TE KŌKIRINGA TAUMATA
NEW ZEALAND PLANNING INSTITUTE

SUBMISSION ON NATURAL AND BUILT ENVIRONMENT BILL AND SPATIAL PLANNING BILL

17 FEBRUARY 2023

Te Kōkiringa Taumata | New Zealand Planning Institute

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Planning is essential to achieving a better New Zealand

Te Kokiringa Taumata | New Zealand Planning Institute (NZPI) is the voice of planning in New Zealand. It is the professional organisation representing this country's planners, resource managers, urban designers, and environmental practitioners.

Planners have a critical role in shaping New Zealand's future by helping to develop solutions to key issues, such as population growth, infrastructure needs, pressure on natural resources and environments, demographic change, and transport.

SUBMISSION SUMMARY

1. NZPI sees the potential in what has been proposed in the NBE Bill and SP Bill, and we have suggestions for how to better realise that potential – we propose further improvements to truly achieve transformational change. Our vision for the reformed RM system is shown in **Figure 1**, with our key changes identified, at the end of this summary.

Transition

2. NZPI considers the Bills should be amended to make transition into the new system more efficient and effective. The proposed approach to transition means efficiency benefits will not eventuate for a considerable period of time (over 10 years). There are also fairness and equity issues with the proposed tranching of regions into the new system. We recommend consideration is given to avoiding tranching, to allowing the preparation of NBE Plans alongside RSSs, and taking the time to first prepare a complete NPF, which leads to efficiencies in the subsequent preparation of RSSs and NBE Plans.

Outcomes-based planning

3. NZPI supports the move to outcomes-based planning. Outcomes-based planning means greater emphasis in the system on achieving actual outcomes. It allows us to move away from a focus on adverse effects and instead consider how we achieve positive outcomes for the future.

4. Changes are needed to the Bills to realise the full potential of outcomes-based planning. In particular, the outcomes in section 5 of the NBE Bill need to be redrafted so that they are true outcomes. That is, they need to be aspirational, end-states that tell us what the future we are planning for looks like. The outcomes in section 5 are the pinnacle of the system and need to be framed correctly. This submission provides a set of redrafted outcomes to demonstrate what we mean (attached as **Appendix 2**).

5. Also essential for an effective outcomes-based system is greater weight being placed on these outcomes when assessments are undertaken as part of the consenting process. Without this, there will be very little change to the status quo for consent assessment, no matter what changes are made elsewhere in the system.

6. NZPI supports the change in focus for notification of resource consent applications, to a means of providing information on the extent to which applications achieve outcomes and meet limits and targets.

Te ao Māori and Te Tiriti o Waitangi

7. NZPI supports the inclusion of te Oranga o te Taiao alongside the wellbeing of present and future generations in the purpose of the Act; the requirement to 'give effect to' the principles of te Tiriti o Waitangi; and the increased participation opportunities for Māori in the revised system. These changes are significant when compared to the requirements of the RMA.

8. These changes will require significant support for practitioners, including iwi/Māori. We recommend that the NPF includes direction on what 'giving effect to' the principles of te Tiriti o Waitangi means in planning practice.

Front-loading of the planning system

9. NZPI supports the 'front-loading' of the planning system, so that decisions are made and conflicts resolved at the policy level rather than left to a case-by-case consent assessment. This will introduce certainty to the system, which results in improvements in efficiency and effectiveness.

10. However, changes are needed to realise the full potential of front-loading the system. In particular, front-loading starts at the national level. The NPF needs to be complete and outcomes-based, rather than staged, to ensure it is fit-for-purpose. Time should be taken to ensure this is the case, so that efficiencies in the regional planning system can be realised. Other important changes needed for front-loading include:

    - There should be a national spatial strategy, sitting alongside the NPF, that provides national-level strategic direction for RSSs.
    - Engagement on major regional policy issues should occur before an RSS is prepared, rather than after the RSS (it is currently part of the NBE Plan preparation).
    - The RSS should be the only source of strategic direction for a region (as drafted, both RSSs and NBE Plans need to provide strategic direction).
    - We consider that an NBE Plan should 'give effect to' an RSS rather than just be 'consistent with' it.
    - We consider a draft RSS should go through an IHP hearing rather than being decided solely by the regional planning committee without any independent analysis and testing of submissions.

