46]. The ability to review consent durations and set a common expiration date will ensure all consents are subject to new plan requirements at the time of consent renewal. For the clause to implemented, changes will need to be made to clause 232 to list "duration" as a matter than can be included as a condition of consent.

152. Environment Canterbury also supports the ability to recover costs associated with consent reviews.[47] Cost is a significant barrier to consent reviews, with the RMA only enabling cost recovery for consent reviews carried out for the purpose of addressing adverse effects or inaccuracies[48]. Enabling costs to be recovered for other types of consent review (e.g. aligning consents with limits in operative plans) will enable more responsive implementation of plan provisions.

Contaminated Land

153. Environment Canterbury supports improved management of contaminated land but has significant concerns with the cost and liability implications of the framework.

Definition of Contaminated land

154. The proposed definition of "contaminated land" is much broader than the RMA definition, (ref), and means "*any land where a contaminant is present in any physical state, in, on or under the land and in concentrations that exceed an environmental limit or pose a risk to human health or the environment*".

155. This would include land used for on-site wastewater discharges, or spray irrigation of animal effluent where pathogens are present that "pose a risk to human health" and land where background concentrations are elevated above human health guidelines due to underlying geology (e.g. areas of North Canterbury, Halswell and Banks Peninsula where arsenic concentrations are elevated). Presumably this is not the intended outcome and a more narrow and focused definition is therefore required. The RMA's definition of "contaminated land" provides a good starting point for a recrafted definition as multiple criteria must be satisfied before the land is classified as "contaminated". Land only meets the definition where it has been subject to a hazardous substance (as defined per Section 2 of the Hazardous Substances and New Organisms Act) and where this has given rise to, or is likely to have given rise to, significant adverse effects on the environment.

Polluter pays framework

156. The Council supports the "polluter pays" principle but considers there will be practical challenges with implementing the framework. The definition of "polluter" is exceptionally

[46] Cl76 of the NB Bill
[47] Cl821(3)(c) of the NB Bill
[48] s128(1)(a) and s128(1)(c) of the RMA

broad, including "*any person who has directly or indirectly, or through neglect or wilful inactivity, caused or allowed a discharge of a contaminant into the environment*". When read in conjunction with the definition of "contaminant"[49], it includes any person who discharges a substance to the environment including those operating in accordance with permitted activity rules or resource consents.

157. The overview document and Supplementary Analysis Report contain few details on the framework and it is unclear if the framework is intended to apply to legacy contamination. There will be practical challenges with identifying historic polluters or responsible parties where contamination is a consequence of cumulative discharges over many decades. These issues must be considered and addressed in the design of the framework to ensure a system that is able to be implemented.

Landowner obligations

158. Environment Canterbury supports improved management of contaminated land but considers some obligations may be challenging for landowners to meet.

159. Clause 419 requires landowners to notify the regional council of contamination and manage, investigate and monitor contamination to ensure concentrations don't exceed environmental limits or pose an unacceptable risk to human health. Landowners may not be aware of the history of a piece of land or the level of contamination that exists. Changes should be made to require notification to councils only where it can be established that a landowner knows, or should have reasonably known, that land was contaminated. An example would be where land is registered on the Hazardous Activities and Industries List (HAIL) as contaminated.

Hazardous Activities and Industries List (HAIL)

160. Environment Canterbury supports proposals to improve identification of contaminated land and communication of the risks associated with use of that land.

161. Environment Canterbury is reasonably well positioned to meet the requirements to develop and maintain a public register [50] of all HAIL sites and contaminated land, but this may be more challenging for smaller, less well-resourced councils.

162. In addition, there are aspects of the framework that will impose significant costs for limited benefit. For example, requirements for regional councils to identify the "*nature, extent and severity of contamination found in contaminated land within its boundaries*". Requirements to assess the severity of contamination will necessitate complex, site-specific assessments that could be of limited benefit if carried out using generalised approaches. Consequently changes should be made to delete reference to "severity".

[49] contaminant means "any substance… that either by itself or in combination with other substances changes the physical chemical or biological condition of land, air or water"

[50] Cl420 of the NB Bill

Cost-recovery from local authorities where contamination is detected

163. Environment Canterbury strongly objects to proposals which allow the EPA to recover "actual and reasonable costs" from local authorities incurred in undertaking actions or responses relating to the investigation or remediation of contaminated land.[51]

164. Regional councils should not be responsible for costs associated with preventing, remedying or remediating contaminated land, particularly given contamination may be a consequence of historic lawful activities, Government inaction, or activities within the jurisdiction of other authorities (e.g. territorial authorities). Proposals to pass costs to local authorities move the burden of cost from taxpayers to local ratepayers and will further stretch council budgets and result in rate increases for ratepayers. The Council strongly urges the Environment Committee to remove these provisions from the Bill.

