New Zealand Law Society
Te Kāhui Ture o Aotearoa

Level 4, 17–21 Whitmore Street, Wellington
PO Box 5041, Wellington 6140 · DX SP20202, Wellington
04 472 7837 · inquiries@lawsociety.org.nz

lawsociety.org.nz

Environment Committee
Parliament Buildings
Wellington

By email: Environment@parliament.govt.nz

17 February 2023

Tēnā koutou i te Komiti

Law Society Submission on Resource Management System Reform Bills

The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Natural and Built Environment Bill and Spatial Planning Bill (the **Bills**).

We are grateful for the Environment Committee's willingness to extend the timeframes for receiving submissions on the Bills, particularly given the Government's wish to progress this legislation prior to the 2023 election. The Bills represent a significant reform of environmental law in this country and will likely have far-reaching impacts on the lives of New Zealanders.

This submission has been prepared with assistance from the Law Society's Property Law Section[1], Environmental Law Committee and Climate Change Law Subcommittee.[2]

Our submission is attached as two appendices:

- Appendix One is a clause-by-clause analysis of the Bills, which includes our comments on issues we have identified, along with recommendations/proposed amendments to address them.
- Appendix Two is a paper specifically focussing on a common problem that arises with road vesting in subdivisions, which the reform provides an opportunity to sort out.

The Law Society's comments have been restricted to matters of workability and clarity in drafting, and natural justice or other process concerns, and where possible amendments have been proposed to address these issues.

1 More information regarding the Property Law Section is available on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/property-law-section/about-us/.

2 More information regarding our law reform committees is available on the Law Society's website: https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

The Law Society wishes to be heard on the Bills. To arrange a suitable time, or for any questions relating to our submission please feel free to contact Dan Moore, Law Reform and Advocacy Advisor at the Law Society (04 889 7706, dan.moore@lawsociety.org.nz).

Nāku iti noa, nā

Frazer Barton
President

Appendix one: Clause by clause analysis of the bills

Natural and Built Environment Bill

Clause	Comment	Recommendation/proposed amendment
Part 1 – Purpose and preliminary matters		
3(a)(iii)	Current wording implies that compliance is required with both environmental limits and associated targets. A target is a goal intended to be met at a defined future date, rather than a limit. Suggest rewording.	Reword to: "(iii) complies with environmental limits and achieves environmental targets"
3(a)(iv)	At present the provision requires management of adverse effects but does not require effects be effectively or appropriately managed. Suggest adding qualifiers so that the intention of managing such effects is clear.	Reword to: "(iv) appropriately manages adverse effects".
5	We query whether it is an intentional shift that system outcomes (clause 5) and decision-making principles (clause 6) only apply at plan-making, rather than to all decisions made under the Bill.	Consider whether all decisions made under the Bill should be guided by the purpose, outcomes and principles – rather than just at the plan-making stage.
5(a)	The terms "mana" and "mauri" are not defined in the Bill. While these are difficult terms to define, given they play a key role in the overarching focus of the Bill we suggest that further guidance be included on what these terms mean in order to ensure they are achieved.	Consider whether statutory definitions are required.
5(b)	The system outcomes refer to climate change related matters in clause 5(b). We consider clause 5(b) should be amended to ensure consistency with other provisions in clause 5, and make it clear all the specified outcomes are to be achieved.	Amend clause 5(b) as follows: "(b) in relation to climate change and natural hazards, achieving— (i) the reduction of greenhouse gas emissions; and (ii) the removal of greenhouse gases from the atmosphere; and

Clause	Comment	Recommendation/proposed amendment
		(iii) the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change."
5(c)(i)	In contrast to the balanced outcomes for terrestrial environments, no use and development outcome applies explicitly to the coastal marine area. The only outcome of direct relevance is a protection outcome. Consider amending clause 5 to add a 'use and development' outcome for the coastal marine area. While infrastructure is the subject of a separate provision (clause 5(i)) it should also be listed here given it is a key use of land too. The term 'primary production' should be defined in order to give greater clarity.	Add a system outcome for use and development (including infrastructure) within the coastal marine area. Amend clause 5(c)(i) as follows: "(i) the use and development of land for a variety of activities, including for housing, infrastructure, business use and primary production". Consider whether to include a definition for "primary production" that includes primary production in both terrestrial and coastal marine environments.
5(c)(ii)	The terms "ample" and "inflated" are very subjective. Over provision of land for development may also have adverse effects. For example, providing too much land zoned for commercial use outside of centres could undermine the functioning of primary centres. Suggest amending to focus on sufficiency of land to meet demand as per the National Policy Statement on Urban Development (**NPSUD**).	Amend as follows: "(ii) ~~the ample supply of~~ sufficient land being available for urban development to meet demand~~, to avoid inflated urban land prices~~"
5(c)(iii)	Typo – at present there are three 5(c)(ii), and an unnecessary 'and'.	Correct typo: "(iii) housing choice and affordability; and (iv) an adaptable and resilient urban form with good accessibility for people and communities to social, economic, and cultural opportunities:~~; and~~".

Clause	Comment	Recommendation/proposed amendment
5(e)	The terms “kawa” and “mātauranga” are included but unlike the terms “tikanga” and “kaitiakitanga” are not defined in the Bill. In addition, the Bill regularly switches between referring to ‘mātauranga’ and ‘mātauranga Māori’. At some points this appears to be an intentional drafting decision, to draw a distinction between local mātauranga which may vary between groups, and an idea of 'nationwide' mātauranga (see, for example, clause 543(2)(b)). If that is the case, we consider that this distinction should be explained in the definition.	Consider whether definitions should be included for the terms “kawa” and “mātauranga” in clause 7. If no distinction is intended to be drawn between ‘mātauranga’ and ‘mātauranga Māori’, we recommend changing all references in the Bill from ‘mātauranga Māori’ to ‘mātauranga’.
6(3)	The term “taiao” is used but not defined in the Bill (along with ‘mana’, ‘kawa’ and ‘mātauranga’ referred to in earlier comments).	Consider whether to include a definition in clause 7.
7	“Adverse effect” is defined in negative terms – i.e., it states what it is not, but not what it encompasses. It also conflicts with the definition of the term “effect” which includes any adverse effect “irrespective of the scale, intensity, duration or frequency”. It potentially requires all effects other than trivial effects to be managed, which is a significant change from the current approach where minor effects are considered acceptable. If “trivial” effects is considered to be the appropriate threshold, we understand these would equate to “*de minimis*” or negligible effects (as those terms have been used under the Resource Management Act 1991 (**RMA**)). If so, it would be more efficient (and more certain) to use “*de minimis*”, rather than introducing yet another new term that would likely require judicial consideration and definition.	Consider the threshold of effect to be deemed acceptable and amend the definitions accordingly, to address the issues raised.

Clause	Comment	Recommendation/proposed amendment
	Suggest merging the two for clarity.	
7	The definition of "allocation method" includes: - consensus: - standard consenting process: - affected application pathway: - auction or tender "Consensus" is not defined and would merit further explanation i.e. consensus between who (resource users; resource user(s) and the consent authority; with Iwi/hapū). Consideration should also be given to whether the "affected application pathway" description is clear. This is essentially a process to enable a comparative merits assessment of competing applications and the description could better reflect that.	Consider whether the allocation methods could be described with more clarity.
7	The definition of "consent authority" has been expanded to include "or other person" whose permission is required to carry out an activity. As currently drafted, this could include landowners for the land on which the activity is proposed, customary marine title order holders and potentially other regulatory authorities such as Heritage New Zealand or the Department of Conservation if heritage authorities or Wildlife Act approvals are required for the activities.	Delete reference to "or other person" or amend to clarify the identity of the other person intended to be a consent authority.
7	The definition of "contaminated land" includes land where a contaminant is present "in, on, or under the land". As presently drafted, this could include land where contaminants are stored on land in a proper containment area but are not actually present in the characteristics of the land itself.	Consider rewording to make it clear that contaminated land is land affected by a contaminant, not land where contaminants are stored in secure containment areas.

Clause	Comment	Recommendation/proposed amendment
7	The definition of "cultural heritage" is defined as including "cultural landscapes". However, no guidance is given on the extent of such areas or how the boundaries of these areas will be determined.	Consideration be given to providing further guidance around what "cultural landscapes" mean.
7	Definition of "ecosystem" means any system of organisms interacting with their physical environment and with each other, at any scale. If the phrase "at any scale" is applied literally, then it might be inappropriate to cut a branch off a tree because, at the scale of the branch, that is a significant change to the ecosystem. The relevant scales in planning terms need to be ecologically meaningful.	Delete the words "at any scale" or alternatively, replace them with a term such as "at any ecologically meaningful scale".
7	The "emissions reduction plan" is defined to include the national adaptation plan prepared under the Climate Change Response Act 2000. It is unclear why the emissions reduction plan is defined to include both plans given they are separate plans and referred to separately in legislation. Further, the "national adaptation plan" is separately defined under clause 7 of the Bill. The references to the Climate Change Response Act in both definitions have the wrong year.	Amend definition of "emissions reduction plan" as follows: "**Emissions reduction plan** is defined as meaning "the emissions reduction plan ~~or national adaptation plan~~ prepared under the Climate Change Response Act ~~2000~~ 2002". Amend definition of "National adaptation plan" as follows: "**National adaptation plan** means the national adaptation plan prepared under the Climate Change Response Act ~~2000~~ 2002".
7	The definition of "environmental limit" appears to contain a typo as it refers to "ecological integrity of human health." However, clause 37 identifies that these are two separate purposes to protect the ecological integrity of the natural environment and human health.	Amend to read: "environmental limit means a limit set for ecological integrity ~~of~~ or for human health, as provided for in sections 39 and 40".

Clause	Comment	Recommendation/proposed amendment
7	Clause 7 includes a definition of 'Minister' as the Minister who has responsibility for the administration of the Bill. There are also alternative definitions of Minister that apply to particular subparts (for example, clause 482, which defines 'Minister' as the Minister of Conservation). However, at points throughout the Bill, there are repeated references to 'Minister' which are intended to refer to another individual. See, for example, clause 451(1) and (4), where this is intended to refer to the Minister responsible for aquaculture. Similarly, there are instances where the Bill refers to the 'Minister for the Environment' and the 'responsible Minister' (or both, as seen in clause 633). Given the Bill sets out roles and responsibilities for four Ministerial positions (Minister for the Environment, Minister for Oceans and Fisheries, Minister of Conservation, and Minister responsible for aquaculture), references to "the Minister" can cause uncertainty. To ensure clarity, this definition should be removed (along with the definition in clause 482), and each reference to 'the Minister' should be replaced with the specific minister.	Delete definition of 'Minister' and include a definition for 'Minister for the Environment'. Amend all subsequent references to 'the Minister' to specify which individual is being referred to.
7	The definition of "space" has been omitted from the Bill. However, Schedule 15 will amend the Maori Commercial Aquaculture Claims Settlement Act 2004 to refer to clause 7 for this definition.	Reinstate the definition of space used in the RMA: "**space**, in relation to the coastal marine area, means any part of the foreshore, seabed, and coastal water, and the airspace above the water".
7	The definition of 'significant biodiversity area' means a place that meets the criteria for significant biodiversity set out in the National Planning Framework (**NPF**).	Consider reviewing the definition of "significant biodiversity area" to remove reference to criteria and substitute the term 'factors', with an appropriate consequential amendment to the definition.

Clause	Comment	Recommendation/proposed amendment
	The word 'criteria' suggests a tick box exercise. The Environment Court has commented on the difference between criteria and factors (which would be a more appropriate term in this context) in *Western Bay of Plenty District Council v Bay of Plenty Regional Council* [2017] NZEnvC 147. Particular difficulties arise in respect of highly mobile species, in respect of extensive areas of important habitat. Whether an area is significant or not requires the application of judgement not the application of criteria. Requiring criteria to be identified may perpetuate problems which have arisen in other contexts.	
7	A definition is included for the term "tikanga Māori". This is carried over from the current RMA. However, the term tikanga appears in places throughout the Bill without the word Māori following it. The word Māori appears superfluous given the definition already refers to Māori customary values and practices. As with the term mātauranga Māori (referred to in our comment on clause 5(e)), at some points, it appears that the use of 'tikanga' (i.e. without being followed by 'Māori') is an intentional drafting decision, to draw a distinction between local tikanga which may vary between groups, and an idea of 'nationwide' tikanga (see, for example, clause 543(2)(b)). If that is the case, we consider that this distinction should be explained in the definition for 'tikanga Māori'.	Clarify drafting of definition. Alternatively, if no distinction is intended to be drawn between 'tikanga' and 'tikanga Māori', we recommend renaming the definition as 'tikanga', and changing all references in the Bill from 'tikanga Māori' to 'tikanga'.
7	The definition of "use" appears to include a typo in (a)(ii) where it refers to "describe land" rather than "disturb land".	Amend subclause(a)(ii) of the definition of "use" as follows: "(ii) drill, excavate, or tunnel land or <u>disturb</u> ~~describe~~ land in a similar way:".

Clause	Comment	Recommendation/proposed amendment
7	The definition of “well-being” does not currently reference future generations. Doing so would ensure that the well-being of current and future generations is consistently addressed throughout the Bill.	Amend the definition of well-being to include future generations.
7 and 11	This clause refers to the NHNP Act. This term is not defined. For clarity the term could be included in the definitions section with a cross reference to the definition in schedule 2.	Insert a definition for NHNP Act in clause 7, with appropriate cross-reference (or amendment to) the existing definition of this in clause 7.
12(5)	Paragraphs (a) and (b) of this subclause could be combined for better readability. At present, subclause (b) does not make sense if it is read on its own (i.e., without the words in (a)).	Amend to read as follows: “(5) An abatement notice or direction must not be served on, or issued against, an instrument of the Crown under this Act unless it is served on or issued against-a Crown organisation in its own name.”
Part 2 – Duties and Restrictions		
13	The clause provides a general responsibility, which is then particularised further in part through clause 14. However, while clause 14 is expressly not enforceable against any person (see clause 14(2)), clause 13 does not have the same clarification.	Clarify whether the responsibility in clause 13 is intended to be enforceable.
14	The requirement in clause 14(1) is for "any adverse effect" to be avoided, remedied, mitigated, etc. With the definition of “adverse effect”, this requirement applies to minor effects, and effects that are less than minor but more than trivial.	Clarify whether the requirement in clause 14(1) applies to any adverse effect, irrespective of magnitude or scale.
18(1)	There appears to be a drafting issue with this clause, as subclause (b) does not make sense in the absence of subclause (a).	Amend clause 18 as follows: (1) A person must not subdivide land unless <u>the subdivision</u>— (a) ~~the subdivision~~ complies with subsection (3); or

Clause	Comment	Recommendation/proposed amendment
		(b) is ~~given effect to under another Act~~ in accordance with another Act as described in subsection (3).
23	The clause includes an incorrect reference to water and should in fact refer to waste.	Amend clause 23(1)(b) as follows: […] (b) incinerating any ~~water~~ waste of other matter in a marine incineration facility
24	This clause appears to contain a typo.	Amend clause 24(2)(c) as follows: […] (c) the harmful substance or contaminant, if discharged into air, is not likely to be noxious,~~:~~ dangerous, offensive, or objectionable to the extent that is has, or is likely to have, a significant adverse effect on the environment.
26	Clause 26(1)(b) provides for the protection of certain uses, including where any change in effects is limited to reducing the adverse effects on the environment or otherwise enhances the environment. However, it is not clear whether the reference in clause 26(1)(b)(ii) to "otherwise enhances" is intended to be considered on an overall basis (i.e. taking into account offsetting), or whether it requires that the adverse effects are avoided. The wording of clause 26(2) and clause 26(4)(a) appears contradictory, as clause 26(2) provides an existing use of land 'must comply with the plan rules that give effect to the NPF' but clause 26(4)(a) states that subclause 2(b) applies 'whether or not the rules give effect to provisions of the NPF'. The intention of the clause appears to be that either the NPF or rules in a plan must make explicit reference to the application of	Clarify whether the requirement for a use to "otherwise enhance" in clause 26(1)(b)(ii) the environment is intended to take into account offsetting. Amend clause 26(2)-(4) as follows: "(2) Despite subsection (1), an existing use of land must comply with the plan rules that give effect to the national planning framework as ~~it relates to each of the following~~ far as they are relevant to the natural environment, ~~as far as they are relevant~~, but only if the national planning framework or a framework rule ~~or a plan~~ expressly provides that this subsection applies.~~:~~ ~~(a) The natural environment; and~~ ~~(b) The reduction or mitigation of, or adaptation to, the risks associated with –~~

Clause	Comment	Recommendation/proposed amendment
	the provision (and therefore the ability of the plan rules to extinguish existing use rights). However, the wording is unclear as to whether the intention is that the NPF, through framework rules, could also extinguish existing use rights. That would appear to be the intention given the wording of clause 89(6), however we consider this could be expressed more clearly.	~~(i) natural hazards:~~ ~~(ii) climate change:~~ ~~(iii) contaminated land.~~ (3) ~~Subsection (2)(a) applies only if the national planning framework expressly states that it applies.~~ Despite subsection (1), an existing use of land must comply with plan rules, the national planning framework or framework rules as it relates to each of the following, as far as they are relevant, but only if the national planning framework, framework rules or a plan expressly state that it applies: (a) The reduction or mitigation of, or adaptation to, the risks associated with – (i) natural hazards: (ii) climate change: (iii) contaminated land. (4) Subsection ~~2(b)~~ (3) applies~~: (a)~~ whether or not the rules give effect to the provisions of the national planning framework. ~~; but~~ ~~(b) only if the national planning framework or a plan expressly state that it applies.~~ "
28	Clause 28(2)(b)(ii) contains the same issue as for clause 26(1)(b) above.	See clause 26 above.
29	Clause 29(3)(a) is not clear as to when building work should not be treated as lawfully established and is potentially contradictory. Clause 29(3)(b) does not seem to follow on from the chapeau in clause 29(3) as there seems to be a missing link between the building work and the building consent for that work.	Clarify the drafting of clause 29(3).