Regional-level planning

11. NZPI supports the shift to planning at the regional level rather than the district level. Regional-level, combined land use and environmental planning, coupled with spatial planning, will provide for a more holistic approach to planning, and allow us to better achieve outcomes that support our wellbeing as a society.

12. We do not see a loss in local voice as a result of regional plan-making. The role of the planner in engaging with communities will ensure that the voice of local communities is heard, without the need for additional documents such as statements of community outcomes.

A fit-for-purpose digitally enabled system

13. The reform of the RM system is an ideal opportunity to provide a modern system supported by digital technologies. Our review has identified there is a significant missed opportunity in this regard. This will have a critical impact on the ability to undertake truly successful reform and deliver on the reform objectives such as effectiveness and efficiency. Our submission makes a number of recommendations on how to address this focused on:

    - requiring a robust, nationally consistent data collection and sharing system
    - encouraging use of modern digital systems and tools in administering the system
    - providing improved access to environmental information and data in user friendly formats.

14. We also recommend that how digital is deployed in the new system be guided by the development of a national digital strategy for the new system.

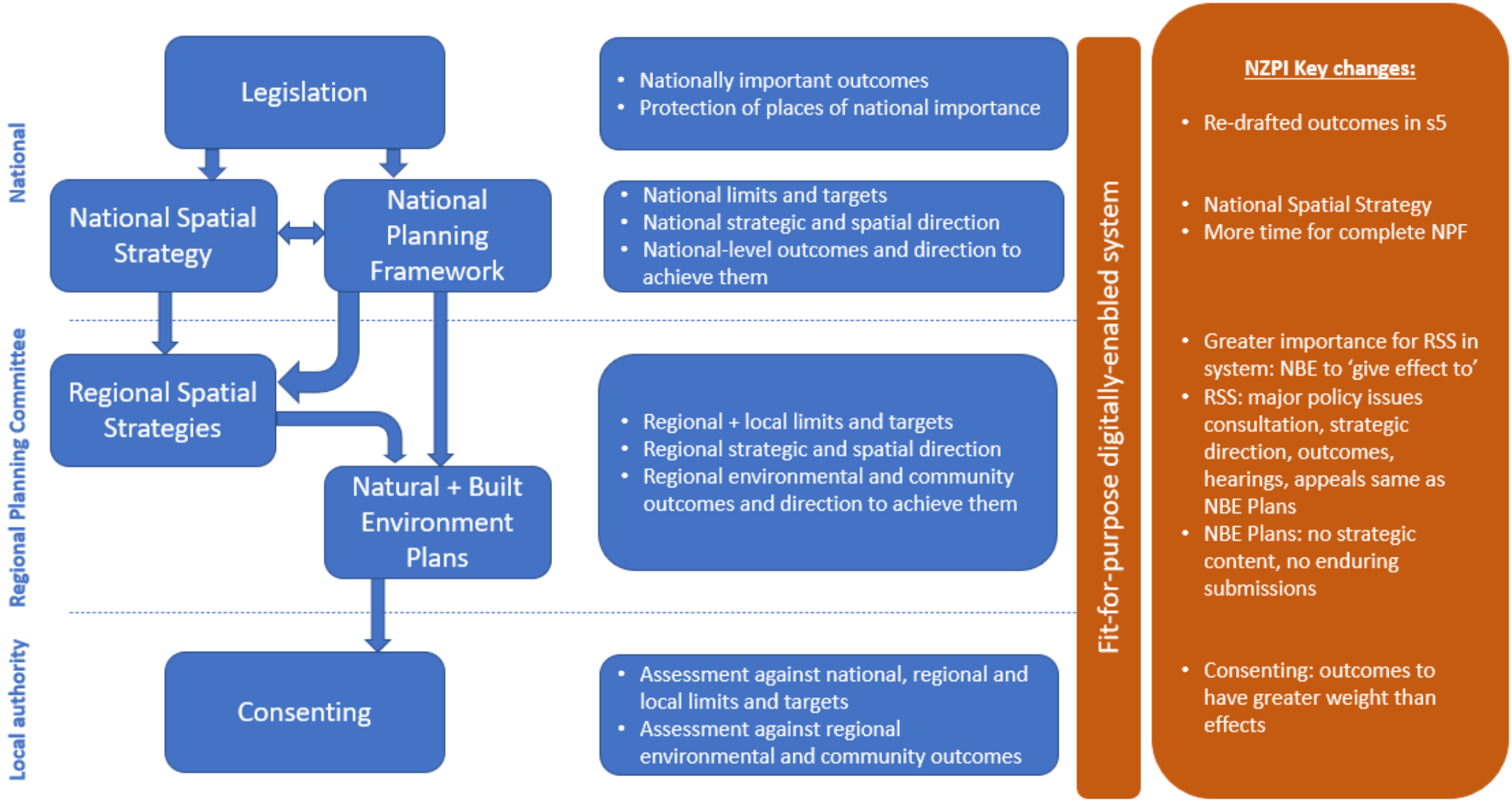
Structure of the Bills

15. There are structural issues with the legislation. Fundamentally, there should be one piece of legislation for the new planning system, incorporating the NBE Bill, the SP Bill, and the climate adaptation legislation, the latter of which is such an essential part of how we plan for our future.

16. Significant issues for implementation will result from provisions being located in unhelpful places within the Bills, and our submission highlights these. For example, the provisions relating to 'places of national importance' need much greater prominence, and the notification provisions relating to plan-making need to be moved out of the consenting part of the NBE Bill.

17. **Figure 1**, on the following page, illustrates our vision for the reformed RM system with our key changes identified.

Figure 1: NZPI's vision for the reformed RM system



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1. INTRODUCTION

18. Te Kōkiringa Taumata | New Zealand Planning Institute (NZPI) welcomes the opportunity to present this feedback on the Natural and Built Environment Bill and the Spatial Planning Bill.

19. As the industry body that represents planning professionals in New Zealand, NZPI has a strong interest in RM Reform. We bring an implementation perspective to our review of the proposed legislation and have considered whether the proposed change will achieve what is intended.