Compliance, Monitoring and Enforcement

165. Environment Canterbury supports a compliance, monitoring and enforcement (CME) system that incentivises positive behaviour change, addresses poor performance and enables restorative actions to address the environmental impacts of non-compliance.

166. Proposals to increase maximum penalties are supported on the basis that these should help disincentivise non-compliance. Where penalties are applied, decisions on the size of the penalty should take into account the nature of the offending (e.g. deliberate vs accidental), scale and significance of effects, track record of the offender (e.g. repeated vs one-off event) and culpability of the offender (e.g. reckless vs negligent). A sliding scale for penalties could be included in the Bill to account for the different circumstances that influence offending.

167. Environment Canterbury does not support the proposal to prohibit resource users from taking out insurance for fines associated with offences under the Act. If resource users aren't able to access insurance, this could result in insufficient funds being available for addressing the consequences of offending or remediation of sites.

168. The Council also cautions against relying solely on punitive measures to achieve the objectives of system reform. CME frameworks need to take into account the range of factors that influence behaviour change, with incentives and mechanisms that promote best practice, recognise good stewardship of natural resources, and encourage performance above the "compliance minimum" featuring alongside penalties and punitive measures. Opportunities to address non-compliance through relationships and methods that sit outside the CME system (e.g. working with irrigation schemes to restrict water supply where significant non-compliance exists) should also be explored.

169. Finally, while requirements for local authorities to produce Compliance and Enforcement Strategies may increase public confidence in CME, the non-statutory nature of these documents means they may be of limited use for driving improved environmental performance. In addition, some clauses that set out the required content for CME strategies are overly prescriptive (e.g. requirements[52] for local authorities to describe

[51] Cl427 of the NB Bill
[52] Cl649(2)(b) and (c) of the NB Bill

how they will respond to incidents and address incidences of non-compliance). These provisions fail to recognise that CME does not involve standardised actions and responses need to be tailored to the specifics of the offending (i.e. wilful vs accidental) and scale and significance of environmental effects.

Monitoring and System Oversight

170. Environment Canterbury supports improved monitoring and oversight of activities but considers parts of the framework could be improved through more effective feedback loops and clarified requirements.

171. The scope and type of "monitoring" covered by Part 11 subpart 6 is unclear. Subpart 6 is nested within Part 11 which sets out a local authority's responsibilities and powers relating to monitoring an activity's compliance with permissions, authorisations and enforcement. It would be logical to assume "monitoring" in this part of the Bill relates solely to compliance monitoring and not other types of monitoring carried out by local authorities (e.g. state of the environment monitoring and monitoring of plan effectiveness). However, this appears not to be the case given clause 783 includes provisions related to these matters. The structure of this part of the Bill could be improved by co-locating all clauses related to monitoring system performance, state of the environment monitoring and monitoring of plan effectiveness and efficiency within Part 12, subpart 6 (system performance). Alternatively these provisions to Part 10, subpart 4 which sets out functions and responsibilities of local authorities.

172. Improvements to the overall efficiency and effectiveness of the framework could be achieved through targeted changes to clause 782(b) and (c) to enable the Governor-General to prescribe requirements relating to the timeliness and quality of data. Monitoring and reporting requirements in clause 783 should also be rationalised and consolidated to ensure a 'systems-based' approach to environmental monitoring, and data requirements aligned to proposed changes to the Environmental Reporting Act.

173. Finally, requirements for local authorities to monitor permitted activities in a region or district[53] should be deleted. These clauses will impose significant costs on local authorities and divert resources away from new or higher priority activities (e.g. state of the environment monitoring and monitoring of resource consents).

Part 3 – Spatial Planning Bill

Introduction

174. Environment Canterbury recognises the benefits that spatial planning provides and supports strategic spatial planning being elevated in the Bill.

175. Spatial planning provides opportunities for the use, protection and enhancement of the environment, the integration of planning across functions, including transport and infrastructure, and the opportunity for greater collaboration between councils, government and Māori. The Council understands and supports the ever-increasing

[53] Cl783(g) of the NB Bill

need for taking an integrated approach to planning for environmental protection, land use, development, transport, and infrastructure to ensure resilient and sustainable communities.