Clause	Comment	Recommendation/proposed amendment
30	Clause 30(2)(b)(ii) contains the same issue as for clause 26 above.	See clause 26 above.
Part 3 - National Planning Framework		
33(b)	The phrase "helping to resolve conflicts" is ambiguous and ineffective. The NPF should resolve (the inevitable) conflicts between system outcomes or, at a minimum, provide direction as to how those conflicts are resolved. (This clause can be compared to clause 57(1)(b) which provides this more definitive requirement.)	Amend to: "(b) <u>providing direction</u> ~~helping~~ to resolve conflicts about environmental matters, including those between or among system outcomes;"
35	Virtually all of the provisions that relate to Te Ture Whaimana could be deleted from Part 3, given the legislation referred to in clause 35(3) includes the operative provisions of clause 35(1). Clause 35(2)(a) could be retained, while clause 35(2)(b) is best located within the plan provisions part of the Bill.	See proposed change in lefthand column.
36	The three identified resource allocation provisions are, on their terms, very broad. Further guidance is required for these principles to be able to be implemented, given the crucial role that these resource allocation principles will play in future resource decisions. By way of example, it is unclear whether the reference to "equity" includes some or all of: inter-generational equity; inter-regional or inter-district or city equity; equity as between different land use types; equity as between different cultures. Reference to "sustainability" could mean some or all of: environmental sustainability; economic sustainability; or it may be intended to mean "the ability to meet the needs of today's	Further guidance on these terms is required. (Note - while clause 87(1)(a) provides for the NPF to "provide further detail on the meaning of the resource allocation principles", that does not provide any certainty for any users, and it will allow the Minister, as ultimate decision-maker on the NPF, to effectively define these terms.)

Clause	Comment	Recommendation/proposed amendment
	generation without compromising the ability of future generations to meet their needs".	
46(b)	The meaning of "unacceptably degraded" is unclear. This can be compared to clause 50(2) which provides guidance about how to assess whether an environmental limit is set at a level that represents "unacceptable degradation of the natural environment".	Clarify drafting by including an equivalent subclause or cross reference to clause 50(2).
52(a)	The responsible Minister is required to consider "what is most appropriate" for a customary marine title group. There is no guidance to the meaning of "most appropriate", or what considerations guide this decision.	Clarify or delete phrase.
61(a)	As noted above, the definition of "adverse effects" includes any effect that is greater than trivial. If the effects management framework is to be applied in respect of all adverse effects, the current extent of analysis/assessment would be exponentially increased. (Noting that this framework must be applied to all significant biodiversity areas and all specified cultural heritage and can be extended by the NPF to apply to some or all other effects.) If the intention is for clause 62(3)(b) – "a less stringent management of any particular adverse effect" – to mean that the NPF can require the effects management framework to only apply to significant adverse effects, then that should be made clear. Schedule 3, which is a key means of addressing the principles for biodiversity offsetting, applies to "more than minor residual adverse impacts". A more than minor effect can be less than a	Apply the effects management framework only to "significant" adverse effects with a requirement to reduce to minor adverse effects (rather than trivial or *de minimis* effects).

Clause	Comment	Recommendation/proposed amendment
	significant effect, and accordingly there should be consistency between 61(a) and Schedule 3. As noted above, given current caselaw has established that trivial effects are negligible or *de minimis*, this is a significant shift away from minor effects usually being considered acceptable. We query whether this shift is intentional and, if not, recommend the Bill be clarified.	
61(c)	'Minimised' could be interpreted as meaning reduced to the lowest practicable level in the circumstances (as opposed to making any adverse effects minimal). Minimisation in this way is always possible; ultimately that is the purpose of resource consent conditions. Accordingly, there will be no adverse effects that fall within sub-clause (c) because every effect would have been "minimised".	Amend clause 61(b) to state: "(c) adverse effects that cannot be avoided must be minimised <u>or remedied</u> where~~ver~~ practicable". Delete (c).
61(e)	It is not clear what is meant by "redress" in clause 61(e), and how this differs from "compensation" or "enhancement" which are used elsewhere in the Bill.	Clarify the meanings of "redress", "compensation", and "enhancement", or if these are the same use one term consistently.
64(2)(c)	It is unclear what a "trivial effect" is. If it is "*de minimis*" or negligible, then that existing terminology should be used. Alternatively, if it is "less than minor", then that terminology should be used (noting that the phrase "more than minor" is repeatedly used in the context of adverse effects throughout the Bill).	See proposed change in lefthand column.
64(d)	The reference to "other requirements" requires clarification.	Consider specifying what the 'other requirements' might be.
66(h)	Check the cross reference to s 62(1) – this appears to be incorrect.	See proposed change in lefthand column.

Clause	Comment	Recommendation/proposed amendment
67(1)(a)	Clarify that the sub-clause (1)(a) relates to s 66(1)(o).	See proposed change in lefthand column.
79(2)	Check the cross reference to s 81(b) – this appears to be incorrect.	See proposed change in lefthand column.
82	The NPF is likely to have significant implications for processes that are part way through; it will be essential, as a matter of natural justice, for there to be sufficient safeguards for users through transitional provisions.	Change "may" to "must".
86(1)(a)	Clause 86(1)(a) allows the use of an adaptive management approach if there is likely to be a "significant change in the environment". Presumably an adaptive management approach should not be required or necessary for a proposed significant positive effect.	This should be rephrased to a "significant adverse change".
88(4)	While clause 88(4)(a) states that a market-based allocation method must not be used in respect of "a resource that is not described in subsection (1)", clause (1) refers to "a resource specified in the national planning framework as a resource for which an allocation may or must be used". Accordingly, clause 88(4)(a) should refer to "a resource that is not described in subsection (1)(a)-(h), or specified in a NPF under subsection (1)(i)". The use of the double-negative in clause 88(4) should be avoided. Clause 428 of the Bill provides that this allocation framework does not apply to any activity or application under Part 7 (Coastal matters), but that exclusion is not apparent on the face of clauses 87 and 88.	Amend to: "(4) A market based allocation method may be used to determine the allocation of a right to apply for a resource consent for any resource described in subsection (1)(a)-(h) or in an NPF pursuant to subsection (1)(i), but may not be used in respect of the taking, diverting or use of freshwater or coastal matters;"

Clause	Comment	Recommendation/proposed amendment
	While aquaculture/occupation of coastal space is not expressly included in the list of activities in clause 88(1), it could potentially be covered by clause 88(1)(i). Clause 88(4) could be reworded to expressly exclude coastal matters.	
89(4) & (5)	The current wording of these provisions refer to a land use consent only prevailing over a framework rule if it is "issued" prior to the framework rule applying. As a matter of natural justice, this needs to be amended to "applied for". Otherwise, there is a significant risk of prejudice to applicants who apply for consents, and potentially spend many years (and may only be days away from the consent being issued) at the time the framework rule commences.	Replace "issued" with "applied for".
91	The relationship between bylaws and framework rules is problematic. Given that bylaws are generally made under the Local Government Act 2002 and do not require or result in the issue of resource consents, it is difficult to understand how a bylaw could "prevail". It is also unclear whether a bylaw and a framework rule would cover the same activity – and if it does, then that would seem duplicative and inefficient.	Delete clause 91.
94	The Minister for Oceans and Fisheries is responsible for achieving the purpose of the Fisheries Act, which is to provide for the utilisation of fisheries resources while ensuring sustainability. This role is directly relevant to achieving the outcomes of the Bill in relation to the coastal marine area. The Minister for Oceans and Fisheries is also responsible, on behalf of the Crown, for upholding the integrity of the Māori Fisheries Settlement. The responsible Minister should be required to consult the Minister	Amend clause 94 by adding a new subclause at the end: "(5) The responsible Minister must consult the Minister for Oceans and Fisheries before exercising or performing a power or function conferred by this Part or Schedule 6 that relates to a provision that has implications for fisheries management under the Fisheries Act 1996 or for the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992."

Clause	Comment	Recommendation/proposed amendment
	for Oceans and Fisheries in relation to any matter related to the NPF that has implications for fisheries management or the Māori Fisheries Settlement.	
Part 4- Natural and built environment plans		
95	The requirement that there be a Natural and Built Environment Plan (**NBE plan**) 'at all times' in each region assumes that the Schedule 7 process will have been completed for every region before Part 4 commences, or alternatively that the existing regional and district plans under the RMA will be deemed to be natural and built environment plans for each region. Neither option is currently provided for. The transitional provisions when read together with the commencement clause suggest the roll-out of the new system requires more careful consideration. We request consideration be given to providing a very clear roadmap of how the system is intended to operate during the transitional phase.	Clarify arrangements for transition from RMA plans to natural and built environment plans.
99	We question whether a greater level of direction is required than that the regional planning committee "have regard to the extent to which it is appropriate" to resolve system outcome conflicts via a plan. Clause 102 is much more directive in this regard and the potential for such conflicts creates significant uncertainty in the outcome of resource consents and designations. While it may not be possible to anticipate and resolve those conflicts in every case, that should be the objective.	Amend clause 99 to direct regional planning committees to resolve outstanding system conflicts in the natural and built environment plan wherever practicable to do so.
100	We query the relevance or need for a regional planning committee to be appointed in regions with unitary authorities (and therefore only one local authority).	Reconsider requirement for a regional planning committee to be established in Auckland and Tairāwhiti.

Clause	Comment	Recommendation/proposed amendment
102(2)	The chapeau is unrealistically directive given the range of requirements, some conflicting, that follow.	Amend the opening words to require that natural and built environment plans include content designed to achieve the listed matters.
102(2)(c)	A plan cannot 'achieve' limits and targets. Where positive action is required to achieve a particular outcome, a plan may seek that outcome, but may have no ability to ensure its achievement. A plan can preclude actions, but inaction may not achieve the desired outcome. In addition, a requirement that a plan must achieve targets, in particular, precludes targets that will require action over a period longer than the life of the plan, thereby promoting short-term thinking at the expense of long-term planning.	Amend clause 102(2)(c) to: "(2) a plan must – … (c) <u>specify how environmental limits will be complied with and how targets will be achieved</u> ~~achieve environmental limits (including interim limits) and targets~~; and"
102(2)(e)	As above, it may be impractical to resolve all conflicts arising in relation to system outcomes, or even to foresee such conflicts (more so if the focus is broadened to management of natural and built resources more generally).	Qualify reference to resolving conflicts to direct that that should occur "where practicable".
102(2)(j)	Reference to meeting "demands of the region and its districts" implies a broader assessment than is currently provided for in the NPSUD. It is not clear whether this is intended. The clause should also refer to 'districts'.	Consider whether this sub-clause should refer to demands "within" each region and district. Regardless, correct the typo so that it is "districts" plural.
105(1)(b)(ii)	The word 'competency' invites assessment of the ability of the relevant local authority to devise and implement a particular funding mechanism. It is not clear whether this is intended. If this was intended to refer to the 'powers of general competence' (as the general powers in ss 10 to 12 of the Local	Consider whether 'competency' should be replaced by 'competence.

Clause	Comment	Recommendation/proposed amendment
	Government Act 2002 are sometimes known as), this should be replaced by 'competence'.	
105(1)(f)	This is a new provision that is not currently in the RMA. It directly duplicates the Minister for Oceans and Fisheries' responsibilities under section 8 of the Fisheries Act 1996. The effects of this clause together with clause 124(9) are highly uncertain. This level of uncertainty will likely impede the preparation of NBE plans.	Consider deleting clause 105(1)(f) (see also comments on clause 124(9)). Alternatively, clarify the scope of the statutory overlap by amending clause 105(1)(f) to read*:* "(f) include provisions that manage the adverse effects of fishing in the coastal marine area (but see section 124(9))."
107	This clause has two subclause (2)s. *Integration of climate change considerations* There are no references to the ERP or NAP within the provisions relating to Natural and Built Environment Plans. It is unclear whether that is intentional given one of the system outcomes relates to climate change and natural hazards. We note that recent amendments to the RMA which came into force on 30 November 2022 require regional policy statements, regional plans, and district plans to *"have regard to"* the ERP and NAP (refer to s61(2)(d) and (e) of the RMA; s66(2)(f) and (g) RMA; and s74(2)(d) and (e) RMA). Given the importance of the ERP and NAP, it is considered that there should be a specific reference requiring consideration of these documents at the NBE plan level. In addition, a number of the 'key actions' within the ERP refer specifically to improving the current resource management system to promote greenhouse gas emission reductions and climate resilience. The ERP refers at p132 to a package of initiatives which will 'create a pathway for integrating climate change through the planning system – from the legislative	Amend clause 107 as follows: **"107 Considerations relevant to preparing and changing plans** *Matters to which regional planning committee must have particular regard* (1) In addition to the matters to be included in plans under sections 102, 103, 5 and 105, a regional planning committee must have particular regard to— (a) a statement of community outcomes prepared by a territorial authority or unitary authority; and (b) a statement of regional environmental outcomes prepared by a regional council; and (c) any relevant planning document recognised by an iwi authority or 1 or more groups that represent hapū; and (d) the emissions reduction plan and the national adaptation plan.

Clause	Comment	Recommendation/proposed amendment
	framework, through to national direction, regional spatial planning, plan-making and consenting'. It also refers to 'embedding' both 'emissions reduction' and 'climate adaptation' into resource management frameworks (for example, the proposed Strategic Planning Act and Natural and Built Environments Act), including measures that help achieve urban density that improves access to community amenities. While it is understood that climate adaptation, including managed retreat, will be addressed through the separate Climate Adaptation Bill, the lack of reference and clarity to emissions reduction and the ERP within the Bill should be addressed. Similarly, the NAP refers specifically under a number of the action points to reform of the RMA to better prepare for a changing climate, but it is unclear how these national documents are to influence the NBE plans. *Inclusion of fisheries considerations* The Fisheries Act requires decision-makers to have regard to planning documents (including the NPF) under the Bill and the Spatial Planning Bill. There is no reciprocal provision in the Bill for a regional planning committee to have regard to fisheries planning documents or regulations. Effective statutory integration should work in both directions, not in a unidirectional way that places one statute above the other in terms of influence on decision-making. This is particularly important during the preparation of an NBE plan, the purpose of which is 'to further the purpose of this Act by providing for the *integrated management* of the natural and built environment in the region that the plan relates to' (clause 96, emphasis added).	(2) Subsection (1) applies only as far as the matters set out in subsection (1)(a) to (~~c~~ d) are relevant to the matters dealt with in the plan. *Matters to which committee must have regard* (3) ~~(2)~~ A regional planning committee must have regard to— (a) relevant entries on the New Zealand Heritage List/ Rārangi Kōrero made under the Heritage New Zealand Pouhere Taonga Act 2014; and (b) the extent to which a plan under this Act must be consistent with regulations made under the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012. (c) management plans and strategies prepared under other Acts (d) instruments made under the Fisheries Act 1996 relating to ensuring sustainability, or the conservation, management, or sustainability of fisheries resources (including instruments relating to taiāpure, mahinga mātaitai, or other non-commercial Maori customary fishing). (4) ~~(3)~~ A regional planning committee may incorporate documents by reference in its plan, as provided for by Schedule 12."