20. Over the last six months, NZPI has invested heavily in understanding the reform proposals and consulting with our membership to seek feedback. Prior to the release of the two Bills, we prepared position papers on key aspects of the reform, including outcomes-based planning, spatial planning, regional-level NBE planning, and consenting under the new system. Once the Bills were released, we undertook a roadshow on the two Bills with the Resource Management Law Association, visiting 11 centres around New Zealand to communicate the key aspects of the Bills to practitioners and received feedback. We also undertook a survey of our membership on the proposals in the Bills prior to Christmas. All of this preparation work and feedback has informed the content of this submission.

21. NZPI has approximately 3300 members across its membership classes, which range from student and emerging planners to fellows, and include associate members from related disciplines. Members come from diverse backgrounds and work for a variety of organisations and clients, such as councils, central government, developers, environmental groups, infrastructure providers, and consultancy firms. This diverse membership results in a range of views on reform issues, but our survey results tell us that often there is a consistent view among us on how to make improvements and do things better. As professionals working within the system, our views and opinions are focused on how we can plan for a better New Zealand for our society as a whole, considering all points of view. This is the strength of our submission.

Format of the submission

22. This submission addresses both the Natural and Built Environment Bill (NBE Bill) and the Spatial Planning Bill (SP Bill). We have considered the system as a whole, rather than as two individual parts, and our recommendations on both Bills depend on each other.

23. A summary is provided at the beginning of our submission. The detailed part of our submission starts with key issues including transition, outcomes-based planning, managing effects, and te ao Māori and te Tiriti o Waitangi; then addresses more detailed system-wide matters; then addresses aspects of the system in accordance with the planning hierarchy and structure of the Bills (national planning framework, regional spatial strategies, natural and built environment plans, and consenting). The final section of the submission is a substantial one on creating a fit-for-purpose digitally-enabled system – this is a key focus for NZPI.

24. Our recommendations for amendments to the Bills are identified under each heading and are numbered, with explanation for the recommendations in the following paragraphs. In some cases, we have included drafting amendments to give effect to our submission points. In situations where we have not done this, we are happy to work with officials on drafting solutions. We have used underlying in the text to highlight matters we support.