Interpretation

176. For consistency and interpretation of the Bill, the Council submits the following definitions should be included in clause 8 interpretation, rather than in the various sections throughout the Bill:

- Urban Centre of Scale (s.17(2))
- Statement of Community Outcomes and Statement of Regional Environmental Outcomes (s.24(4))
- Parent Committees (s.42(2)(a)

177. Changes should also be made to definitions for “infrastructure” “major infrastructure” “other infrastructure” and “small-to-medium sized infrastructure” as there is no clear distinction between the terms. Clear definitions will ensure consistent interpretation, aid implementation of the Bill, and guide development of the National Planning Framework.

Purpose

178. Environment Canterbury notes the Purpose of the Spatial Planning Bill[54] does not provide clear direction for strategic spatial planning or the development of Regional Spatial Strategies (RSS). Regional spatial strategies will be a key tool for delivering the NBA’s Purpose, however the Purpose of the Spatial Planning Bill and RSS needs to be recognised as greater than this. The Council submits Purpose of the SP Bill should be:

The purpose of this Act is to:

a) provide for regional spatial strategies that set the strategic direction for the use, development, protection, restoration, and enhancement of the environment of the region for a timespan of not less than 30 years; and
b) assist in achieving the purpose of the Natural and Built Environment Act 2022, including recognising and upholding te Oranga o te Taiao, and the system outcomes set out in that Act.

179. Environment Canterbury also considers the Climate Adaptation Act should be included in the list of legislation referenced in the Purpose of the Bill[55].

Key matters to include in Regional Spatial Strategies

180. Environment Canterbury is in general agreement with the key matters to be provided for in regional spatial strategies[56]. The matters listed are appropriate for providing direction on the strategic growth, development, and enhancement of regions over a 30-year time period.

[54] Cl3 of the SP Bill
[55] Cl3(b) of the SP Bill
[56] Cl17(1) of the SP Bill

181. Regional spatial strategies are required to be developed in accordance with the form prescribed by the National Planning Framework or regulations[57]. However, given these are yet to be developed there is uncertainty as to the final form and content of a Regional Spatial Strategy, with potential cost and resourcing implications.

182. In addition, linkages between the content of regional spatial strategies and how these are to be implemented in order to "give effect" to the National Planning Framework remain unclear. For example, regional spatial strategies are required to provide strategic direction on "areas that are appropriate for urban development and change, including existing, planned, or potential urban centres of scale"[58]. Environment Canterbury agrees this is an appropriate matter for regional spatial strategies to provide strategic direction on, but it is unclear how the contents of the National Policy Statement on Urban Development (including housing bottom lines and housing and business development capacity) should be reflected in Regional Spatial Strategies.

183. Similarly, it is unclear how requirements of the National Policy Statement on Highly Productive Land which direct planning documents to identify "areas that are appropriate to be reserved for rural use or where there is expected to be significant change in the type of rural use"[59] are to be reflected in Regional Spatial Strategies. The Council presumes the methods and processes that must be followed to comply with these requirements will be detailed in the NPF, however this is unclear with the current drafting of the Bill.

Other matters

184. The Spatial Planning Bill also lists other matters that Regional Planning Committees must "have regard to" and "not have regard to" when preparing a Regional Spatial strategy[60]. For ease of implementation, the Council submits these matters should be relocated to sit alongside the list of general matters in clause 17.

185. The Council also considers trade competition should be listed as matter that Regional Planning Committees and regional spatial strategies must not have regard to, and the NBA's description of trade competition included in the Bill.

Integration of information from RMA planning documents into regional spatial strategies

186. Environment Canterbury supports clause 2 of Schedule 1 which states that Regional Spatial Strategies may incorporate information from operative RMA planning documents.

187. Environment Canterbury is in the process of undertaking a significant work programme to develop an integrated planning framework, including a review of the Canterbury Regional Policy Statement (CRPS). The CRPS provides an overview of the resource management issues in the Canterbury region and the objectives, policies and methods

[57] Cl16(2) of the SP Bill
[58] Cl17(1)(c) of the SP Bill
[59] Cl17(1)(e) of the SP Bill
[60] Cl25 of the SP Bill

to achieve integrated management of natural and physical resources and provides direction[61] to district and regional plans on how to implement regional direction.