Clause	Comment	Recommendation/proposed amendment
108(b)-(d)	It is critical to the success of the system that the concepts of "environment" and "effects" are correctly understood and identified. Clause 108(b)-(d) lists the effects that are to be disregarded when preparing the NBE plans. The list appears to be an attempt to address "NIMBY" matters being raised under the guise of amenity – stopping people from raising concerns about impacts on their views, impacts on their signage, and impacts from social housing developments. We query whether there is any need to specify these matters in the Bill, and if so, suggest careful consideration be given to the precise wording. For example: - The restriction on having regard to any effects on "scenic views" from private properties or land transport assets that are not stopping places raises the question of what a "scenic" view is (for example, whether a view of the ocean or the sky are scenic views) or why scenic views cannot be taken into account, but other views can. - The reference to adverse effects created by people on low incomes is a clumsy attempt to stop NIMBY opposition to social housing developments, but may have much wider consequences. - It is not clear what is meant by people with "special housing needs". While it can be inferred this relates to disabled people with special housing needs, as currently framed, it could be read much more broadly.	Reconsider approach taken to addressing matters that cannot be taken into account in the planning process, to ensure these are clear and well-defined.
110(1)	Plans can only direct the way in which activities are undertaken.	Amend s 110(1) to:

Clause	Comment	Recommendation/proposed amendment
		"(1) A plan may direct ~~the use of an~~ that an activity use an adaptive management approach…".
110(1)(a)	Reference to "change" includes both positive and adverse changes.	Qualify "changes" to refer to "adverse changes".
112(2)	Stating that a rule may require an environmental contribution, among other things, for the purpose of ensuring positive effects on the environment, creates a power to impose liabilities that are out of proportion to the nature of the activity and the extent of any adverse effects it may have. While one of the stated purposes is to offset adverse effects, that is only one purpose of a number that an environmental contribution may have.	Amend to make offsetting of adverse effects a required purpose.
117(7)	Reference to "the effects of surface water" is unclear. If the intention is to require management of surface run-off, that should be stated more clearly.	Clarify what is meant by "the effects of surface water".
124(6)	This sub-clause creates significant uncertainty for existing activities. A plan should be required to identify whether and how any rule is intended to apply to existing activities authorised by resource consents.	In the chapeau to clause 124(6), amend "may" to "must".
135	This clause needs to be reframed to reflect more clearly the sequence of steps in the plan-making process. Presumably a rule should be operative on close of submissions (if no submission has been filed opposing the rule). At present, because sub-clause (a) is framed in the alternative, it would be necessary to wait to see if an appeal has been filed, which in practice would be many months later. Specifying (a), (b) and (c) in the alternative will also have presumably unintended outcomes e.g. that a rule will be	Amend clause 135 to state that a rule is treated as operative: (a) On close of the submission period if no submissions are lodged opposing the rule; or (b) On withdrawal of all submissions opposing the rule; or (c) On close of the appeal period, if no appeal is filed in relation to the rule; or

Clause	Comment	Recommendation/proposed amendment
	operative because submissions opposing it have been determined, even though it is still subject to appeal. Reference to appeals being determined should also cater for further appeals to the senior courts.	(d) All appeals in relation to the rule have been withdrawn, or finally dismissed, or finally determined in a manner retaining the rule.
139	The interaction between the Bill and the future Climate Adaptation Act is currently unclear in terms of compensation and the ability to acquire land under the Public Works Act 1981 (the **PWA**) to enable managed retreat or for other climate related reasons. Clause 139 relating to compensation for land incapable of reasonable use has been retained from the RMA but refers specifically to a 'provision in a plan', rather than where rules/regulations might be imposed through the NPF. Clause 141 refers to voluntary acquisition under the PWA. However, the situation where an offer is not accepted is less clear, as clause 141(4)(b) refers to the provisions in the plan remaining in force 'unaffected'. Therefore, it is uncertain whether compulsory acquisition would then be required, or whether plan breaches would be allowed to occur. The position should be made clear in the legislation. The definition of "reasonable use" under clause 139(5) also does not cater for the situation where natural hazards (including those exacerbated by climate change) make use of the land for the intended purpose imprudent. This should also be clarified.	Amend clause 139(1) as follows: "(1) An interest in land must be treated as not being taken or injuriously affected because of a provision in a plan <u>or a provision in the national planning framework</u>, unless the contrary is expressly provided for in this Act." Amend clause 139(4) as follows: "(4) A reference in this section and section 140 to a provision in a plan or proposed plan <u>or a provision in the national planning framework</u> does not include a designation, heritage protection order, or a requirement for a designation or heritage protection order." Clarify the inter-relationship between the concept of reasonable use and management of natural hazards under clause 139(5).
140(3)	The phrase "relevant to the land in question" is ambiguous. Rather this should refer to risks relating to the use of the land.	Amend to refer to risks identified as relevant "to the use of the land in question".

Clause	Comment	Recommendation/proposed amendment
141(6)	This clause should be more specific as to which powers it is referring to (e.g. those conferred by Schedule 13).	If this clause is intended to refer to the powers provided by Schedule 13, this should be specified. If this clause is intended to refer to powers in addition to those conferred by Schedule 13, identify the source of those powers.
142	As currently drafted, the clause does not provide for the situation where the Local Authority wishes to compulsorily acquire land, the landowner does not agree, and clauses 141 and 524 do not apply.	Clarify whether this clause is intended to preclude acquisition under the PWA other than by agreement, or in the situations identified in clauses 141 and 524.
Part 5 – Resource consenting and proposals of national significance		
153-159	It appears these clauses would sit more naturally within Part 4.	Relocate clauses to Part 4.
154(1)	The clause uses the present tense "applies"; however it is unclear whether it should in fact be "should apply".	Clarify drafting.
154(2)	It is unclear what the 'relevant outcomes' are for an activity. If this is a reference to 'system outcomes' in clause 5, this should be specified. This would also apply to the other uses of 'relevant outcomes' throughout this clause. It is also not clear what is required to "meet" the relevant outcomes.	Clarify drafting.
154(3)	This should read "An activity is <u>also</u> a permitted activity…"	See proposed change in lefthand column.
154(4)	This clause states that a prohibited activity is one that will not contribute to the relevant outcomes. However, there may be a range of benign activities that have no effect on the relevant	Clarify drafting.

Clause	Comment	Recommendation/proposed amendment
	outcomes and would not seem to justify prohibited activity status.	
154(5)	The clause refers to an activity that “meets the relevant outcomes”. See comments on clause 154(2) above.	Clarify drafting.
154(6)	The clause refers to activities that "will not contribute" to the relevant outcomes. See comments on clause 154(4) above.	Clarify drafting.
157	Clause 157(2)(a) requires the applicant to prepare and lodge a resource consent application to activate the option of obtaining a permitted activity notice. A streamlined application akin to an application for a Certificate of Compliance or an Existing Use Certificate would seem more appropriate. We query whether an alternative name should be given to the notice obtained under clause 157, given the Permitted Activity Notice required under clause 302.	Provide process to apply for permitted activity notice without requiring a full resource consent application. Suggest notice be renamed Deemed Permitted Activity Certificate to remove confusion with Permitted Activity Notice under clause 302.
164	It is not clear what is meant by "consent engagement costs" and what these should relate to. While the details of these are to be set out in future regulations, the Act should provide a high-level definition of what they cover. It is also not clear whether the costs in clause 164(1)(b) are to be agreed between council, and all relevant iwi and hapū, or these can be agreed separately with individual iwi or hapū, and whether this is a process to challenge the reasonableness of the costs.	Define consent engagement costs and clarify drafting and process.

Clause	Comment	Recommendation/proposed amendment
168(5)(a)	This clause is missing the word 'the' i.e. "…the proposed activity". However, we query whether this should be reworded to "the proposal" so as to align with clause 168(4)(a).	Amend clause 168(5)(a) as follows: "(5) The consent authority must assess the request against the following criteria: (a) the scale, significance, and complexity of the proposal ~~proposed activity~~:"
198	Aspects of the clause are uncertain, for example which outcomes are to be considered.	Amend clause 198(1)(b) as follows: "(b) through that information, to better understand the proposed activity and its effects including whether~~how~~ the proposed activity meets or contributes to the relevant outcomes."
200	It appears this clause would sit more naturally within Part 4.	Relocate clause to Part 4.
201	It is not clear what the threshold is for a person to be considered an affected person, and whether it intended that the existing test (i.e. minor effects) is to be retained. If it is not, it is unclear how a council is meant to apply the relevant considerations. For example, what information is being relied on to weigh the positive and adverse effects, and what does the outcome of the weighing exercise need to be in order for the person not to be "affected". We also query why there is no reference to disregarding the effects that could similarly be generated by a permitted activity.	Clarify drafting.
203-204	It is unclear whether these clauses are simply a presumption in favour of non-notification (for controlled activities) and in favour of notification (for discretionary activities) or are to be read as a prohibition and requirement.	Careful reconsideration of intent following by clarified drafting.

Clause	Comment	Recommendation/proposed amendment
	We recommend careful consideration of the intention regarding public and limited notification and the thresholds and rationale for the revised approach.	
205-207	It appears these clauses would sit more naturally within Part 4.	Relocate clauses to Part 4.
205(2)(c)	It is unclear what evidence or information would be relevant to determine that there are "relevant concerns" from the community. Nor is it clear at what point there would be sufficient interest from the public or neighbours for it to be considered that this clause applies. As currently drafted, there is potential for this clause to result in a significant number of resource consent applications being notified, contrary to the intent and purpose of the Bill.	Redraft or delete clause 205(2)(c).
208	It is unclear why this clause requires that information be provided, given that the requirement no longer applies. It may be more appropriate for the reverse to be confirmed (i.e. that there is no obligation to provide information). If there is no longer a requirement under other legislation it is not clear why the information is only provided to the post-settlement governance entity, and why it is not provided to all relevant iwi and hapū authorities. This approach may also disadvantage those who have not yet settled.	Clarify drafting.
212	We consider it would be sensible for the consent authority to be required to provide copies of the submissions rather than simply a list of submissions.	Clarify drafting.
213	There are multiple references to the "authority" which would be clearer if it were to refer to the "consent authority".	See proposed change in lefthand column.

Clause	Comment	Recommendation/proposed amendment
215	If a hearing is being held, it seems inconsistent then for only parties invited by the consent authority to be heard.	Clarify drafting.
217	It is not clear as to who is responsible for bearing the cost of an independent commissioner, if requested by a submitter.	Clarify drafting.
221(2)	Reference in clause 221(2)(b) to authority should be updated to "consent authority".	See proposed change in lefthand column.
221(3)	The applicant's evidence should be required as soon as practicable after the consent authority's evidence.	Amend clause 221(3) as follows: "(3) The applicant must provide briefs of evidence (the **applicant's evidence**) to the consent authority within the time limit prescribed by regulations under this Act (if any) or otherwise as soon as practicable after the provision of the consent authority's evidence~~closing date for submissions on the application~~."
221(4)	The submitter's evidence should be required as soon as practicable after the applicant's evidence.	Amend clause 221(4) as follows: "(4) A person who has made a submission and who is intending to call expert evidence must provide briefs of the evidence (the **submitter's evidence)** to the consent authority and the applicant within the time limit prescribed by regulations under this Act (if any) or otherwise as soon as practicable after the provision of the applicant's evidence~~closing date for submissions on the application~~."
222	This clause is silent as to whether there is any discretion for the consent authority to refuse to undertake a technical review.	Clarify drafting.
223(2)	The reference to the likely state of the future environment refers to what is contemplated by plans, but does not reference unimplemented resource consents, or the extent to which the	Clarify drafting, potentially through amending clause 223(2)(e) as follows:

Clause	Comment	Recommendation/proposed amendment
	future state as specified in a plan is realistic (for example, if consents have subsequently been granted and implemented that mean that the planned future state is not realistic).	"(e) the likely state of the future environment as specified in a plan, a regional spatial strategy, or the national planning framework, or through the exercise of resource consents that have been granted; and...".
223(8)	The rationale for removing the requirement to disregard the effects of permitted activities and the ability to disregard the effects of consented activities when assessing the effects of a proposed activity is unclear. The comments above in relation to NIMBY matters being raised under the guise of amenity value concerns equally apply here.	Reinstate the requirement to disregard the effects of permitted activities and the ability to disregard the effects of consented activities when assessing the effects of a proposed activity. Reconsider phrasing of (c)-(e).
223(10)	It is unclear how adequacy is to be assessed. There is the risk this could allow second-guessing of consistency with higher order documents.	Clarify drafting.
223(11)	It appears clause 223(11)(a)(vi) and (vii) should refer to a "restriction on the grant of" a discharge permit or coastal permit, respectively.	See proposed change in lefthand column.
229	While the term "reasonable mixing" is currently used in the RMA, it has given rise to some issues about the extent of the area in some cases. It would be helpful for a definition to be included, or for there to be a requirement for that to be covered in a plan. It is not clear what the reference to "necessary maintenance" in clause 229(3)(a)(iii) relates to.	Clarify drafting.
233(2)(c)	Clause 233(2)(c) refers to baseline monitoring and reporting to set triggers. However, there should be sufficient information to set triggers at the decision stage, with further monitoring to confirm the appropriateness of those triggers.	Amend clause 233(2)(c) as follows:

Clause	Comment	Recommendation/proposed amendment
		"(c) require baseline monitoring and reporting to ~~set~~ confirm the appropriateness of triggers as well as enforcement limits (where appropriate); and…".
233(2)(f)	The reference to an activity being discontinued where the effects are found to be unacceptable should be clarified as presumably this relates to effects that are unanticipated at the grant stage. Correct typo ("allow for ~~*an*~~ *the* activity").	Amend clause 233(2)(f) as follows: "(f) include provisions to allow for ~~an~~the activity to be discontinued permanently (in circumstances where unanticipated effects are found to be unacceptable).
233(4)(a)	This would be better framed as having sufficient information to set indicators and compliance limits, with ongoing monitoring following on from this.	Amend clause 233(4)(a) as follows: "(a) there is sufficient information regarding ~~monitoring of~~ the receiving environment to set appropriate indicators and compliance limits; and…".
241	The requirement to state any relevant provisions of the relevant planning framework may end up being very broad. It is not clear whether a thematic approach could be taken to this aspect. Similarly, we consider a requirement to summarise all evidence may end up being unnecessarily burdensome. Rather, the written decision should summarise the evidence that is material to the ultimate decision that has been made.	Clarify drafting, and potentially delete clause 241(1)(c) and amend clause 241(1)(e) as follows: "(e) A summary of the key evidence heard;".
246	This clause relates to the plan-making process so would sit better within Part 4.	Relocate clause to Part 4.
252	It is not clear in clause 252(3) why the adjudicator is a party to an appeal, as normally their role is complete, and they are functus officio. It is also unclear what the test of materiality is in clause 252(4).	Clarify drafting.

Clause	Comment	Recommendation/proposed amendment
253	The ability for a person to appeal any matter that was not raised in the person's submission creates a risk of gaming of the system (particularly as aspects that have been struck out cannot be appealed).	Consider removing clause 253(2)(b).
261	The cross references in the clause and its heading to clause 261(2) are orphans and should be updated.	Update cross-reference.
266(1)	The cross reference in clause 266(1)(b) to section 272 should also include section 273.	Amend clause 266(1)(b) as follows: "(b) is subject to section 272 (which provides when the consent lapses) and section 273 (which provides when a consent may be cancelled)."
266(2)	Missing word.	Amend clause 266(2) as follows: "(2) The maximum period for which any of the following resource consents may be granted is unlimited: …"
266(3)	The clause should clarify that the maximum period is measured from the commencement of the consent.	Amend clause 266(3)(a) as follows: "(a) a period specified in the consent not exceeding 35 years from the date of the commencement of the consent ~~as specified in the consent~~; or…".
270(1)	It is not clear whether this is referring to a consent that could not be fully exercised practically or as a matter of law.	Clarify drafting.
270(4)	Missing word.	Amend clause 270(4) as follows: "(4) The consent authority must determine Person A's application by applying…"

Clause	Comment	Recommendation/proposed amendment
271(1)(c)	See comment on clause 270(1) above.	Clarify drafting.
274	The restriction in 274(1)(b) should just refer to subdivision and reclamation consents, and then should only refer to the relevant survey plan, as often subdivision consents will relate to multiple stages.	Amend clause 274(1)(b) as follows: "(b) in relation to subdivision and reclamation consents, the application is made before the deposit of the relevant survey plan."
275(1)	This clause should clarify when the maximum duration is measured from.	Amend clause 275(1) as follows: "(1) The maximum duration of a resource consent that may be issued by a consent authority for any of the following activities is 10 years from the date of the commencement of the consent: …"
277	In relation to activities that have already obtained consent, the Bill provides for a review of consent conditions in relation to climate change matters, including in relation to the duration of the consent if there are exceptional circumstances. There is also the ability to cancel the consent under clause 281(7) but clause 89 should be amended to ensure this is clear. Given the intention of clause 277 to deal with a wide range of currently emerging threats, the drafting of clauses 277(3) and (7) would be improved by clarifying what is meant by 'exceptional circumstances'. Currently, both clauses 277(3) and (7) include this exceptional 'circumstances requirement'; however, we note that this requirement does not apply to regional council consents (clause 277(4)) - we assume because such consents have always been of limited duration. We acknowledge "exceptional circumstances" is a phrase used in many statutes, including a number of times and in different	Amend clauses 277(3) and (7)(a) as follows: "… there are exceptional circumstances where in the short to medium term –…" Clarify that the reference to 'exceptional circumstances' in clause 277(7) should not apply to regional council consents, to maintain consistency with clause 277(4). Add provisions to allow collective reviews of related consents. Refer proposed amendment to clause 89 above.

Clause	Comment	Recommendation/proposed amendment
	contexts, both procedural and substantive in the RMA and this Bill. However, its use in this context (including the current government's declaration of an ongoing "climate emergency") may lead to confusion without further definition. For example, it is not clear whether "exceptional circumstances" applies only to situations of imminent harm, within days or weeks, or can apply also to anticipated harm over a longer timeframe. In the former case, it is unclear how this would differ from the future-focused aspects of the emergency works provisions (clause 751) which refer to 'adverse effects' requiring 'immediate *preventative* or remedial measures' and 'sudden events' causing or *likely* to cause serious damage. We assume that anticipated harm over a longer timeframe is included, given the nature of the climate crisis, and the need for flexibility in responding to emerging threats. We also assume that most climate and natural hazard issues apparent at the time plans are developed will be dealt with within those plans and reviews of the duration of consents under plans provided for under clause 277(7). Clause 277 should also expressly provide that multiple consents may be reviewed collectively, including consents of the same type, or all consents in particular areas (say as a number of properties along an eroding beachfront).	
280	It should be clarified that the scale of investment associated with implementing the consent be considered under clause 280(1)(e).	Amend clause 280(1)(e) as follows: "(e) may have regard to the manner in which the consent has been used, including associated investment."