25. Feedback on the Bills from two of NZPI's special interest groups are included in this submission: PlanTechNZ and Aotearoa Pacific Practitioners Group (APPG). PlanTechNZ explores the implications of digital technologies for planning practice. The PlanTechNZ input to this submission is significant – digital transformation is a key issue addressed in this submission. The APPG focuses on the role of Pacific peoples within the New Zealand planning and resource management framework, and the consideration and integration of Pacific cultural values in resource management planning and decision making.

Minor amendments

26. **Appendix 1** contains a table with a number of minor amendments to the NBE and SP Bills. These minor changes correct errors, provide clarity, or improve implementation, without significant changes to the underlying approach.

Acronyms used in this submission

27. This submission uses a number of acronyms:

NBE Bill	Natural and Built Environment Bill
SP Bill	Spatial Planning Bill
NPF	National Planning Framework
RSS	Regional Spatial Strategy
NBE Plan	Natural and Built Environment Plan
IHP	Independent Hearings Panel
RMA	Resource Management Act 1991

2. ONE ACT

28. NZPI considers that the SP Bill should not be its own piece of legislation, and rather should be part of the NBE Bill. The significant risk to having these two separate Acts is that each can be changed independently of the other, creating opportunities for inconsistencies and errors and a break-down of the system as a whole. It is inefficient to have two separate pieces of legislation when one would work better.

29. There is no reason why the SP Bill needs to be a stand-alone piece of legislation. It does not actually stand alone, as it relies on the NBE Bill and could not operate without it. The SP Bill is clearly subservient to the NBE Bill. Its purpose is to help achieve the purpose of the NBE Bill. The national-level direction that guides RSSs will be set out in the NPF. The regional planning committees will prepare both the RSSs and the NBE Plans, and all the provisions relating to regional planning committees and hearing processes are set out in the NBE Bill. It would make much more sense, and the system would be much more user friendly, if the SP Bill was inserted into the NBE Bill.

30. We also have concerns that the Climate Change Adaptation Act (CAA), which is the third piece of legislation to replace the RMA, is some way behind the NBE and SP Bills. The CAA will be a critical part of how we plan for our future and achieve outcomes listed in the NBEA. We consider it is very awkward to set up the new system without it. For example, we cannot see how regional planning committees can undertake spatial planning for a 30-year timeframe without factoring in the effects of climate change and how that needs to be responded to. The CAA should also be part of one Act to replace the RMA. We envisage an additional round of RSS updates and NBE plan changes being required once the CAA is in place. This puts additional burden on our communities, the planning profession and those involved in plan making.

31. NZPI acknowledges that there are two Bills before the Select Committee, and that the Select Committee has no ability to influence the CAA as part of this current process. While our preference is for one piece of legislation, we make no specific recommendations on this issue and have taken a pragmatic approach to the rest of this submission.

3. COMMENCEMENT, SAVINGS AND TRANSITION

32. NZPI has strong concerns about transition to the new system. Transition has significant implications for the effective and efficient operation of the new system, and wellbeing of the many people working in the system. Under the proposed transition arrangements, there will be significant uncertainty in the system with no difference to the way resources are used and developed for at least 7 years, and possibly as long as 13 years. NZPI wants the transition to be as short and efficient as possible.

A complete NPF

33. **<u>Recommendation 1:</u> That the NBE Bill is amended so that time is taken to develop a complete and fit-for-purpose NPF, rather than staging the development of the NPF (changes required include to Clause 1 of Schedule 6 (suggest 6 months changed to 2 years), and clause 32 (removal of 2028 date for minimum level targets).**

34. **<u>Recommendation 2:</u> That the NBE Bill is amended as necessary so that a complete NPF includes updated National Planning Standards that include model plan provisions for universal issues such as noise, signs, earthworks, and standard zones.**

35. The importance of having a complete NPF in the system cannot be over-stated. The NPF has high expectations to live up to if significant change in the system is to be achieved. Simply rolling over existing national directions into the new system will not be sufficient.

36. We observe from the proposed legislation[1] and understand from discussions with MfE that the first NPF will not be complete and will largely mirror existing national direction. On this basis, a number of iterations will be necessary before a 'full' or complete NPF is in place.