188. Regional spatial strategies will include similar content to Regional Policy Statements and will be the key resource management document that sets out the strategic direction for development of the region over a 30-year timeframe. Many provisions in the RPS will be relevant for the development of a future RSS and accordingly the Council supports clauses in the Bill that provide for relevant and up-to-date strategic direction to be incorporated into future Regional Spatial Strategies. This should reduce the amount of re-work required and potential for re-litigation of recently settled decisions. Further, community engagement and consultation will be undertaken as part of the RPS review (prior to its public notification in 2024) and this provides an opportunity to robustly test proposals with the public prior to policy being settled.

189. Whilst Environment Canterbury supports this clause, the Council has concerns with the narrow definition of "RMA planning document" which is defined as "a regional policy statement, regional plan, or district plan". In particular, the Council notes the definition does not include Future Development Strategies which are required under the National Policy Statement on Urban Development (NPS-UD).

190. Under the RMA, Future Development Strategies are required for Tier 1 and 2 urban environments to promote long-term strategic planning, identify and provide for growth, development capacity, infrastructure capacity over the next 30-years[62]. Environment Canterbury is part of the Whakawhanake Kāinga Committee[63], and extensive work is being undertaken to prepare the draft Greater Christchurch Spatial Plan for public consultation in mid-2023. A significant evidence base has been worked through to get to this stage including the development of Future Development Strategies, housing and business development capacity assessments, assessments of constraints and natural hazards, identification of areas to protect and enhance, urban form scenario testing, and consideration of and desired patterns of growth.

191. This isa comprehensive piece of work (focused on achieving fully integrated planning outcomes) that would be valuable to take into account when preparing the future Regional Spatial Strategy. Whilst the Spatial Planning Bill requires Councils to have regard to strategies or plans made under other legislation[64], it would be preferable to amend clause 2(1) of Schedule 1 to explicitly state Future Development Strategies should be considered as part of the development of future Regional Spatial Strategies.

[61] In accordance with the established planning hierarchy of the Resource Management Act
[62] National Policy Statement on Urban Development, cl3.13
[63] In early 2022, the Greater Christchurch Partnership and the Crown established an Urban Growth Partnership – the Whakawhanake Kāinga Committee. The Committee is a partnership between local government, mana whenua and central government to advance shared urban growth objectives for Greater Christchurch relating to housing, infrastructure and land use.
[64] Cl24(3)(a) of the SP Bill

Environmental limits and targets in regional spatial strategies

192. Another area of uncertainty is how regional environmental limits and targets set through future NBA plans should be accounted for in the development of regional spatial strategies.

193. Environmental limits and targets set in the NPF will be 'given effect to' in the RSS, and NBA plans must be developed that are consistent with the RSS. However, there will be instances where environmental limits and targets need to be set in NBA plans that are more restrictive than those set in the NPF. Given the planning hierarchy places RSS's above NBA plans, there is no requirement for Regional Spatial Strategies to consider the types of environmental limits and targets that may be set in future NBA plans. Consequently, there is a risk that strategic direction set in an RSS may prevent NBA plans from setting regional environmental limits or targets that are necessary to achieve regional outcomes. For example, activities involving the extraction of natural resources[65] or the provision of infrastructure[66] may need to comply with environmental limits in NBA plans to achieve air quality outcomes, and decisions on the appropriate location for these activities need to be considered during development of the RSS.

194. Clauses should be included in the Spatial Planning Bill that anticipate the need for regional environmental limits and targets that are more restrictive than the NPF, and provisions included that require this to be accounted for when developing an RSS. Monitoring and feedback loops should also be included to enable an assessment of whether environmental limits and targets set in the NBA plan (where relevant to the RSS) are being achieved.

Natural Hazards

195. Environment Canterbury considers that when providing strategic direction to the inclusion of natural hazards in spatial strategies, provision for avoiding risk needs to be included. The following change is recommended to clause s.17(1)(i):

> *areas that are vulnerable to significant risks arising from natural hazards, and measures for <u>avoiding where possible, or</u> reducing those risks and increasing resilience.*

Climate Change

196. Environment Canterbury submits that climate change is an urgent and pressing issue and must be prioritised in all decisions relating to development of the Regional Spatial Strategy.

197. Regional Spatial Strategies are the key regional planning instrument to guide growth and development over the next 30 years and are important for providing direction on management of the natural environment, including climate change and natural hazards.