Clause	Comment	Recommendation/proposed amendment
281	Clause 281(7) provides that a territorial consent authority may cancel a land use consent for reasons relating to climate change, but only if the land use consent cannot comply with the relevant "plan rules". We recommend clause 281(7) is amended to include reference to "framework rules" (which are rules in the NPF) and apply to all types of resource consents, not just land use consents. Territorial consent authorities should have the ability to cancel resource consents in circumstances where the consent holder cannot comply with framework rules relating to climate change matters. There appears to be a lack of linkage for regional consents (e.g. regional land use consents) where reviews are undertaken under clause 277, and this should also be clarified.	Amend clause 281(7)-(8) as follows: "(7) A territorial consent authority may cancel a ~~land use~~ resource consent following a review only if the ~~land use~~ resource consent cannot comply with framework rules or plan rules that— (a) give effect to any parts of the national planning framework relating to the natural environment; or (b) give effect to any parts of the national planning framework relating to— (i) natural hazard or climate change risk reduction; or (ii) adaptation to, or mitigation of, climate change; or (iii) contaminated land; or (c) reduce natural hazards or climate change risk, or adaptation to climate change (even if there is no national planning framework provision on those matters); or (d) deal with contaminated land (even if there is no national planning framework provision on the matter); or (8) A regional consent authority may cancel a regional consent following a review if: (a) a relevant environmental limit is breached or likely to be breached resulting in significant adverse effects on the environment or it has reviewed the consent under section 277(4); and (b) there are significant adverse effects on the environment that cannot be rectified through any consent condition."

Clause	Comment	Recommendation/proposed amendment
		Add new subclause providing that a consent issued by a territorial consent authority can be cancelled where the consent authority has reviewed the consent under s277(3)(b) and there is a risk of significant harm or damage to human health, property, or the natural environment resulting from the exercise of the consent.
284	The clause refers to the grant of consent but should refer to commencement for consistency with other provisions.	Amend clause 284 as follows: "A consent authority that grants a resource consent may, within 20 working days of the commencement of the consent ~~grant~~, issue an amended consent that corrects minor mistakes or defects in the consent."
289	The clause refers to a concern that the transferee may not be able to comply, but it does not seem that ability to comply is the key issue, rather it should be whether the transferee will comply.	Amend clause 289 as follows: "… if it has ~~reason~~ reasonable grounds to believe that the transferee may not ~~be able to~~ comply with consent conditions based on the transferee's prior non-compliance…"
290	See comments on clause 289.	Amend clause 290 as follows: "… if it has ~~reason~~ reasonable grounds to believe that the transferee may not ~~be able to~~ comply with consent conditions based on the transferee's prior non-compliance…"
291(2)(b)	The clause refers to the ability to "meet other conditions", but this should say "comply with" for clarity and consistency.	Amend clause 291(2)(b) as follows: "(b) affect the ability of the consent holder to comply with ~~meet other conditions of~~ the consent; or…"
293	Clauses 293(4) and (5) each refer to "the best practicable option condition", but this would make more sense referring to "a best practicable option condition".	See proposed change in lefthand column.

Clause	Comment	Recommendation/proposed amendment
294	The clause references 15 days. In line with most other timeframes provided in the Bill, it appears this may be intended to refer to working days.	Clarify drafting.
307	Part 5 applies subject to the subpart dealing with affected applications. It is not clear what happens for rights of appeal for affected applications. Given that it is a competitive merits determination, there may be winners and losers (total; or partial e.g. pro rata reduction of resource). If one party appeals, we query whether that mean all applicants are necessarily dragged into the appeal process (given that if an appeal is successful it may result in a redistribution of the resource).	Clarify issues/drafting.
316	The tense of clauses 316(f)(i) and (ii) should both be future tense rather than present tense. The reference to the distribution and treatment of water, wastewater, or stormwater should also include storage. Cycleways and pedestrian paths that will result in changes in transportation habits are important for climate mitigation and should be included as an eligible activity (noting that these are not always ancillary to the transport activities listed). Similarly, coastal protection works are important for climate adaptation, and should be included. Some eligible activities may benefit from definition to avoid argument, e.g.: - affordable housing - educational facilities	Amend clause 316(f)(i) from "supports" to "will support" and clause 316(f)(iii) from "contributes" to "will contribute". Amend clause 316(l) to include storage. Under 'Transport' heading, add in "significant cycleway and pedestrian path projects". Under 'Water' heading, add in "coastal protection works". Consider clarifying scope of the definitions of the terms listed in lefthand column.

Clause	Comment	Recommendation/proposed amendment
	- health facilities.	
318	Clause 318(4) specifies that the information set out in clauses 318(3)(a) and (b) are only required to be provided at a general level of detail sufficient to inform the Minister's decision on the referral application. Clause 318(3)(f) requires a referral application to contain the information required by clause 173, which sets out the general information required for a resource consent application, including an assessment of environmental effects. Because there is no cross reference to clause 318(3)(f) in clause 318(4) this means that at the referral application stage, an applicant would need to provide a full assessment of environmental effects as it would for the substantive application. This is not how the existing fast-track process has been working and would be an inefficient use of resources, as well as too much information for the Minister, at referral application stage.	Amend clause 318(4) as follows: "(4) The information required by subsection (3)(a) ~~and~~ (b), and (f) need only be at a general level of detail, sufficient to inform the Minister's decision on the application".
319	The Minister can require the panel to suspend further processing of an application by direction to the EPA with reasons. The current Fast-Track legislation states the circumstances in which this kind of direction can be given (section 22(3)) but the Bill does not. Presumably the detail is going to be provided through regulations (clause 856) but that seems unnecessary given the detail could be completed now.	Include drafting as regards the scope of the Minister's direction rather than leaving it to regulations.
320	This clause provides that clauses 209 to 213 applying to standard resource consent applications, will apply to fast-track submissions. This needs to be amended to make clear that it will	Amend clause 320 as follows: "Sections 209 to 213 apply to the making and hearing of submissions on an application, with any necessary modifications."

Clause	Comment	Recommendation/proposed amendment
	apply with any necessary modifications, for example, if only certain parties are invited or if a hearing is not held.	
321	It would be beneficial to clarify whether a Panel is required to provide reasons for its decision whether to hold a hearing	Clarify drafting.
326(2)	The clause references 60 and 90 days, and it is not clear whether this should be working days (consistent with most other timeframes specified in the Bill).	Clarify drafting.
327	There is an incorrect cross-reference. The reference to section 205 should be to section 326.	See proposed change in lefthand column.
329	Clause 329(3)(f) refers to a proposal affecting "the natural and built environments in more than 1 region". As drafted, both natural and built environments would need to be affected by a proposal in order for those effects to become a mandatory consideration for the Minister. It seems likely this is intended instead to read ‘or’.	Clarify drafting.
329(4) and 337(4)	Consideration should be given to including a requirement to consider the views of iwi and hapū authorities on whether the matter should be called in. These processes are generally faster and place a greater burden on iwi and hapū to respond within the allocated time.	Clarify drafting.
340	If an iwi or hapū authority is asked to provide views on the process (as per comments on clauses 329(4) and 337(4)), it would follow that they would be provided with the Minister's direction.	Clarify drafting.

Clause	Comment	Recommendation/proposed amendment
349(3)	The use of "may but need not" in clause 349(3) is unusual and does not appear to be necessary, as effectively any individual is able to be appointed to this position. Similarly, if the current wording is to be maintained the inclusion of both former and retired Environment Court Judges appears to be unnecessary.	Amend clause 349(3)(b) to read: "(b) 1 member as the chairperson~~, who may (but need not) be a current, former, or retired Environment Judge or a retired High Court Judge~~."
351(2)	The use of the word "purposes" is unusual, and we suggest "principles" is more appropriate.	Replace "purposes" with "principles".
352(3)	The EPA's estimate should also be provided to the applicant.	Add an additional subclause after clause 352, providing that if the EPA provides an estimate to the board of inquiry under clause 352(3), this must also be provided to the applicant.
352(4)(h)	It is not clear why the board of inquiry must have regard to the most recent estimate provided by the EPA.	Delete clause 353(4)(h).
354(5)	It is not clear why two particular ministers are identified as not being required to pay environmental contributions.	Clarify drafting.
355(5)	Relevant iwi, hapū, and Māori groups should also be expressly listed as parties to receive a copy of the decision report.	Add "relevant iwi, hapū, and Māori groups" as additional subclause to clause 355(5).
356	It is unclear why for resource consents it refers to grant of consent whereas for plan changes the clause refers to all appeals having been determined. It is also unclear in clauses 356(3) and 356(4) whether this would include a situation where there were appeals to higher courts and then the matter was referred back to the board of inquiry.	Clarify drafting for consistency.

Clause	Comment	Recommendation/proposed amendment
359(5)	See comments on clause 354(5).	See comments on clause 354(5).
360	As a matter of drafting, the clause cross references clauses in Schedule 13, but then refers to them as "sections". Also, there have been issues with various processes involving boards of inquiry or expert panels where there have been subsequent appeals and then challenges in reconstituting the board or panel at a later date. It would be appropriate to provide for that reconstitution expressly.	The references to "sections" in subclauses 360(3)(a), (b) and (c) should be amended to refer to "clauses" and 360(3)(c) should be amended to refer to "~~the sections~~ those clauses." Clarify drafting as to reconstitution of board of inquiry if required.
377(5)	Relevant iwi, hapū and Māori groups should also be expressly listed as parties to receive a copy of the notice.	Add "relevant iwi, hapū and Māori groups" as additional subclause to clause 377(5).
Part 6 – Water and Contaminated Land Management		
378	We query whether there is any need for Water Conservation Orders to remain as a tool in the Bill. It would seem more appropriate for the existing WCOs to simply be incorporated into the NPF, in the same manner as NPSs and NESs. This is particularly so given the new requirement (at clause 397(1)) for a plan to "give effect to" a WCO. If they remain a separate tool, Part 9 of the RMA could simply be retained to provide the framework for water conservation, potentially with other amendments as may be required to update the RMA provisions.	Consider deleting WCO as a tool in the new system.
378(2)(b)(ii)	The reference to "fishery" should be clear whether it is a recreational fishery, or values of fish more generally.	Clarify drafting.

Clause	Comment	Recommendation/proposed amendment
379	Like Part 9 of the RMA, these proposed provisions are ambiguous as to whether a water conservation order may require regional councils to monitor water bodies that are subject to a WCO. Those provisions are likewise ambiguous as to whether a regional council has the statutory responsibility to monitor and enforce a WCO. Both of these issues have been argued in the recent Environment Court hearing of submissions on the Special Tribunal's decision on the proposed water conservation order for Te Waikoropupū Springs, with a decision pending.	Clarify drafting.
385	The timeframes for exchange of evidence, a hearing, and a decision, are unrealistic given the very technical nature of evidence in those processes. In particular, there would be no opportunity under the proposed timeframe for any submitter to brief and obtain any technical expert evidence. This is because all evidence would have to be briefed, researched, and written within the 30 working days after the close of submissions and to be filed 10 working days before the hearing. This is despite any water conservation order needing considered expert evidence, reflective of the significant potential impact of the water conservation on existing rights and interests on the one hand, and on outstanding characteristics and values on the other (refer, for example, the recent WCO application for Ngaruroro River in Hawke's Bay). There is also no provision in these timeframes for any rebuttal evidence, which is a fundamental aspect of natural justice. This is particularly important in circumstances where there will be multiple parties, many of whom will have slightly different interests and will call evidence on different aspects.	Delete the specific timeframes or, as a minimum, allow the special tribunal to provide extended timeframes where appropriate.

Clause	Comment	Recommendation/proposed amendment
392(1)	This clause appears to contain a typo.	Correct as follows: "(1) When the Environment Court has completed its inquiry, it must ~~mast~~ report in writing to the Minister…"
397(1)	The RMA specifies that a plan must not be inconsistent with a water conservation order. The proposed provision requires a plan to "give effect to" a WCO. It is unclear whether it is all aspects of a plan that are required to give effect to a WCO, or only the rules, mapping components (noting that a WCO does not contain objectives or policies). It is also unclear where a WCO sits in the hierarchy of planning instruments.	Clarify drafting.
410	A freshwater farm plan may direct that steps be taken to avoid, remedy or mitigate effects (clause 404). Under clause 405, a farm operator must obtain certification that a plan complies with clause 404. Clause 410(1) states that that a farm plan may control an activity in way not required by a specified instrument (including a regional plan) and that a farm plan may restrict an activity to a greater extent than a specified instrument.	It is inappropriate from a natural justice perspective for a farm plan certifier to be able to require steps to be taken in a farm plan (or a farm operator risk not having their plan certified) if that goes beyond what is required by a regional plan. That risks inconsistent treatment by different farm certifiers, and it is not clear how any farm certification decision – which essentially is a decision on what must be in a farm plan - could be challenged.
416	Clause 416 provides the framework for managing contaminated land is based on the polluter pays principle (which is defined in clause 417). More clarity may be required to implemented this in complex situations, e.g. where contamination may have been caused by multiple landowners and cost apportionment issues arise.	Consider whether the current proposed provisions are adequate to address complex contaminated land scenarios.
419(1)(b)	This clause appears to contain a typo.	Amend clause 419(1)(b) to: "(b) manage, investigate, and monitor the contamination to ensure that ~~is~~ its concentrations—…".

Clause	Comment	Recommendation/proposed amendment
425(a)	This clause appears to contain a typo.	Amend clause 425(a) to read: "(a) … as a result of the polluter's actions (in allowing or causing the discharge of a ~~contaminated~~ contaminant into the environment)…".
Part 7 – Coastal matters		
434(1)	This Clause sets out matters to be considered before a regional planning committee proposes a rule for "allocation of space in the coastal marine area". There is no requirement to consider entitlements of iwi under the Maori Commercial Aquaculture Claims Settlement Act 2004.	Clause be amended by adding the following to subclause (1)(a): "(iv) [have regard to] any impact the proposed rule will have on the rights and interests of any holder of customary marine title or protected customary rights and the rights and entitlements of iwi under the Maori Commercial Aquaculture Claims Settlement Act 2004."
438	The Minister of Conservation can recommend an Order in Council be made to stop regional councils from proceeding with authorisations, or require them to do it in a certain way. One of the reasons for making these directions is to give effect to government policy which seems very uncertain and far reaching.	Consider intent of drafting, and whether clause 438(2)(a) is necessary in addition to specifying the circumstances in which such Orders in Council can be made in clause 438(2)(b)-(d).
441(5)	Subclauses (b) to (d) include important obligations in relation to treaty settlements. Given the significance of these, we query whether it is sufficient to "have regard to" the listed matters, or whether the requirement should be strengthened.	Consider whether it is adequate to "have regard to" these matters.
464	Clause 464 deals with the requirements and contents of a direction given under clause 463 by the Minister responsible for aquaculture. However, this clause refers only to the Minister.	Amend to ensure reference is to the appropriate minister. (Note: this issue would not arise if our recommendations in relation to the definition of 'Minister' in clause 7 was adopted)

Clause	Comment	Recommendation/proposed amendment
	This is not in alignment with the definition of "Minister" for the purposes of this part in clause 429.	
478(3)	This clause refers to section 186EA of the Fisheries Act 1996, however the new section to be inserted into the Fisheries Act 1996 is to be s186ZEA.	Amend clause 478(3) to read; "(3) If an aquaculture agreement or compensation declaration is registered under the Fisheries Act 1996, the negotiator appointed under section 186ZEA of that Act…"
Part 8 – Matters relevant to natural and built environment plans		
Heading/ Content	Part 8 comprises 3 sub-parts. The first two relate to Designations and Heritage orders and parallel Part 8 of the RMA. Sub-part 3 relates to matters of national importance and appears misplaced, given its importance and its significant effect on the substantive content of natural and built environment plans.	Shift Subpart 3 to form part of the introductory clauses of Part 4. Retitle Part 8 as "Designations and Heritage Orders."
498	We suggest a definition (or explanation) of "taonga tuku iho" should be provided to clarify what it is that must be recognised.	Define "taonga tuku iho".
500(5)(c)	It is unclear whether the reference to commercial retail activity (or facilities to support commercial retail activity) is intended to mean that other commercial activities or commercial wholesale activities cannot be approved under clause 499(3).	Clarify intention as regards commercial activities.
505(c)	We query the process and information requirements for the "route protection process" and the extent of public input (for example, the ability not to hold a hearing even when requested by a submitter), particularly where the infrastructure has been identified in the Regional Spatial Strategy without any hearing or potential to challenge.	Clarify drafting.