[65] Cl17(1)(d) of the SP Bill
[66] Cl17(1)(g) of the SP Bill

RSS's will also be critical tools for achieving emission reduction targets, climate mitigation, and adaptation planning.

Cross-Regional Spatial Strategies (System Efficiency)

198. Environment Canterbury considers clauses legislating cross-regional planning committees and cross-regional spatial strategies have the potential to reduce system efficiency and add additional layers of bureaucracy to decision-making processes.

199. For example, the Bill provides for cross-regional planning committees to be established[67], but mandates that where committees are established, cross-regional strategies must be developed and adopted.[68] In Canterbury, this could result in three additional planning committees needing to be established for Canterbury/ Marlborough, Canterbury/ West Coast, and Canterbury/ Otago. This could result in four regional spatial strategies applying to Canterbury (one regional spatial strategy and three cross-regional spatial strategies) and could detract from achieving outcomes of improved system efficiency.

200. The Council supports the need for cooperation and cooperation on cross-regional issues. However, the legislation should restrict itself to setting out the minimum legislative requirements (e.g. composition, roles and responsibilities of the cross-regional planning committees) and avoid mandating requirements for additional planning documents.

201. Flexibility will be needed to address the scope and scale of the cross-regional matters. Environment Canterbury suggests a minimum legislative requirement should include a joint cross-regional chapter in each regional spatial strategy to provide strategic direction on cross-regional issues between adjoining regions. This would ensure co-operation between regions, whilst providing for flexibility dependent on the scope of the cross-regional issue.

Implementation Plans and Agreements

202. Environment Canterbury supports, and sees the benefit in, the development of implementation plans after a regional spatial strategy is adopted[69]. The Council supports implementation plans that clearly set out actions to implement the strategy, the priority of these actions, the people or organisations responsible for delivering actions, and monitoring and reporting of progress in delivering actions.

203. The Council notes implementation plans must be prepared in accordance with regulations specified by secondary legislation[70]. However, given the form and content of these regulations is still to be determined, it is unclear what expectations or obligations the Council may be subject to in the future. The Council submits secondary

[67] Cl42(1) of the SP Bill
[68] Cl43(1) of the SP Bill
[69] Cl52(1) of the SP Bill
[70] Cl54(3) of the SP Bill

legislation and the regulations[71] should be notified prior to transition to the new resource management system.

204. Environment Canterbury also submits that projects and infrastructure identified in an implementation plan should be reflected as designations in NBA plans and should be subject to fast-tracked consenting processes.

205. As drafted, the feedback loops between regional spatial strategy implementation plans, and NBA plans remain unclear. The Council submits clarifying this relationship is essential to ensure the success of implementation plans.

Process/Preparation for development of a Regional Spatial Strategy

206. Environment Canterbury generally supports flexibility in processes used to develop Regional Spatial Strategies[72].

207. However, given the potentially significant and binding implications of Regional Spatial Strategies for property owners, resource users and communities, a public hearing of submissions should be the default position. The option not to hold a hearing should be limited to proposals of low significance or minor changes with criteria clearly defined in the Bill or through guidance material.. Guidance material would aid correct interpretation of the Bill and assist Councils and communities transition to the new system through clear guidance on processes to be followed when developing Regional Spatial Strategies. It would also help ensure consistency between regions and reduce the need for matters to be clarified through case law.

[71] Cl68 of the SP Bill
[72] Cl35(1) of the SP Bill

Appendix 1 - Summary of relief sought

Part 1 – General matters, cross-cutting themes, and matters of significance

Topic	***Relief sought***	***Paragraph Number***
Introduction		
System integration	Address disconnects between the aspirations of system reform and the proposed framework to deliver on intent and ensure system appropriately recognises regional council functions and responsibilities. Clarify how the 'outcomes-based' planning system and 'effects-based' management through resource consents will integrate in practice.	3 -4
Institutional and structural changes	Defer decisions related to structural change or institutional reform to the Future for Local Government review.	5
Collaboration	Leverage Environment Canterbury's skills, leadership and expertise and implement a partnership approach to design and delivery of the new system.	8 - 11
Integration with other legislation		
Climate legislation	Strengthen connections between the Bills and climate legislation and require the National Planning Framework to contribute positively towards the achievement of emission budgets.	18-20
Three Waters legislation	Require meaningful collaboration between Regional Planning Committees, Water Service Entities and other agencies involved in planning for, funding, delivery and regulation of three waters infrastructure.	21-22
Relationships with mana whenua		
Tuia Relationship	Ensure work undertaken by Environment Canterbury and ngā Runanga to forge a partnership approach current and future work programmes is not undermined through changes proposed as part of system reform.	23 - 24
Ngāi Tahu Representation Act	Recognise the implications of the Ngāi Tahu Representation Act for mana whenua decision-making in Council decisions and make changes to ensure these provisions are recognised and upheld in the new system.	25 - 28
Governance, Representation and Regional Planning Committees		
Composition of Regional Planning Committees	Ensure composition arrangements for the RPC secure effective representation for regional councils and mana whenua. Expand the criteria in Clause 3 of Part 1 of Schedule 8 to require decisions relating to the composition of the RPC take into account the impacts of policy decisions on other local authority functions. Amend Schedule 8 to allow alternative RPC models to be put forward that operate at different spatial scales and which better reflect treaty settlements.	29 - 37
Host Local Authority and Secretariats	Ensure requirements for Host Local Authorities to provide Secretariat services do not negatively impact on the ability of councils to participate in statutory parts of the planning process. Delete clause 33 of Part 3 of Schedule 8 which empowers the Regional Planning Committee to appoint a Director of the Secretariat as an employee of the Host Local Authority.	38 - 41
Roles, responsibilities and functions		
Planning hierarchy, Statements of Regional Environmental Outcomes and Statements of Community Outcomes.	Require development to occur within sustainable limits. Amend clause 107 to require Regional Planning Committees to have 'particular regard' to Statements of Regional Environmental Outcomes (SREOs) and to 'provide for' Statements of Community Outcomes (SCOs) only where doing so does not compromise the achievement of outcomes in an SREO. Delete clause 645(3) which exempts territorial authorities from the need to demonstrate compliance with national direction when developing an SCO.	42 - 45
Functions, roles and responsibilities	Review and amend clauses 642 – 645 of the NB Bill to correctly align functions and responsibilities to roles.	46 - 47
System efficiency, funding and financing		
Flexibility and efficiency	Retain processes that increase system efficiency (e.g. limitations on appeals, expedited plan-making) but remove those that add cost or which are process-heavy. Include flexible frameworks and processes that enable local authorities to adapt in response to changed conditions and new information.	48 - 50

Funding and Financing	Delete proposals for unfunded mandates or increase funding to local authorities to support the exercise of new functions and responsibilities. Shift to more proactive and strategic funding models. Ensure mana whenua are not put in the position of needing to fund participation in the system from financial redress received as part of Treaty settlements.	51 - 55
Transitional arrangements		
Freshwater Working Group	Address overlaps between the timeframes for reporting back of the Freshwater Working Group and the notification of Freshwater Planning Instruments. Make changes to specify the relative priority of each initiative.	59 - 60
Automatic expiry of resource consents	Delete provisions that invoke an automatic expiry for resource consents granted during the transition period. Defer discussion on these matters to the development of the National Planning Framework. Alternatively if provisions remain, broaden the list of exempted activities to cover all Council activities.	61 - 67
Te Tiriti o Waitangi, Treaty settlements, Iwi rights and interests		
Upholding existing treaty settlements	Make changes to the Purpose of Schedule 2 to recognise the bespoke legislative arrangements that apply in Canterbury under the Ngāi Tahu Representation Act.	68 - 73
National Māori Entity	Require decisions on membership and appointment processes for the National Māori Entity to involve iwi and hapū.	74 – 75
Equity	Delete provisions that provide preferential treatment for urban activities. Where exemptions for urban activities are included ensure these are narrow and focused.	76 - 78
Braided rivers		
Definitions	Address issues with siloed management of braided river systems and consider including definitions of “braided river” and “bed of a braided river” which take into account the dynamism and unique hydrological characteristics of braided river systems.	79 - 82