Clause	Comment	Recommendation/proposed amendment
507(7) and (8)	We suggest the subclause refer to "other Māori parties specified in the plan", as iwi and hapū are clearly "Māori parties".	See proposed change in lefthand column.
509(6)	The implication of these provisions is that a hearing might be held but no parties are in fact "heard", or that an applicant might be heard, but not the submitters opposing the application. The first is a contradiction in terms. The second is contrary to the rules of natural justice.	Amend to require that if a hearing is held, both the applicant and any submitters who wish to be heard are given that opportunity.
512(1)(a) and (c)	Note our comments in relation to clause 108(b)-(d).	See recommendation at clause 108(b)-(d).
512(3) and (4)	These subclauses provide that if infrastructure has been identified in the regional spatial strategy when a designation is applied for, the regional planning committee cannot consider alternatives, and must assume the infrastructure meets national and regional objectives. As we have noted in our comments on clause 24 of the Spatial Planning Bill, we consider that climate considerations should be strengthened by requiring that the regional planning committee have particular regard to the emissions reduction plan and national adaptation plan while preparing a regional spatial strategy. As an additional safeguard, it would also be appropriate for these documents to be considered as part of the regional planning committee's assessment of infrastructure projects that are included in a regional spatial strategy.	Amend clause 512(4) as follows: "(4) If the infrastructure concerned has been identified in a regional spatial strategy, the planning committee must not consider whether the work and designation are reasonably necessary for achieving national planning framework outcomes or the regional spatial strategy's vision and objectives for the region's development or any change or strategic outcomes in plans apart from considering whether the infrastructure is consistent with the emissions reduction plan and national adaptation plan."
515(1)(a)	Clause 515(1)(a) needs to provide for the potential for appeals to the senior courts.	Clarify effect of appeals to the senior courts on the timing of designations being included in plans.

Clause	Comment	Recommendation/proposed amendment
525(1)	While this clause reflects the current power in s 186 of the RMA, we suggest consideration be given to how designations under this subpart and compulsory acquisitions interact. It would appear inconsistent if a designation is refused but compulsory acquisition is able to proceed nonetheless.	Clarify whether it is intended that compulsory acquisition is enabled even if designation is refused.
531(3) and 537(2)	A 20-working day timeframe appears very short for preparation of a critical element on a potentially very substantial notice of requirement.	Suggest provision be made for extension of timeframes in appropriate cases.
543(2))	As noted above in relation to clause 5(e), we suggest it would assist understanding of this provision if kawa and mātauranga were defined.	Clarify as noted.
555	Sub-part 3 relates to places of national importance and appears out of place. In the definition of "place of national importance", (c) stands out as not identifying an area or place.	Consider relocating subpart 3. Amend (c) to refer to "an area of specified cultural heritage"
559(1) and 563	It is unclear what a "trivial adverse effect" is. If it is "*de minimis*" or negligible, then that existing terminology should be used. Alternatively, if it is "less than minor", then that terminology should be used (noting that the phrase "more than minor" is used regularly throughout the Bill).	See proposed change in lefthand column.
559(3) and (4)	It is too late in the process to enquire whether an area that is the subject of a resource consent application includes significant biodiversity before the activity commences. This inquiry should be part of the consideration when the resource consent application or notice of requirement is made. For the same	Shift these subclauses into Parts 5 and 8 and amend to require consideration as part of the processing of a resource consent application or notice of requirement as the case may be.

Clause	Comment	Recommendation/proposed amendment
	reason, this subclause is out of place. It should be located in Parts 5 and 8.	
561(1)	It appears the intention is to allow the reassessment of an area, even if nothing material has changed since the plan was notified/ considered (- i.e. subclause (c) be read as "assessed as such"). If so, that would have significant implications for the plan process, encouraging re-litigation of plan findings in subsequent resource consent applications.	Amend subclause (c) to relate specifically to the situation where an area was not assessed when the plan was made.
567	Areas of critical habitat are not "places of national importance" (as defined) nor referenced in the heading to the subpart. The implications of a declaration under clause 567 are unclear.	Clarify drafting.
Part 9 – Subdivision and reclamation		
572(4)	This clause appears to contain a typo and missing words.	Amend to: "(a) if the territorial authority is ~~are~~ satisfied under subsection (3), approve the survey plan…."; "(b) if the territorial authority ~~any of the~~ is not satisfied under subsection (3), decline the survey plan…".
576(4)(a)	This clause appears to contain a typo.	Amend to: "(4) Subsection (3) applies if – (a) an esplanade reserve or esplanade strip is required…".
578(1)(b)	We suggest this be reworded for consistency with subclause (a), and to make it clear the clause captures allotments that include a part of a river or lake.	Amend to: "(b) is within the bed of a river or lake."

Clause	Comment	Recommendation/proposed amendment
581(2)	This clause currently reads like an advice note. We suggest this could be worded more directly.	Amend to: "(2) ~~*See*~~ the following sections, which also set deposit requirements for documents to be lodged with the Registrar-General of Land, must also be complied with: …".
585(2)	It is not clear what is intended by "held in as few records of title as possible". This seems to conflict with the first part of the clause requiring it to be held in 1 record of title.	Clarify inconsistency.
592(1)(b)	We suggest this be worded to make it clear that clause captures allotments that include a part of a river or lake.	Amend to: "(b) is within the bed of a river or lake."
608(2)	This clause appears to contain a typo or missing words.	Amend to: "(2) An esplanade reserve must be set aside from the allotment under section 611, or an esplanade strip must be created under section 612…"
623(8)	This clause currently reads like an advice note. We suggest this could either be worded more directly or deleted.	Clarify clause.
Part 10 – Exercise of functions, powers, and duties under this Act		
634(5)	The reference should only be to clauses 54(2)-(4) of Schedule 7. Clause 54(1) of Schedule 7 is not relevant in this context.	Amend clause 634(5) as follows: "(5) Clauses 54(2)-(4) of Schedule 7 applies to the review…"
635	It is unclear whether this clause is intended to allow the Minister to transfer powers, functions or duties from one body to another, or to direct a body that is not performing its powers, functions or	Amend the clause so that its purpose and intent are clear. Regardless, amend subclause (4)(a) to read:

Clause	Comment	Recommendation/proposed amendment
	duties correctly on how to remedy that. At present, the clause is ambiguous and confusing. Subclause (4)(a) requires a local authority or regional planning committee to set out how the committee will carry out the direction, but presumably it is intended that the same applies to a local authority.	"(a) set out for the Minister how the local authority or regional planning committee will carry out the direction …".
636(b)	To maintain consistency with how the rest of Part 10 is drafted, this clause should be incorporated into clause 633 as well.	Incorporate into clause 633 (which already contains the equivalent powers for the Minister for the Environment).
638(3)(a)	The cross reference should be to clause 12(2).	Amend "section 13(2)" to read "section 12(2)".
638(3)(f)	The cross reference should be to clause 541.	Amend "section 542" to read "section 541".
639(h)	The cross reference should be to subpart 4 of Part 6	Amend "subpart 3 of Part 6" to read "subpart 4 of Part 6".
640(2)(b)	The cross reference here does not appear correct. It is presumed it should actually be to clause 831(c).	Check and correct cross-reference as necessary.
640(3)(a)	The cross reference here does not appear correct. It is presumed it should actually be to clause 374 (not section 331).	Check and correct cross-reference as necessary.
640(3)(b)	As for clause 640(2)(b).	As for clause 640(2)(b).
642(2)(a)	The cross reference should be to Part 1 of Schedule 7.	Amend "*see* subpart 4 of Part 4" to read "*see* Part 1 of Schedule 7".
643	This clause does not include an equivalent of subclauses (3) and (4) from clause 645, even though those subclauses are equally applicable to regional council and unitary authorities.	Replicate subclauses (3) and (4) from clause 645 within this clause, with appropriate amendments.

Clause	Comment	Recommendation/proposed amendment
643(1)(a)	The requirement "to participate" with the regional planning committee is vague and ambiguous. The role of regional councils and unitary authorities in the process of preparing relevant plans should be clearly outlined and well understood.	Clearly outline how regional councils and unitary authorities engage in each plan making process, at the appropriate place in the Bill. For example, in Schedule 7 for NBE plans. Then cross-refer to those provisions in this clause.
643(3)	Part 10 does not provide for a Minister or regional planning committee to delegate or transfer any functions to a regional council or unitary authority.	Amend the clause to read as follows: "If a function, power or duty is ~~delegated or~~ transferred to a regional council or unitary authority by a ~~Minister, a regional planning committee, or a~~ territorial authority, the council or authority must carry out that function, power or duty under the terms of the transfer".
644 (general comments)	Climate change is not specifically listed in clauses 644 or 646. It is unclear whether that is because the reference to 'natural hazards' is deemed sufficient. However, it is considered that specific reference to climate change and adaptation would help clarify that NBE plans can address these matters, particularly given references to a broader remit of climate change matters in other clauses of the Bill. Regional councils and unitary authorities are not given any responsibility for contaminated land but have obligations in this regard, for example under Part 6 of the Bill. The phrase "control of" has limited use in this clause as drafted (in contrast to section 30 of the RMA). Yet the phrase has been retained for describing the responsibilities of territorial and unitary authorities in clause 646. There should be consistency in how both clauses 644 and 646 are drafted.	Add in the following as additional subclauses to clause 644: "(aa) mitigating, reducing or adapting to the risks arising from natural hazards or climate change; (ab) adapting to, or mitigating the effects of, climate change;" Consider including the management of contaminated land (in conjunction with other bodies) as part of regional council and unitary authority responsibilities. Amend as necessary, to ensure appropriate consistency between clauses 644 and 646.
644(a)(v)	We suggest this should refer to "avoiding, mitigating or reducing the risks from natural hazards". It is unclear why the requirement to "avoid" such risks, if possible, has been removed.	Consider including reference to "avoiding", as well as "mitigating or reducing".

Clause	Comment	Recommendation/proposed amendment
	This function may well be required, for example with respect to addressing risks from climate change.	
645	This clause does not include an equivalent of clause 643(3), even though that subclause is equally applicable to territorial and unitary authorities.	Replicate subclause (3) from clause 643 within this clause, with appropriate amendments.
645(1)(a)	As for clause 643(1)(a).	As for clause 643(1)(a).
645(5)	This clause replicates clause 647.	Delete.
646	As for clause 644.	Amend clause 646(a) as follows: "… (a) control of the effects of the use, development, or protection of land within a district, including— (i) mitigating, ~~or~~ reducing or adapting to the risks arising from natural hazards or climate change: (ii) adapting to, or mitigating the effects of, climate change; (iii) ~~(ii)~~ preventing or mitigating any adverse effects of developing…" Consider including the management of contaminated land (in conjunction with other bodies) as part of regional council and unitary authority responsibilities."
648	This clause further addresses the Minister of Conservation's functions, powers and duties under the Bill. It would more logically be combined with clause 636.	Delete and combine with clause 636 instead.
649(2)(c)	The requirement for compliance and enforcement strategies to set out "how the local authority will respond to incidents" lacks	Clarify what this sub-clause is intended to address.

Clause	Comment	Recommendation/proposed amendment
	clarity and certainty. It also unnecessarily overlaps with (and duplicates) the requirement from clause 649(2)(d).	
650(3)(c)(iii)	As currently drafted, this provision is unclear and does not fit with the structure of this subclause.	Amend clause 650(3)(c)(iii) as follows: "(iii) the authority to which the transfer is made has technical or special capability or expertise that the local authority does not."
654(2), (3) and (5)	These provisions refer to delegations being made to "a person", where the relevant powers, duties and functions can only be delegated to specific bodies (not individual people).	Amend "a person" to read "a body" in specified clauses.
655(5)	The cross reference should be to clauses (1) and (3).	Amend clause 655(5) to read: "(5) Subsections (1) and (3) do ~~or (2) does~~ not prevent a local authority…"
656(1)	There is no definition of "possible party" provided.	Consider whether the clause can be made clearer by amending the definition of "party" in clause 656(7) to read "possible party", not just "party".
656(5)	The cross reference should be to section 652(4) and (5).	Amend "section 651(4) and (5)" to "section 652(4) and (5)".
680(2)	This clause appears to contain a typo.	Amend clause 680(2) to read: "(2) If a Mana Whakahono ā Rohe exists and another iwi authority, group that represents hapū, local authority, or regional planning committee in the same area as the ~~for the~~ existing Mana Whakahono ā Rohe wishes to initiate…"
688(4)(a)	The cross reference should be to section 841.	Amend clause to refer to "section 841 (Supply of Information)".

Clause	Comment	Recommendation/proposed amendment
690	It is unclear whether the Freshwater Working Group is to have any ongoing role, beyond the initial report required by this clause. For example, whether the Group is required to prepare a similar report on a regular basis (every three or five years, for example), or to review/have input into the allocation statements that may be agreed under clause 693(3).	Consider whether this clause/the ongoing role of the Freshwater Working Group can be made clearer.
693	More clarity may be required on how these are intended to inform NBE plans. The drafting is that the Minister must "support" the submission of the allocation statement to the relevant RPC. The RPC then determines how the plan is to be updated and must update the plan in a manner consistent with the Act. The only guidance to the RPC is "in a manner consistent with the Act".	Consider intent of drafting and whether it requires more clarity.
Part 11 – Compliance and enforcement		
695	The effect of clause 695(2) is that interim enforcement order applications are heard either by an Environment Judge in the Environment Court or an Environment Judge in the District Court. Clause 706 does not specify how an applicant chooses whether to file in the District Court or Environment Court or why there is a choice at all. Since either way it is heard by an Environment Judge, it would be appropriate for this to be heard in the Environment Court. Offences are heard in the District Court by a District Court Judge who is also an Environment Judge. As a consequence, prosecutions cannot be heard together with related enforcement action such as appeals on abatement notices or applications for enforcement orders. This is inefficient and leads to increased	Consider offences being heard in the Environment Court with appropriate consequential amendments to Criminal Procedure Act 2011. Alternatively, if that is not considered appropriate given the possibility of jury trials for offences (which is presumably a situation in which the Chief District Court Judge might direct that a proceeding be heard by a District Court Judge who is not an Environment Judge, in the event no judges with both a jury and environment warrant are available), the Bill could provide for enforcement action associated with an offence to be transferred by the Environment Court to the District Court to be heard either at the same time as a criminal proceeding or sequentially by the same Judge.

Clause	Comment	Recommendation/proposed amendment
	cost burdens for all participants. We query whether offences can be heard in the Environment Court to remove this existing obstacle.	
708(5)	The reference to "enforcement order" is in error.	Amend "enforcement order" to read "abatement notice".
712(1)(b)	The cross reference should be to subsection (6).	Amend "subsection (5)" to "subsection (6)".
712(2)	The cross reference should be to clause 711(1).	Amend "subsection (1)" to read "section 711(1)".
714(1)	There is no definition of "place". Without such a definition, it is not clear, for example, whether noise from an apartment in a high-rise building could be considered "excessive noise", when it is affecting other occupants of that same building.	Include a definition of "place", which should apply to any separately occupied area within a property or building.
717(4)	This subclause appears both out of place and repetitive.	Delete, or amend so that it appropriately fits within clause 717.
718	There are several issues in respect of this clause, including: • There is no process provided for how a monetary benefit order application is made – for example, who is entitled to make such an application and in what context, and how the subject of the application is advised it has been made. • It is unclear which provisions/obligations need to be breached for there to be a "contravention" in respect of which such an application can be made. • If applications can only be made where an offence has been committed, they should go to the District Court (where offences are prosecuted), not the Environment Court as currently provided for (unless the power to determine these is transferred to the Environment Court as suggested in our comments on clause 695 above).	Amend the clause as required, to clarify these matters.

Clause	Comment	Recommendation/proposed amendment
	• The provisions relating to monetary benefit orders may unnecessarily duplicate those under clauses 723-730 (relating to enforceable undertakings), clauses 736-750 (relating to financial assurance) and the more detailed provisions for pecuniary benefit orders (clauses 776-780). These provisions may therefore unduly complicate compliance options and costs in the environmental field, and could undermine the existing procedures of an enforcement order or prosecution. • Subclauses (3) and (4) refer to prescribed guidelines, methods of protocols but no provision in the Bill appears to provide any person, such as a Minister, the power to prescribe a guideline, method or protocol. • The definition of monetary benefit is ambiguous as to whether it includes money a person has saved by not complying with the provision and this could be more clearly stated.	
720	It is implicit (but not explicit) that the definitions from clause 147 also apply to this clause.	Consider whether the clause can be made clearer by explicitly stating that the definitions from clause 147 also apply to this clause. We also query whether instead of a declaration, acting in breach of trade competition restrictions should be an offence.
721(3)(b)	This clause provides for court costs to be awarded against an party against whom a declaration is made. Such awards are discretionary, and are generally awarded where the court considers the party has wasted the court's time. It is not clear why such award of court costs should be reduced under clause 721(3)(b) if the party has also had to pay money to the other party in earlier proceedings in the same matter.	Consider whether the clause should be redrafted to remove clause 721(3)(b).

Clause	Comment	Recommendation/proposed amendment
728(4)	It is understood that this clause is intended to allow proceedings to be brought in respect of contravention when an enforceable undertaking has been given, if the enforceable undertaking is then contravened. However, the clause does not explicitly state this.	Amend clause 728(4) to read: "(4) This section does not prevent proceedings being brought for the contravention or alleged contravention of this Act or regulations to which the enforceable undertaking relates in the event the enforceable undertaking is contravened."
729(3)	This clause should only apply to the withdrawal of enforceable undertakings given under clause 724(1)(b), as those are the only ones which the NBE regulator is required to place on its internet site under clause 724(3).	Amend clause 729(3) to read: "(3) The NBE regulator must publish, on an Internet site maintained by or on behalf of the regulator, notice of the withdrawal or variation of an enforceable undertaking given under clause 724(1)(b)."
731(1)	It is unclear why adverse publicity orders have been confined to "non-compliances" with the Act in relation to a resource consent only. Other new enforcement tools (such as monetary benefit orders and enforceable undertakings) cover all contraventions under the Act (not just those relating to a resource consent) and use the term "contravention", not non-compliance.	Amend the clause as required, to clarify these matters.
731(2)(a)(iii)	This subclause provides for an adverse publicity order to be made where a penalty has been imposed by the District Court following a prosecution. However, clause 731(1) does not provide for the District Court to make this type of order as a part of the sentence it imposes.	Amend this clause and clause 765(6) (regarding penalties that can be imposed by the District Court) as required, to clarify these matters.
731(4)	Adverse publicity orders can either be made by the Environment Court or offered by a consent holder as part of an enforceable undertaking (clause 731(1)). Yet the right of appeal from such orders is to the Environment Court, which would have made the order in the first place (presuming consent holders will be unlikely to appeal orders that they have volunteered).	Amend the cause as required, to clarify these matters.

Clause	Comment	Recommendation/proposed amendment
732(1)(b)	It is unclear what "the regulations" are, which are being referenced here.	Amend by specifying which regulations are being referred to (i.e. "the regulations made under section [XXX]".
734 and 735	These provisions replicate (with only minor/appropriate amendments) clauses 234 and 235, regarding the imposition of bonds as resource consent conditions. It is unclear why this has been done and what the latter provisions add/provide that cannot already be achieved under clauses 234 and 235.	Delete and cross-reference to clauses 234 and 235, or such other amendments as required to clarify/address this apparent duplication.
744 and 745	The relationship between clauses 744 and 745 is currently unclear and potentially contradictory.	Amend clause 744 so that it applies unless clause 745 applies, and further outline what constitutes an "event of immediate or serious risk" such as to trigger clause 745.
748(2)(a)	It is unclear which "prescribed risk-assessment criteria" are being referenced here, and how such criteria would be developed.	Amend by specifying how any prescribed risk-assessment criteria are developed (or cross-referencing where the process for developing the criteria is outlined).
751(1) and (2)	These provisions repeat section 330(1) of the RMA, but with the structure of the wording changed. It is unclear why the structural change was required, as it has made the provisions less clear than section 330(1) of the RMA. This clause appears to contain a typo.	Revert to the structure of section 330(1) of the RMA. Amend "this adverse events" at the beginning of clause 751(2) to read "The adverse effects".
771	It is unclear what "the regulations" are, which are being referenced here. There is also a missing reference at clause 771(c).	Amend by specifying which regulations are being referred to (i.e. "the regulations made under section [XXX])". Correct missing reference.
780	This clause clarifies that a person cannot be both convicted of an offence and ordered to pay a pecuniary penalty under the Act, in respect of the same conduct. However, the Act does not	Consider providing criteria which set out the appropriate circumstances for using the pecuniary penalty regime, as opposed to pursuing prosecution.

Clause	Comment	Recommendation/proposed amendment
	otherwise provide any guidance or criteria as to when to pursue a prosecution as opposed to a pecuniary penalty. This decision has significant consequences, given the pecuniary penalty regime has a much longer limitation period and potentially higher penalties than for offences, is not subject to the solicitor-general's prosecution guidelines, and is only subject to the civil (not criminal) standard of proof.	
781(2)(c) and (3)(a)(ii)	These clauses potentially do not provide for the recovery of costs in respect of all the new compliance and enforcement mechanisms that have been introduced into Part 11.	Amend both clauses to refer to "statutory notice or order", so that they also include monetary benefit orders, enforceable undertakings and adverse publicity orders.
783(2)	This clause must be referring to the regulations made under clause 782.	Amend clause 783(2) to read: "(2) Monitoring required by this section must be undertaken in accordance with any regulations under section 782 of this Act."
783(4)	This clause must be referring to taking action in accordance with clause 784.	Amend clause 783(2) to read: "(4) The local authority must take appropriate action in accordance with section 784 (having regard to the methods available to it under this Act) where this is shown to be necessary."
783(6)	This clause does not specify the manner in which local authorities must make their environmental monitoring results "available or accessible to the public". This leaves local authorities with an inappropriately broad discretion in this regard.	Amend the clause as required, to specify the manner in which environmental monitoring results must be made available or accessible to the public.
783(7)	This clause does not specify how the regional planning committee is to "publish" the assessment of environmental monitoring results. It is also unclear why the regional planning	Amend the clause as required, to clarify these matters.

Clause	Comment	Recommendation/proposed amendment
	committee has this obligation rather than the local authority, given the latter has the relevant monitoring obligations.	
784	It is unclear what constitutes "appropriate action" that the local authorities or regional planning committees should take, in accordance with this clause. It is also unclear how regional planning committees would be able to take such action, given the scope of their functions under clause 642.	Amend the clause (and potentially clause 642) as required, to clarify these matters.
793(2)	The cross reference should be to subsection (1).	Amend "subsection (2)" to read "subsection (1)".
Part 12 – Miscellaneous provisions		
805(1)	It would be difficult to definitively determine that information is complete and that its use is practicable. There is always more information that can be gathered and what is practicable depends on the particular circumstances – including matters such as cost, effort or time to collect. It is also not clear why the meaning of this term differs from that set out in the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and Fisheries Act. Having consistency across the legislation would assist users in understanding what is required and also for enforcement purposes.	Amend to: "(1) A requirement under this Act to use the best information available at the time is a requirement to use, if practicable, the most complete and scientifically robust information that in the particular circumstances is available without unreasonable cost, effort or time."
805(3)(b)	Missing word	Amend to: "(b) take all practicable steps to reduce uncertainty (such as by improving…".
803(4)	This clause appears to contain a typo.	Amend to:

Clause	Comment	Recommendation/proposed amendment
		"(4) A person~~s~~ who is required….".
803(4)(b)	This clause appears to contain a typo. Additional wording may also better reflect what decision-makers are required to do under the Act.	Amend to: "(b) if the information is uncertain~~,~~ must interpret and apply the information in a way that best achieves the purpose of this Act."
806(6)(b)	The reference to fax number is out of date and could be removed.	Amend to: "(b) by sending it to the ~~fax number or~~ electronic address…".
808	There is a macron missing in the heading.	Amend to: "808 Notices and consents in relation to Māori land".
812	Some coastal marine areas have or will have customary marine title granted for them. For any areas unlawfully reclaimed where a customary marine title is in effect, a decision maker should not be able to grant a coastal permit unless the customary marine title holder agrees. While this may be covered by the reference in subclause (2) to the provisions of Part 5 applying, it may be clearer to make that explicit.	Amend to include a reference to a decision maker not being able to grant a coastal permit for unlawfully reclaimed areas where a customary marine title is in place unless the customary marine title holder consents.
813	Prior to the relevant entity taking enforcement action, there should there be a requirement to consult with the customary marine title holder (if any) for the area.	Consider including a requirement to consult with a customary marine title holder for an area before deciding whether to take enforcement action for an unlawful reclamation in that area.
814(1)	This clause refers to a paragraph in a Supreme Court decision. This is an unusual (but not unprecedented) approach and would require the reader to access a copy of the decision to fully understand its effect.	Amend to delete reference to the paragraph of the Supreme Court decision and instead include a list of the rights or interests that the Crown has recognised.

Clause	Comment	Recommendation/proposed amendment
	It would be clearer and more easily accessible to summarise the rights and interests noted in that paragraph in the clause itself.	
818	No mention is made in this clause of Mana Whakahono ā Rohe. If there is such an agreement in existence, then the Māori participation policy should be consistent with it.	Amend clause to include a requirement for the Māori participation policy to be consistent with any applicable Mana Whakahono ā Rohe.
819	There have been instances where the records maintained by the Crown and those by local authorities differ. Te Puni Kōkiri has previously advised that its lists are based on self-reporting by groups without any verification being undertaken. There should be a process for what is to occur if the lists differs or if a challenge is made to the inclusion of a group on the list.	Amend this clause to provide a process if local authority and Crown lists differ, if an entry is challenged, and to include a requirement to update lists to be consistent with any legislation or tangata whenua determinations made by the court.
819(6)	This subclause should apply to the Crown lists too since the local authority is required to include the Crown information into its lists.	Amend to include reference to subclause (2) as well.
819(7)(b)	This subclause refers to any "prescribed requirements" but does not specify where these requirements can be found.	Amend to include reference to the location of the requirements e.g., "<u>any</u> requirements prescribed <u>by regulation</u>".
Heading above clause 821	This clause appears to contain a typo.	Amend to: "How administrative charges <u>are</u> to be set".
821(2)	This clause appears to contain a typo.	Delete second colon: "…under this Act:~~:~~".

Clause	Comment	Recommendation/proposed amendment
836(1) and 837(1)	Reference is made to the "responsible departments" however no clarification is given as to which departments these are.	Clarify who the responsible departments are.
839	This clause should include a timeframe for the production of such a report (for example within a set period of the end of the financial year).	Consider imposing a timeframe requirement.
858(1)(d)	This clause enables regulations to be made about the practice and procedures of the Environment Court. The Environment Court should be consulted prior to any such regulations being made. Section 228 of the District Court Act 2016 and s 148 of the Senior Courts Act 2016 could be used as a template for this.	Include a requirement for consultation with the Environment Court prior to any regulations being made.
858(1)(e), (i) and (j)	This clause appears to allow regulations to overrule the provisions of the Act. The Legislation Design Advisory Committee notes that it is possible for secondary legislation to amend or override primary legislation, but that this should be as limited as possible to achieve the objective and include safeguards to reflect the significance of this power. The clauses in the Bill are limited to certain objectives, but it may be appropriate to include a requirement to get parliamentary approval for the transitional regulations in clause 858(1)(i) and (j) as a safeguard, given (as noted in our comments on schedule 1) these have the potential to affect pending applications or proceedings.	See proposed change in lefthand column.
860	Clause 860 will not come into force until an Order in Council is made under clause 2. Given the prolonged rollout of the new system and the sequencing of the transition, query whether	Clarify that clause 860 will be the last part of the Bill to come into force.

Clause	Comment	Recommendation/proposed amendment
	either clause 860 or clause 2 should be clear that this will be the last part of the Bill to come into force.	
Schedule 1 – Transitional, savings, and related provisions		
General	The transitional provisions are lacking and fail to provide a clear path through the transition to the new system. For example, there are no basic provisions for the transition of existing Council (rather than Environment Court) processes (including consent applications), or High Court (and above) proceedings, either on appeal from the Environment Court or on judicial review. The transitional arrangements for fast-track applications needs to be urgently addressed, as the Covid-19 Recovery (Fast Track Consenting) Act 2020 is due to self-repeal on 8 July 2023. The Ministry for the Environment's *Our Future Resource Management System: Overview* publication that was released with the Bill states that: - During the transition period and before NBE plans are updated in response to allocation statements, shorter-duration consents for freshwater-related activities will be issued. This is to create a greater opportunity for NBE plans to effect change (p 35). - Shorter-term consents will be issued under the RMA for freshwater takes and discharges during transition to the Bill - these consents must expire within three years of the relevant NBE plan being notified (p 39). These provisions are not included in the Bill.	Consider introducing standard transitional provisions from RMA Amendment Acts to address this current gap. Ensure clear transitional provisions. Provide transitional provisions to address gap between repeal of Covid-19 Recovery (Fast Track Consenting) Act 2020 and commencement of provisions enabling a similar process under the Bill.

Clause	Comment	Recommendation/proposed amendment
	The Overview document also states that many detailed commencement, savings and transitional provisions are not included in the Bill (p 58). Given the significant implications this change will have for consent holders/resource users with significant investment that relies on freshwater, it is surprising that only a statement of policy is available, rather than the transitional provisions themselves. For reasons of accessibility and clarity the transitional provisions should be available in the Bill.	
1(1)	The definition of "RMA document" should also include proposed plans, as well as current plan variations and plan changes.	Consider amending the definition to also include proposed plans, as well as current plan variations and plan changes (or at least make clear how those documents are dealt with under the transitional provisions).
1(1)	The reference to "sub-part 2" in the definition of "transitional period" is unclear. If this is a reference to sub-part 2 of Schedule 1, this comes into force (in accordance with clause 2 of the Bill) on the day after Royal assent, as does the rest of Schedule 1.	Amend "the commencement of sub-part 2"to read "the commencement of this Schedule, in accordance with section 2 of this Act", if that is what is intended.
2(1)-(4)	The word "applies" as it is used in these provisions is unclear. It appears (from the wording of clause 2(5) of Schedule 1) that this is intended to mean "has legal effect". If so, that is the phrase that should be used, not "applies".	Amend the clauses as required, to clarify this matter.
2(5)	There is a concern about having new planning instruments becoming operative, prior to any appeals being heard and determined. This raises real natural justice/access to justice issues – an appeal can effectively be negated by other parties	Consider retaining the existing position under the RMA, where planning instruments have legal effect as proposed plans once decisions on submissions are released, with the provisions then becoming operative once there are no appeals, or any appeals are resolved.

Clause	Comment	Recommendation/proposed amendment
	having been able to act in reliance on "operative" provisions before that appeal is heard.	
7	This clause should refer to the relevant sections of the RMA still being "in force", rather than "applying". The transitional provisions should also provide for relevant parts of the RMA to be repealed, as corresponding parts of the Bill come into force. Otherwise this provision is presumably not required, given that (as currently drafted), the entire RMA is only repealed once clause 860 of the Bill comes into force.	Amend the clause as required, to clarify these matters.
8(2)	The word "pending" as it is used in this provision is unclear. There is no such thing as a "pending" Environment Court proceeding. This wording could be interpreted to mean a proceeding that is being contemplated, but not yet filed. The transitional provisions should not provide for (or apply in) such situations – only to where a proceeding has actually been filed and is in progress. This clause should also deal with the effect the repeal of the RMA will have on appeals that have been filed but not yet determined (though this would also require reframing the clause away from 'continuation of the Environment Court – an alternative would be addressing this in a separate clause and/or subpart).	Amend the clause as required to clarify these matters by replacing 'pending' with 'commenced but not yet determined' or similar wording. Clarify the effect on appeals that have been commenced but not yet determined.
8(2)	It is inappropriate to have existing resource consent applications (for example) made and completed under the RMA (following the Bill coming into force) then enforced under the existing RMA provisions, as if the Bill did not exist. Transitional provisions only need to apply to the completion of existing processes, not the	Amend the clause as required, to clarify these matters.

Clause	Comment	Recommendation/proposed amendment
	subsequent enforcement or amendment (for example) of the outcomes from those processes.	
11	This clause should more appropriately sit within clause 2 of the Bill.	Delete and include in clause 2 of the Bill.
12	The definition of "authorisation" from clause 429 of the Bill also needs to apply within this Schedule, for this provision to make sense.	Amend the clause and associated definitions as required, to clarify this matter.
Schedule 2 – Transitional, savings, and related provisions for upholding Treaty settlements, NHNP Act, and other arrangements		
3(3)(a)	A "person" is already defined in clause 2 of the Bill such that it includes a regional planning committee. The phrase "person or regional planning committee" in this clause is redundant.	Amend "person or regional planning committee" to read "person (including a regional planning committee").
3(4), 4 and 5	Clauses 3(4), 4, and 5 appear to be inconsistent: - Clause 3(4)(a) provides that Treaty settlements and the NHNP Act are addressed in clause 4, and other arrangements are addressed in clause 5; - The heading and clause 4(1) state that this clause addresses Treaty settlements, the NHNP Act, and other arrangements; - Clause 5 also addresses other arrangements.	Amend the clause as required, to clarify this matter.
Schedule 3 – Principles for biodiversity offsetting		
Introduction	The meaning of "should" and how will that be applied is unclear. If principles 13-14 are not applied, it is not clear whether it still qualifies as a "biodiversity offset".	Change "should" to "may" or provide further details as to when Principles 13-14 are required in order for an action to qualify as a biodiversity offset.

Clause	Comment	Recommendation/proposed amendment
2(b)	It is not clear what is intended by a "socially acceptable option" and who is to judge the acceptability of any proposed option.	Delete the reference to "socially acceptable" or provide further details as to what that might mean.
5	The requirement for "like for like" could result in perverse outcomes. For example if an exotic wetland of poor quality is being affected, a requirement for a "like for like" outcome could require any offset to also be an exotic wetland (albeit of better quality). It would appear that a poor-quality exotic wetland could not be offset by a native wetland because that would not be "like for like".	Amend the principle to allow for "like for like" or a superior outcome (e.g., as is enabled by the trading up principle).
Schedule 4 – Principles for biodiversity redress		
Intro	The opening phrase incorrectly refers to "cultural heritage offsetting" instead of "biodiversity redress". This clause appears to contain a typo or an unnecessary word.	Amend introduction as follows: "The following sets out a framework of principles for <u>biodiversity redress</u> ~~the use of cultural heritage offsetting~~. These principles are a standard for ~~of~~ redress."
2(b)	It is not clear what is intended by a "socially acceptable option" and who is to judge the acceptability of any proposed option.	Delete the reference to "socially acceptable" or provide further details as to what that might mean.
4	The reference in this clause to "compensation" is presumably intended to be a reference to "redress".	Correct this reference.
Schedule 5 – Principles for offsetting and redress		
7 and 18	This clause could be expanded to secure the cultural heritage from third party actions and natural hazards -for example where a cultural heritage site may be vulnerable to climate change impacts.	Consider expanding this clause to cover actions of third parties and natural hazards.