Part 2 – Natural and Built Environments Bill

Topic	***Relief sought***	***Paragraph Number***
Purpose, system outcomes and decision-making principles		
Purpose	Change Purpose to require “sustainable” use and development and add requirement to avoid, remedy or mitigate effects.	83 - 84
System outcomes	Prioritise system outcomes to the protection of the restoration of the natural environment and existential threats (e.g. climate change, natural hazards). Make changes to address conflicts between system outcomes.	85 - 87
Decision-making principles	Apply principles in clause 6 to a broader range of decision makers, e.g. independent hearing panels and consent authorities.	88 - 89
Environmental stewardship (effects management framework and environmental limits, targets and exemptions)		
Mandatory limits and interim limits	Narrow the circumstances in which interim limits may be set that allow a greater level of harm or an environmental state that is more degraded than current state.	92 - 95
Exemptions to limits	Require Regional Planning Committees to seek direction from mana whenua and regional councils prior to requests for exemptions being submitted to the Minister.	96 - 98
Effects management framework	Require all activities to be subject to the effects management framework (EMF). Align the “effects management framework” as described in the Bill, with the “effects management hierarchy” defined in the NPSFM 2020.	99 - 101
Allocation and use of natural resources		
Allocation	Defer all matters relating to the design of an allocation framework to the National Planning Framework. If an allocation framework remains in the Bill, include gravel in the list of allocatable resources.	102 - 114
Natural hazards and existing land uses		
Natural hazards	Retain clauses which require existing land uses within the jurisdiction of territorial authorities to comply with plan rules relating to the reduction, mitigation and adaptation to natural hazards. Omit clause (b) from the definition of ‘natural hazard.’	115 - 118
Water Conservation Orders, National Planning Framework and Natural and Built Environment Plans		

Water Conservation Orders	Clarify which provisions take primacy in the event of conflicts between requirements to 'give effect' to Water Conservation Orders, the principles of Te Tiriti o Waitangi and the National Planning Framework Delete the reference to 'rivers' in clause 102 and include a definition of amenity for the purpose of Water Conservation Orders.	119 - 122
Natural and Built Environment Plans	Include clauses in the Bill to direct first generation NBA plans to utilise recently developed regional policy statements and plans as blueprints for the development of future planning documents. Amend clause 102 to require policy responses to be developed taking into account the appropriate spatial scale.	123 - 127
Sub-committees	Improve local voice in the planning system by amending clauses 31 and 32 of Schedule 8 to enable sub-committees to make recommendations to Regional Planning Committees on the content of NBA plans	128
Plan development timeframes	Extend timeframes for the development of NBA plans by at least two years.	129
Relationship of planning instruments	Amend clause 97 to require NBA plans to "give effect to regional spatial strategies insofar as their content is relevant to NBA plans". Make a complementary change to clause 104.	130-131
Achievement of limits through NBA Plans	Amend clause 102(c) to recognise factors outside a Council's control that will influence whether environmental limits are achieved.	132
Activity classifications in plan	Amend clause 154(4) to classify activities as prohibited only where they fail to meet limits in a framework rule or plan rule and where the proposal would be contrary to the achievement of NPF or NBA plan outcomes.	133 - 135
Resource consents		
Public notification of consent applications	Enable decisions on whether to publicly notify consent applications to be made by consent authorities at the consent decision stage.	136 - 139
Consideration of consent applications	Amend clause 223 to prioritise outcomes in the list of matters consent authorities must have regard to when considering a consent application.	140 - 141
Ability to refer back to the Purpose of the Act or the NPF	Clarify the circumstances in which a consent authority may 'refer back' to the Act's Purpose or the National Planning Framework.	142 - 143
Restrictions on the granting of consent	Address issues with the drafting of clause 223(11) which requires consent authorities to decline applications where consents are contrary to environmental limits or targets.	144 - 146
Hearings for consent applications	Delete clause 215 (1)(b) which empowers consent authorities to decide not to hold a hearing, even where requested by the applicant.	147 -148
Consent duration	Delete clause 275 which restrict land use consents to a maximum duration of 10 years. Decisions on consent duration should be made at the regional or local scale. If 10 year durations remain, expand the list of exempted activities to include all activities related to regional council functions (e.g. pest management, biosecurity, flood management).	149 - 150
Consent reviews	Amend clause 232 to include "duration" as a matter that can be included as a condition of consent (and therefore able to be reviewed).	151 -152
Contaminated land		
Definition of contaminated land	Align the definition of 'contaminated land' with the definition in section 2 of the Resource Management Act.	153 - 155
Polluter pays principle	Delete or narrow the definition of 'polluter'.	156 - 157
Landowner obligations in relation to contaminated land and Hazardous activities and Industries List	Amend clause 419 to only require notification to councils where it can be established that a landowner knows, or should have reasonably known, that land was contaminated. Delete the reference to 'severity' in clause 420.	158 - 162
Cost-recovery for contaminated land	Delete clause 427 which allows for the Environmental Protection Authority to recover actual and reasonable costs from local authorities associated with the investigation or remediation of contaminated land.	163 - 164
Compliance, monitoring and enforcement		
Compliance framework and penalties	Amend the CME framework to include mechanisms that promote best practice and encourage performance above the compliance minimum. Include a sliding scale for penalties to recognise the different circumstances that influence offending.	165 -166