Clause	Comment	Recommendation/proposed amendment
10 and 22	At present this just refers to stakeholders. It may be useful if further guidance is given on relevant stakeholders (for example, whether this includes affected iwi and hapū, or Heritage New Zealand).	Consider providing more guidance on which stakeholders should have an opportunity to input.
Schedule 6 – Preparation, change, and review of national planning framework		
2	It is not clear what "collaborate with the Ministry" is intended to mean, and whether/how this is different to engaging with or consulting.	Consider clarifying and/or rewording.
19(2)	Note our comments in relation to clause 108(b)-(d).	See recommendation at clause 108(b)-(d).
19, 21	Both clauses 19 and 21 include requirements to ensure that recommendations and decisions on a NPF proposal "are not inconsistent with an emissions reduction plan or national adaption plan identified as relevant to this Act or the Spatial Planning Act 2022." We consider the qualifier "identified as relevant to this Act or the Spatial Planning Act 2022" in clauses 19 and 21 is superfluous and it will be evident what provisions are relevant to a planning context. It is important there is a holistic consideration of the ERP and NAP, and the Board and Minister are not unduly constrained.	Remove phrase ""identified as relevant to this Act or the Spatial Planning Act 2022" in clauses 19 and 21.
21	The NPF places significant decision-making power in the hands of the Minister to determine how conflicts between different outcomes including climate change will be managed (Clause 57(1)). As well as the evaluation report and Board of Inquiry report, the Minister may have regard to "any other matter the	Amend clause 21(4) to require that a notification and streamlined process under clause 23 be carried out before the responsible Minister make any significant changes to the first draft NPF after the Board of Inquiry report.

Clause	Comment	Recommendation/proposed amendment
	Minister considers relevant" (Schedule 6 clause 21(2)(iii)). Clause 21(4) then provides that the Minister may: (a) make any changes, or no changes, to the proposal; and (b) withdraw all or part of the proposal. The above provision would allow significant changes to be made even after public submissions and the Board of Inquiry Report (an example is the exemptions for vegetable growing areas from the regime of pollution limits in the NPS Freshwater Management. The exemptions were not part of the regime publicised and reported on by the Board). Clause 23(a)(i) of Schedule 6 provides that the Minister may use a streamlined process for any proposal that is not a "significant departure from any existing direction in the framework". The streamlined process should also be applied where the Minister seeks to make significant changes to the first draft NPF after the Board of Inquiry report.	
Schedule 7 – Preparation, change, and review of natural and built environment plans		
2	The required timeframes would be more understandable if they started with the first step – the decision under the Spatial Planning Act – and then continued chronologically.	Reframe (a) and (b) so steps follow a chronological order and are clear they commence only after the Regional Spatial Strategy has been completed for the region.
11(4)	This clause appears to contain a typo.	Amend clause 11(4) as follows: "… if the committee and the Māori ~~Nāori~~ group".
14(2)	Reference to "draft zoning" is confusing in a regional context, as regional policy statements do not currently impose 'zones'.	Amend clause 14(2)(a)(ii) to refer to "the zones to be applied in the region".

Clause	Comment	Recommendation/proposed amendment
15(3)	Consider adding hapū with an engagement agreement to this list.	See proposed change in lefthand column.
20 and 21	The requirement to provide evidence at the time of submission requires clarification, particularly given the timeframes for submission. It is sensible to allow persons making enduring submissions to provide evidence at the same time as primary submitters. This clause could be expressed more directively.	Clarify drafting. Amend clause 21 as follows: "Persons making an enduring submission must provide <u>any</u> evidence <u>they are going to rely on</u> either...".
24(1)(a)	Cross reference to subclause (2) appears to be incorrect and may be intended to refer to clause 25 of the schedule.	Correct cross reference.
31(2)(a)(ii)	This clause needs to provide for the situation where a Local Authority does not have an electronic address for a person.	Qualify obligation to provide for electronic notice "where possible". Consider written notice where an affected party has no electronic address (or if they do, the Local Authority has no record of it).
31(3)	Clause 31(3) provides that there is no obligation to notify directly affected ratepayers of a proposed plan. This seems to conflict with both (2)(a)(ii) and (4), which do require direct notification of affected persons/ratepayers.	Resolve contradictions between these 3 subclauses.
34(3)(c)	Requiring a submitter to provide all the evidence they intend to provide within 40 working days of notification of the plan negates the purpose of allowing public submissions. The size and range of issues these plans will address would make it impossible in practice for a submitter to identify the issues relevant to them, draft a submission on those issues and then obtain expert evidence to support that submission at the time of filing. The Bill as currently proposed is likely to significantly increase the cost of participation by the public.	Allow a sufficient period after lodgement of submission for submitters to prepare and provide whatever evidence they wish to produce in support of their submission. Allow a further round of evidence to be produced following receipt of the Council's response – as many issues can be addressed following receipt of submission points without putting parties to the cost of evidence.

Clause	Comment	Recommendation/proposed amendment
35	Requiring that public notice of the time for filing of secondary submissions be given within 10 working days of primary submissions closing means in practice that a summary of submissions will never be prepared as there will not be time to do so. In turn, this means secondary submitters are unlikely to be able to identify submissions of interest to them within the 10 working days available, because there are likely to be hundreds (thousands in some regions) of unindexed submissions to review. The Bill as currently proposed is unworkable in practice.	Provide sufficient time between close of primary submissions and notification of secondary submissions for a summary of submissions to be prepared.
38(2)(d)	The implication of this sub-clause is that the only legitimate submissions are those supported by independent expert evidence. If that is the intention, it would exclude the majority of the community from making submissions because they either cannot afford to employ independent experts or cannot identify and brief an independent expert in the time provided (refer previous comments regarding timeframes). The focus on independence has significant implications for organisations that utilise in-house expertise to participate in plan processes. The Department of Conservation, for instance, frequently appears in plan processes through planning and technical experts who are departmental employees. Similarly, individuals with technical expertise frequently make submissions utilising their own expertise. Typically, any perceived lack of independence is treated as going to the weight of the evidence, rather than operating as an absolute bar to participation, and we consider this to be the appropriate approach.	Clarify what role (if any) lay submitters not supported by independent experts have in the plan process. Delete the requirement for independence on the part of expert witnesses.

Clause	Comment	Recommendation/proposed amendment
39	There is no requirement for the RPC to consider the submissions and prepare an evaluative report for the IHP. This is a fundamental step in the process that must be retained.	Reinstate an equivalent to section 42A of the RMA to require the RPC to prepare a report evaluating submissions and recommending any changes as a consequence.
41(1)(b)	This subclause is circular. The words "which must be" point the reader to the date on which the plan becomes operative, and then says that that date must be 5 working days before the plan becomes operative.	Amend to read: "publicly notify the date on which the proposed plan or proposed plan change becomes operative ~~which must be~~ at least 5 working days beforehand ~~before the date on which it becomes operative~~".
41(2)	The term "disposed of" lacks clarity.	Amend clause 41(2) as follows: "(2) The regional planning committee may approve part of a proposed plan or proposed plan change, if all submissions and appeals relating to that part of the plan or plan change have been withdrawn or finally determined ~~disposed of~~."
46(1)(d)	A proportionate plan process will be more limited than a full plan review but may still be very substantial in terms of the number of persons affected and the range of issues it addresses. While the provision of a 20-working day submission period is stated to be a minimum, it is submitted that RPCs should be given greater direction that the submission period provided should be proportionate to the size and scale of the plan change.	Amend clause 46(1)(d)(i) as follows: "Should be sufficient taking account of the nature of the plan change to allow affected parties to properly review it and prepare submissions, and must be at least 20 working days after limited notification is given under this clause; or…".
50(3)	See comments on clause 46(1)(d) above. An urgent plan process will be more limited than a full plan review but may still be very substantial in terms of the number of persons affected and the range of issues it addresses.	Amend clause 50(3) as follows: "The closing date for primary submissions under the urgent process must be sufficient taking account of the nature of the plan change to allow affected parties to properly review it and prepare submissions, and must be at least 20 working days after the date on which the plan change is notified."

Clause	Comment	Recommendation/proposed amendment
50(4)	The exclusion of provision for secondary submissions obviously reflects the urgent nature of the process. There is nevertheless a contrary public interest in providing affected parties a fair opportunity to be heard on proposals (in primary submissions) that have the potential to adversely affect them.	Consider whether the need for speed justifies the infringement of the rules of natural justice.
55(2)(a)	Iwi and hapū are, by definition, Māori.	Insert the word "other" before "Māori".
56(2)(a)	Hearings are stated to be discretionary. This appears to be inconsistent with Clause 57(1).	If there are circumstances where it is not necessary to hold a hearing, specify when that might occur.
56(6)(c)	The word "appoint" is inappropriate in this context and should instead be "permit". More substantively, the implication is that unless permitted by the chair, a submitter must appear on their own and without any support. This would preclude, for instance, representation by counsel. It is not clear in what circumstances it would be inappropriate for a submitter to have one or more 'supporters' present to assist them, and this clause appears to be unnecessary.	Delete.
57(1)	The generalised reference to the requirements of the plan change process is unsatisfactory.	If there are circumstances where it is not necessary to hold a hearing, specify when that might occur.
58	A requirement for commissioners to make their recommendations within 40 working days of the completion of a hearing or the closing date for submissions is not realistic given the size and scale of plans, the number of submissions they are likely to need to consider, and the requirements in clause 59 as to what their reports must include. A more realistic timeframe	Provide a realistic timeframe for completion of Commissioner reports, with provision for extensions where required.

Clause	Comment	Recommendation/proposed amendment
	would be expressed in months, not working days, and would provide for extensions in appropriate cases.	
61(3)(a)	It is fundamental to the rules of natural justice that decision-makers consider the evidence of the parties. If an RPC is not required to consider the evidence or submissions the commissioners heard, that raises questions as to whether they have a legitimate basis on which to reject a recommendation. This clause appears to contain a typo.	The RPC should be required to consider all of the material before the commissioners if it proposes to reject a recommendation. Correct clause (3)(a): "(a) … or consider submissions <u>or</u> ~~of~~ other evidence…".
64	Subclauses (2) and (4) are contradictory. Subclause (2) is appropriate, as the proposed plan or proposed plan change should only be varied once the variation reaches the same procedural stage and becomes merged. Until then, it should remain a separate instrument.	Delete (4).
66(6)	This clause appears to contain a typo.	Amend clause 66(6) to read: "(6) A regional planning committee may delegate its functions under this clause to 1 or more <u>commissioners</u> ~~commissions~~."
Subpart 3	Sub-part 3 sets out the general hearing provisions for a range of matters – including resource consent applications, reviews, changes of conditions, designations etc and appears misplaced.	Suggest relocating, either to a stand-alone Schedule or to the body of the Bill.
87	The specified time limits appear fixed. It is submitted the authority should have the power to allow variations in appropriate cases, and that the specified time limits should be the default in the absence of other directions. In addition, specific provision should be made for requiring pre-circulation of legal submissions, at the Chair's discretion (reflecting current practice in that regard).	Provide discretion to direct alternative time limits. Add provision for the Chair to direct pre-circulation of legal submissions.

Clause	Comment	Recommendation/proposed amendment
89	Raises same issue as clause 38(2)(d) above.	Clarify what role (if any) lay submitters not supported by independent experts have in the plan process. Delete or qualify the requirement for independence on the part of expert witnesses.
93(2)(g)	It is not clear why freshwater is the only mandatory technical skill for membership of an IHP, given a plan will likely raise a wide range of technical issues.	Enlarge the scope for appointment of members with appropriate technical expertise.
94(3)	The word "Māori" is superfluous after "hapū" and is not used elsewhere in the Bill.	Delete the word "Māori".
94(7)	This clause appears to contain a typo.	Amend clause 94(7) to read: "(7) Once a person is nominated for the regional pool, the person remains in the regional candidate pool until removed by the nominator or ~~advised~~ the person advises that they are no longer available."
96(1)(a) and (b)	Should be in the present tense.	Amend clause 96(1)(a)-(b) to read: "(a) whether the candidate knows ~~knew~~ they have ~~had~~ been nominated as an IHP member: (b) if the candidate knows ~~knew~~ they have ~~had~~ been nominated as an IHP member, how the opportunity to be nominated was made known to the candidate: …"
103	The IHP term needs to extend to include situations where, for example, the IHP is reconstituted to consider matters referred back to it following appeals to the High Court. That provision also needs to anticipate that, as occurred in the AUP process, IHP	Amend as per left hand column.

Clause	Comment	Recommendation/proposed amendment
	members might be unavailable to sit at a reconvened hearing (providing that the balance of the IHP may hear the matter).	
110(b) and (c)	As above, it is fundamental to the rules of natural justice that decision-makers consider the evidence of the parties. If the IHP is to sit in sub-panels, which should be permitted, the provisions governing the conduct of the hearing should also direct that all of the submitters on a particular topic be heard by the appointed sub-panel.	Provide that if the IHP is to sit in sub-panels, require that such sub-panels hear and make recommendations on all of the submissions related to the subject of those submissions.
110(e)	This clause appears to contain a typo.	Amend clause 110(e) to read: "(e) to appoint a friend <u>of</u> ~~or~~ submitter for the purpose of providing support to the submitter in relation to a hearing: …"
113(1) and (2)	Duplicates clause 110(b) and (c).	Delete.
113(5)	The clause should include some discretion to accept late submissions where there is good reason (e.g., technological issues) and acceptance would not prejudice either the hearing process or other parties.	Consider providing some discretion to accept late submissions.
113(6)	It is not clear what is meant by a "full record of the hearing sessions and any other proceedings". For example, whether this requires a written transcript, a video recording, or written notes by the IHP members.	Clarify what a "full record" requires.
117(2)(d)	Raises same issue as clause 38(2)(d) above.	Clarify what role (if any) lay submitters not supported by independent experts have in the process.

Clause	Comment	Recommendation/proposed amendment
		Delete or qualify the requirement for independence on the part of expert witnesses.
122	Subclauses (1) and (2) are contradictory. Subclause (1) is appropriate, as the proposed plan or proposed plan change should only be varied once the variation reaches the same procedural stage and becomes merged. Until then, it should remain a separate instrument.	Delete (2).
124(1)	A requirement for an IHP to make its recommendations within 40 working days of the completion of a hearing creates an impossible obligation for an IHP given the size and scale of plans, the number of submissions they are likely to need to consider, and the requirements in clauses 125 and 126 as to what their reports must include. A more realistic timeframe would be expressed in months, not working days, and would provide for extensions in appropriate cases.	Provide a realistic timeframe for completion of IHP reports, with provision for extensions where required.
126(2)(a) and (c)	Note our comments in relation to clause 108(b)-(d).	See recommendation at clause 108(b)-(d).
127(3)(a)	It is fundamental to the rules of natural justice that decision-makers consider the evidence of the parties. If an RPC is not required to consider the evidence or submissions the commissioners heard, that raises questions as to whether they have a legitimate basis on which to reject a recommendation.	The RPC should be required to consider all of the material before the IHP if it proposes to reject a recommendation.
131(1)	Incorrect cross reference.	Correct reference to clause 127(2).
136(4)	This sub-clause would more logically follow sub-clause (5).	Reverse the order of (4) and (5).

Clause	Comment	Recommendation/proposed amendment
136(5)	This sub-clause would be more understandable if (a) were explicitly qualified by (b).	Amend to add on the end of (a)"…; but".
Schedule 8 – Provisions relating to membership, support, and operations of regional planning committees		
8(2)(b)	There is no definition of "publicly available" or any other guidance given as to how the required information is to be made publicly available. Note: this point also applies to every other use of the phrase "publicly available" within this Schedule.	Amend the clause as required, to clarify this matter.
17(2) and (3)	It is not clear what "relevant central government strategic priorities" are, nor how are these set. They are not otherwise referred to or provided for within the Bill or the Spatial Planning Bill.	Amend the clauses as required, to clarify this matter.
29(2)	It is not clear what "significant interest" means and how this is determined.	Include definition for term.
31(2)	Clause 31(2) could be clarified by specifying that the power for a regional planning committee to delegate functions, duties and other powers is subject to the limitation on delegation set out in clause 31(1).	Amend clause 31(2) to read: "(2) Subject to clause 31(1), a regional planning committee may delegate...".
41(3)(b)	Statutory deadlines C and D should not need altering in the event that statutory deadline A is not met, as those deadlines only apply in the case where statutory deadline A is not met. However, statutory deadline B would need altering in the event that statutory deadline A is not met.	Consider whether the clause should be amended by changing "statutory deadlines C and D" to read "statutory deadline B".

Clause	Comment	Recommendation/proposed amendment
Schedule 9 – Water quality classes		
	This schedule replicates RMA Schedule 3, which ceased to be applicable to freshwater on 19 April 2017. Clause 124 of the Bill says it applies for the purpose of managing the quality of coastal waters, but this is questionable given the contents of Schedule 9. We query its ongoing relevance in the new system.	Consider deleting.
Schedule 10 – Information required in application for resource consent		
1(c)(i)	Clause 1(c)(i) refers to "applicable outcomes" whereas other parts of the Bill refer to "relevant outcomes".	Amend "applicable" to "relevant" for consistency.
2(1)(e)(ii)	This clause appears to contain a typo and a missing word.	Amend Clause 2(1)(e)(ii) to read: "(ii) … or there is a gap in its provisions, in relation to the activity:".
3	Given that an application must outline how the permitted aspects meet the permitted standards, it would be beneficial for the legislation to outline whether permitted aspects of a proposal form part of the proposal protected by the resource consent, or whether a certificate of compliance must otherwise be sought as part of a resource consent application to enable all parts of a proposal to be "consented".	Clarify drafting, potentially in Part 5, as it relates to the permitted components of a proposal.
Schedule 11 – Provisions about esplanade strips and access strips		
19(3)	Incorrect cross reference.	Correct reference to clause 274.
Schedule 12 – Incorporation of documents by reference in plans		

Clause	Comment	Recommendation/proposed amendment
1	If it is envisaged that maps be incorporated by reference in a plan or proposed plan, this should be specified.	Amend clause 1(4) as follows: (4) Any material or documents that may be incorporated by reference under this schedule may be in electronic form, and may include any electronic tools, models, maps, and databases that are appropriate for inclusion in a plan or proposed plan.
Schedule 13 – Environment Court		
General	It would be more appropriate for these constitutional provisions to be a part of the Bill itself rather than in a schedule – akin to Part 11 of the RMA. We are unaware of the rationale for relegating these important constitutional provisions to a schedule.	Consider relocating contents of the Schedule to the body of the Bill.
15(k)	The power to make declarations under clause 15 is limited to declarations about inconsistency between the NPF and an NBE plan. This is inconsistent with clause 696 – both in that the scope of clause 15(k) is not replicated in clause 696, nor is there any power given in clause 15 for a Judge sitting alone to make any of the declarations envisaged in clause 696.	Clarify and amend for consistency.
36 and 37	Clause 36 replicates section 259 of the RMA and clause 37 replicates section 263. We query whether it would be more appropriate to enable the short-term appointment of a lay member or additional member of the Court in a similar manner to ss 77-78 Commerce Act 1986, s 3 Land Valuation Proceedings Act 1948, and s 126 Human Rights Act 1993.	Reconsider role of special advisor as a member of the Court for the proceeding appointed to assist with.
Part 3	The role of current or former Environment Court judges in the preparation of the NPF under Schedule 6 and NBE Plans under	Clarify as per lefthand column.

Clause	Comment	Recommendation/proposed amendment
	Schedule 7 could usefully be cross-referenced and/or clarified in this sub-part.	
58(2)	With a number of Court conferences and hearings now held remotely, the requirement to be present "in person" is no longer necessary.	Delete "in person".
66	Clause 66 replicates s 276 of the RMA. This section has mainly been interpreted as meaning that the law of evidence does not apply in the Environment Court. This has caused difficulty and meant that evidence put before the Court often failed to be sufficiently rigorous. The position is reversed in the most recent Environment Court Practice Note 2023, which provides that the Evidence Act does apply to proceedings in the Environment Court, and recasts s 276 as a provision enabling the Court to relax the rules in appropriate cases rather than acting as an exemption for parties, counsel or witnesses. The Evidence Act should apply to proceedings in the Environment Court, with provision allowed for the Court to relax the rules in appropriate circumstances.	Redraft clause 66 to provide for the Evidence Act to apply to proceedings in the Environment Court.
Schedule 15 – Amendments to other legislation		
Amendments to Maori Commercial Aquaculture Claims Settlement Act 2004		
Amendment to s 4	Incorrect cross reference in definition of 'authorisation'.	Amend to read: "In section 4, definition of **authorisation**, replace "section 165C of the Resource Management Act 1991" with "**section 429** of the Natural and Built Environment Act **2022**".

Clause	Comment	Recommendation/proposed amendment
Amendment to s 4	As noted in relation to clause 7, the definition of 'space' refers to clause 7 of Natural and Build Environment Act 2022; however, clause 7 does not include such a definition.	Add in a definition of 'space'.
Amendment to s 50(6)	Incorrect cross reference.	Amend to read: "In section 50(6), replace "sections 135 and 165M of the Resource Management Act 1991" with "sections 286 and 440 ~~445~~ of the Natural and Built Environment Act 2022".
Amendments to Fisheries Act 1996		
Amendment to s 6	Incorrect cross reference.	Amend second sentence to read: "In section 6(2)(a), replace "section 30(1)(d) of the Resource Management Act 1991" with "section 644 of the Natural and Built Environment Act 2022".
New s 186JA	Under new section 186JA the Chief Executive may seek information or consult with certain persons for purposes of making aquaculture zone decision. This mirrors the provision found in s186D in respect of seeking information or consulting with certain persons for the purposes of making aquaculture decisions in respect of a coastal permit. However, this is not in alignment with provisions such as section 12 of the Fisheries Act 1996 that require consultation wherever access to fisheries or where fishing rights are or may potentially be affected.	Amend proposed section to read: "(1) After receiving a request under section 477 of the Natural and Built Environment Act 2022 for an aquaculture zone decision, the chief executive must ~~may~~, for the purpose of making an aquaculture zone decision, seek information from those persons or organisations considered by the Minister to be representative of the classes of persons who have an interest in the relevant determination, including: (a) the person who requested the aquaculture zone decision…. (3) Before making an aquaculture zone decision under section 186JB or a decision to extend it under section 186JI, the chief executive must ~~may~~ consult any of the persons or organisations specified in subsection (1)."

Clause	Comment	Recommendation/proposed amendment
New s 186JD	This new provision relates to the provision of fisheries information relating to stock and is applicable to this subpart 1A as well as 1 and 4. We query whether this is the most appropriate place for this provision to be located given its general application. In addition, at section 186G the same provision is repeated in relation to parts 1 and 4. This should be tidied up as the suggested new clause 186JD is an unnecessary duplication.	Merge proposed new s 186JD with existing s 186G, and move section to beginning of part 9A of Fisheries Act (following the interpretation section): "**186CA Provision of fisheries information relating to stock** For the purposes of subparts 1, 1A and 4, the chief executive may, by notice in the *Gazette*, specify the manner and form in which fisheries information relating to stocks is to be made publicly available by the Ministry of Fisheries."
Part 3: Amendments to RMA		
	As Schedule 15 does not come into force until a date set by a future Order-in-Council, it is unclear when the amendments to the RMA will be made and how the two systems are to operate through the transition. As suggested above, we consider it would be appropriate to provide very clear guidance on the transition sequence.	Clarify drafting.

Spatial Planning Bill

Clause	Comment	Recommendation/proposed amendment
Part 1 – Preliminary provisions		
8	Clause 8 includes a definition of 'Minister' as the Minister who has responsibility for the administration of the Bill. See our comments in relation to this definition in clause 7 of the Natural and Built Environments Bill.	Delete definition of 'Minister' and include a definition for 'Minister for the Environment'. Amend all subsequent references to 'the Minister' to specify which individual is being referred to.
Part 2 – Regional spatial strategies		
15(2)	This requires the RSS to '*support* a *co-ordinated'* approach to infrastructure funding and investment. The proposed amendment to the Local Government Act 2002 set out in schedule 5 requires the local authorities' long-term plans to set out steps to implement priority actions. There is no other indication as to the intended outcome for the level of co-ordination or consequence where there is a lack of or inability to co-ordinate with central government and infrastructure providers.	Clarify drafting.
17(i) and (j)	There is no definition of, or identification of who is responsible for identifying, areas that are '*vulnerable*' to climate change. '*Vulnerable*' is not defined. The Local Government Official Information and Meetings Amendment Bill 2022 proposes clearer information be provided in LIMs by territorial and regional authorities but also does not	Clarify drafting.

Clause	Comment	Recommendation/proposed amendment
	place an obligation on them to seek that information in the first place. Presently it is a matter of national importance under s6 of the RMA. It is not currently clear how this information will become known to territorial and regional authorities, and subsequently, the committee. Information regarding climate change vulnerability is likely to come from a range of sources, including the key documents produced under the Climate Change Response Act 2002 such as the National Adaptation Plan, the planning documents produced under the Natural and Built Environment Bill, and the resource consents and other day to day operations of local and regional authorities.	
18	"Regional Significance" is not defined. Similar concerns are raised as above in respect of s17(i) and (j).	Clarify drafting.
24	Areas vulnerable to climate change are identified as a key matter for a regional spatial strategy but it appears there is no direct requirement for consideration of the emissions reduction plan or the national adaptation plan at the RSS stage. For example, at p70 of the NAP it specifically refers to the SPA being used to identify hazard zones and guide development to the most appropriate locations. It also refers to these documents "identifying opportunities to increase adaptive capacity – for example, catchment scale measures to reduce the impact of flooding on the built environment. These reforms will also guide private investment in development to appropriate locations."	Add the following as an additional subclause to clause 24(2): "(aa) the emissions reduction plan and national adaptation plan;" Clarify intended meaning of 'any planning document' in clause 24(2)(c).

Clause	Comment	Recommendation/proposed amendment
	It is unclear from the current drafting how the RSS will interact with, and implement the requirements of, the ERP and NAP. We recommend that the ERP and NAP be included as factors that the regional planning committee must have particular regard to under clause 24(2). In relation to clause 24(2)(c), it is not clear what is meant by "any planning document recognised by an iwi authority or 1 or more groups that represent hapū". If it is intended that this would be a specific document prepared in a specific fashion, then this should be clarified along with a reference to the particular section(s) that apply.	
24(3)(a)	The phrase "any strategies, plans, or other instruments made under other legislation" is very broad.	Suggest identifying more clearly the nature of these documents or legislation this phrase is intended to include.
25(3)(a)	Note our comments in relation to the phrase "scenic view" at clause 108(b)-(d) of the Natural and Built Environment Bill.	See recommendation at clause 108(b)-(d).
29(2) and (4)	It is not clear how these two subclauses are intended to interact, and whether the Committee undertakes this assessment prior to any submission being received. The order is relevant given the power given to the Committee to have no regard and make no response to a submission in respect of these matters and the limitations on review.	Clarify this aspect.
33 (1)(b)	Recommended clause 33(1)(b) refer to clause 39 for clarity.	Amend clause 33(1)(b) to read: "(b) any relevant engagement agreement <u>initiated under section 39</u>…".

Clause	Comment	Recommendation/proposed amendment
49	Guidance as to the meaning of "*significant change*" may be of assistance to ensure national consistency.	Clarify this aspect.
Part 3 – General powers, duties and other matters		
62(2)(b)	This clause allows the Minister for the Environment to issue directions to a regional planning committee or local authority where the body has failed to act despite 'reasonable steps' that have been taken to assist. It is unclear what reasonable steps this is referring to. If this was intended to be a reference to the assistance provided by grants and loans under clause 63, or assistance provided by the bodies listed in clause 64, this should be specified. If not, greater clarity should be provided around the nature of assistance that is envisaged.	Clarify this aspect.
65	This clause mirrors clause 814 of the Natural and Built Environment Bill. We note our comment in relation to that clause.	Amend to delete reference to the paragraph of the Supreme Court decision and instead include a list of the rights or interests that the Crown has recognised.

Appendix Two

Natural and Built Environment Bill: Fixing a Common Problem with Road Vesting on Subdivision

1. The Law Society's Property Law Section Ngā Rōia Ture Rawa has reviewed the Bill and has identified that it presents an opportunity to address current issues arising from road vesting on subdivisions.

2. The Law Society recommends the Select Committee take this opportunity to remedy these existing issues through a simple redrafting of clause 583(4) of the Bill. For ease of reference, our explanation of and recommendations on this topic are set out below, rather than within the table provided in Appendix One.

Current issues with road vesting on subdivisions

3. Issues often arise, particularly in new property developments, when the title to the land being subdivided is subject to land covenants or easements that benefit other land. This is a very common occurrence.

4. The law at present requires the owners of other land that has the benefit of those easements and covenants to either:

    a. consent to the subdivision and the vesting of land as road or reserve; or

    b. surrender their rights held under the easements or covenants in relation to the land that is to become road or reserve.

5. If there are only a few lots that need to provide consent, it is often feasible to directly approach the owners of the relevant lots to negotiate a consent or a surrender.

6. However, in many cases, the size of the proposed subdivision means this approach is not practical nor feasible. This situation often occurs when a neighbouring title with the benefit of an easement or covenant has itself been developed into hundreds of lots. Usually each lot that has been created must provide a consent or a surrender, and if there is a mortgage on any of those titles, the relevant bank must consent as well. Fresh consents or surrenders must also be obtained from any new owners or new mortgagees that acquire any benefitting lot while the process of obtaining the consents and surrenders is undertaken, meaning the goalposts can keep shifting.

7. Where it is not feasible to obtain the required consents or surrenders, (for example due to the volume of created lots, as noted above), the only option under current law is to apply to the High Court for an order to remove or vary the interests over the land which will become road or reserve, so that the road and reserve can vest and the subdivision can be completed.

8. In relation to road vesting, these applications are invariably granted. The Court often recognises there is no prejudice arising from the road vesting and the interest being extinguished over the land which is to become road. However, this process often makes the subdivision, and ultimately section and house prices, more expensive, including additional legal costs and court fees (sometimes in the range of $50,000 to $100,000), and can cause significant delays.

9. In relation to the vesting of land as a reserve, the Court often similarly recognises there is no prejudice and the interest is extinguished or varied. However, reserve land differs from road as it can cover significantly larger areas (for example parks). It may be that the interest protects a pipeline running through the land and it is appropriate for it to stay in place.

Alternatively, the interest may provide controls around what can or cannot happen on the land, and from the neighbouring land owners' perspective, they are likely to want some form of that control to continue. The relevant territorial authority will often take the land as reserve, and can choose to take the land subject to the constraints of an easement or a covenant.

Clause 583 – Requirement for consent if land will vest in territorial authority or the Crown

Proposed amendment

10. Clause 583 of the Bill prohibits land vesting in the territorial authority or Crown unless all parties with an interest in the land, consent to it. This will include all neighbouring lots that have the benefit of easements or land covenants. Clause 583 simply carries through (with slightly different wording) the existing road vesting provisions in the RMA. Therefore, unless amendments are made to the Bill, we consider the issues discussed above will continue.

11. In our view, the Bill provides a timely opportunity to correct the issues outlined above and avoid the potential for significant additional time and cost for many future subdivisions. Proposed modifications to clause 583 (discussed in more detail below), would also remove a contradiction that presently exists in the RMA between section 224(b)(i) and section 239(2) and which has been carried over into the Bill. Section 224(b)(i) requires all interest holders to provide consent while section 239(2) allows a territorial authority to take land as reserve subject to specified interests (without obtaining consent). However, in practice, the consent of interest holders (under section 224(b)(i)) is often not sought if a territorial authority simply accepts land subject to the interest (under section 239(2)), even though the RMA does not expressly allow for section 224(b)(i) to be ignored.

Proposed solution

Vesting of land as road

12. In relation to **road vesting,** only the registered owner of the land being subdivided, and the mortgagee or encumbrancee of that land, should be required to consent to the vesting of land as road (occurring on deposit of a subdivision plan). It is not necessary or practical to require consents from other interested parties, such as those that have the benefit of easements or covenants, as those parties are highly unlikely to be prejudiced from any interest they may have been extinguished over the portion of land that is to vest as road.

13. In any case, we consider that any potential prejudice to a third party that may lose an interest in land (as a result of that land vesting as road), without their consent having been provided, is outweighed by the benefit of having a simple process for progressing a subdivision and one which avoids the need to incur potentially significant costs and additional delay. The services covered by any easements would then be services contained within the legal road, while the covenants that would no longer apply over the land to vest as road, would be replaced by the rules that the public must follow for legal roads.

Vesting of land as reserve

14. In relation to vesting of land **as reserve**, the right of the relevant territorial authority to take the land subject to existing interests, should be prioritised. If it chooses to do that, then requiring the consent of the other parties to those instruments altogether should also be negated. Only the registered owner of the land being subdivided, and the mortgagee, or

encumbrancee of that land, should be required to provide consent to the vesting of land as reserve (occurring on deposit of a subdivision plan).

15. However, if the relevant territorial authority will not accept the land subject to existing interests, the registered owner of the land being subdivided should have a choice of either obtaining the consent of the parties with the benefit of the interest to surrender or modify that interest in relation to the reserve land, or following existing processes and seeking a Court order.

16. In our view, although this solution is a logical one, clause 583 currently prohibits this by requiring the consent of **all interested** parties, including those under easements and covenants. We note the processes that are required to deal with the vesting of land as reserves, are already largely built into clause 588. However, as clause 583 is independent from clause 588, the consent of potentially hundreds of parties (regardless of what clause 588 says) will be required. We consider this ambiguity can and should be avoided.

Recommendation

17. To address the problems identified above, the Law Society recommends that clause 583(4) of the Bill be redrafted as follows:

> *(4) The persons who must give written consent are,—*
>
> *(a) in the case of land subject to the Land Transfer Act 2017:*
>
> *(i) in relation to land to vest as road, every registered owner of that land, and every mortgagee and encumbrancee registered against the record of title for that land; and*
>
> *(ii) in relation to land to vest as a reserve, every registered owner of an interest in the land except for the registered owner of a specified interest in the land which the territorial authority has certified, on the survey plan, shall remain with the land, under section 588(3); or*
>
> *(b) in the case of land not subject to that Act, every registered owner with an interest in the land, including any encumbrance, as evidence by an instrument registered under the Deed Registration Act 1908.*

18. This recommendation would:

    a. Allow land to vest as road without having to obtain the consent of all interest holders.

    b. Remove the ambiguity around whether there is a need to obtain consent from all but the landowner and its mortgage or charge holders when land is to vest as reserve, and give the opportunity for land to be vested in a territorial authority or the Crown subject to various easements and other interests (at the consent of the territorial authority or the Crown) without the need to obtain consents or variations or surrenders from all.