Insurance	Delete clause 766 which prohibits resource users from taking out insurance for fines associated with offences under the Act.	167
Monitoring and system oversight		
Monitoring and system oversight	Co-locate all clauses related to monitoring system performance, state of the environment monitoring and monitoring of plan effectiveness and efficiency to Part 12, Subpart 6 (system performance). Alternatively move these provisions to Part 10, subpart 4, which sets out functions and responsibilities of local authorities	170 -171
Data management, monitoring and reporting	Amend clause 782(b) and (c) to enable the Governor-General to prescribe requirements relating to the timeliness and quality of data. Amend clause 783 to align monitoring and reporting requirements with proposed changes to the Environmental Reporting Act	172
Permitted activity monitoring	Delete clause 783(g) which requires local authorities to undertake monitoring of permitted activities in a region or district.	173

Part 3 – Spatial Planning Bill

Topic	***Change requested***	***Paragraph Number***
Interpretation		
Definitions	Incorporate definitions for "Urban Centre of Scale", "Statement of Community Outcomes" , "Statement of Regional Environmental Outcomes" and "Parent Committees" into clause 8 of the Bill. Amend definitions for "infrastructure" "major infrastructure" "other infrastructure" and "small-to-medium sized infrastructure" to clarify the scope of each term.	176 - 177
Purpose		
Purpose of the Spatial Planning Bill	Amend the Purpose of the Act to: *The purpose of this Act is to:* *a) provide for regional spatial strategies that set the strategic direction for the use, development, protection, restoration, and enhancement of the environment of the region for a time-span of not less than 30 years; and* *b) assist in achieving the purpose of the Natural and Built Environment Act 2022, including recognising and upholding te Oranga o te Taiao, and the system outcomes set out in that Act.*	178
Climate Adaptation Act	Amend clause 3(b) to include the Climate Change Adaptation Act in the list of legislation	179
Key matters to include in Regional Spatial Strategies		
Implementing national direction	Clarify how the requirements of the National Planning Framework are to be reflected in Regional Spatial Strategies.	180 -183
Other Matters		
Matters to have regard to, and maters that must be disregarded	Relocate the list of matters to "have regard to" and "not have regard to" alongside the list of general matters in clause 17.	184
Trade Competition	Amend clause 25(3) to include trade competition as a matter that Regional Planning Committees must not have regard to when developing regional spatial strategies. Include the NBA's description of 'trade competition' in the Bill.	185
Integration of information from RMA planning documents into regional spatial strategies		
Future Development Strategies	Amend clause 2(1) of Schedule 1 to list Future Development Strategies as a planning document that should be taken into account when developing a future Regional Spatial Strategy	186 - 191
Environmental limits and targets in regional spatial strategies		
Regional environmental limits and targets	Acknowledge the potential need for regional environmental limits and targets that are more restrictive than those set in the National Planning Framework, and require this to be taken into account when developing the Regional Spatial Strategy.	192 -194
Natural hazards		
Management of natural hazards	Amend clause 17(1)(i) as follows: *areas that are vulnerable to significant risks arising from natural hazards, and measures for <u>avoiding where possible, or</u> reducing those risks and increasing resilience.*	195

Cross-Regional Spatial Strategies		
Cross-regional spatial strategies	Delete clauses 42 and 43 which mandate the preparation of a cross-regional spatial strategy (where cross-regional committees exist), and instead require the Regional Spatial Strategy to set how cross-regional issues have been addressed in the development of the strategy	198 - 201
Implementation Plans and Agreements		
Regulations relating to Implementation Plans	Notify regulations that set out requirements for Implementation Plans prior to transition to the new resource management system.	202 - 203
Projects and infrastructure	Include designations in NBA Plans for projects and infrastructure identified in an Implementation Plan. Enable these projects through fast-track consenting processes.	204
Monitoring and feedback loops	Clarify feedback loops between regional spatial strategy implementation plans and NBA plans.	205
Process/preparation for developing Regional Spatial Strategy		
Hearings	Amend the Bill to require public hearings on Regional Spatial Strategies as the default. Limit the circumstances in which a hearing may not be held to proposals of low significance or minor changes and include clear criteria for each term either in the Bill or in guidance material	206 -207