37. We have serious concerns about this approach. Staging the development of the NPF has considerable issues and inefficiencies, as follows:

- It will require numerous Board of Inquiry processes.
- The preparation of the first RSSs and NBE Plans will be cumbersome as issues not addressed in the first NPF will have to be addressed within each region without any national direction. This is the same problem suffered under the status quo and does not deliver the transformational change sought by the Government.
- RSSs and NBE Plans will need to be updated almost as soon as they are produced, to give effect to a frequently updated NPF. This creates inefficiency in the system.
- An NPF largely based on existing RMA national direction will not be fit-for-purpose in an outcomes-based system. As discussed below in the section of this submission on outcomes-based planning, an outcomes-based approach requires much of the existing national direction to be reconsidered and reframed so that it is consistent with the

[1] Clause 5 of Schedule 1 of the NBE Bill requires the first NPF to be notified within six months of the Act receiving Royal assent, and clause 31 of Schedule 6 of the NBE Bill requires that the first NPF must be prepared on the basis of the national direction prepared under the RMA. Clause 31 of Schedule 6 states that the limits and targets review panel is not required for the first NPF, and clause 32 states that an NPF with minimum level targets is not required to be notified until 1 January 2028, meaning that the limits and targets regime will not be up and running for more than five years (noting that the Board of Inquiry process will be required after notification).

purpose and outcomes of the NBE Act, as well as giving effect to te Tiriti o Waitangi, rather than carried over into the new system. We will not achieve transformational change of the resource management system if we perpetuate the status quo.

- The significant role of conflict resolution that falls to the NPF can only be achieved through a complete NPF. Any failing in this role for the NPF creates inefficiencies for RSS and NBE Plan preparation.

38. We see little point in a partial NPF that is not holistic and will not be effective in triggering the start of the transition. Rather, it would be worth taking slightly more time to develop the first comprehensive NPF, to allow faster and more effective subsequent development of RSSs and NBE Plans. Rather than 6 months from Royal assent for notification of the first NPF, a timeframe of perhaps 2 years should be considered, and the delay for the limits and targets regime should be removed so that all aspects are addressed in the first NPF. Time to get the front-end of the system right will result in efficiencies and less time needed to prepare the planning instruments that follow (RSSs and NBE Plans).

39. As an example, a two-year timeframe provides an opportunity for efficiency gains in NBE Plan-making as a result of revised National Planning Standards (which we understand will be incorporated into the NPF). Rather than focusing just on the structure and format of RSSs and NBE Plans, we recommend that the revised National Planning Standards include model provisions for NBE Plans for universal issues such as noise, signs, earthworks, and standard zones. This would create efficiencies in NBE Plan development by providing provisions that NBE Plans could utilise 'off the shelf' without those provisions being subject to the full public consultation process, except to the extent they are made context-specific (see section 70 NBE Bill). This would result in significant efficiency gains for NBE Plan-making. In contrast, if this is something that is added to the NPF at a later date, rather than being part of the initial NPF, there will be significant inefficiencies in all NBE plans developing their own provisions, only to be replaced a few years later by the NPF provisions.

40. We see that taking additional time at the beginning of transition would not create any overall delays in implementation the new system, given the first two years will largely be spent addressing existing Treaty Settlements and forming the new regional planning committees. It will also reduce the need for rework within the system to make early RSSs and NBE Plans consistent with the later versions of the NPF – we will have an effective system by the time the first NBE Plans are prepared rather than a partly effective system.

Concurrent preparation of RSSs and NBE Plans

41. **Recommendation 3: That the NBE Bill is amended so that NBE Plans can be prepared alongside RSSs (requires change to clause 2 of Schedule 7 so that hearing on an NBE Plan cannot commence until the regional planning committee has adopted the RSS)**.

42. There are opportunities to shorten the timeframe to get RSSs and NBE Plans prepared and therefore to switch consenting over to the new system. Specifically, the ability for a region to prepare an RSS and an NBE Plan alongside each other.

43. Clause 2 of Schedule 7 of the NBE Bill is very specific about the timing of preparing an NBE Plan in relation to an RSS. A resolution to begin drafting an NBE Plan has to be made within 40 working

days of a decision to adopt the RSS. This ensures that the RSS has to be right at the end of its process before work on an NBE Plan can begin. This precludes NBE Plans being developed alongside RSSs, and the natural synergies that will likely be created as these instruments are prepared.

44. Transition to the new system will be shorter and more efficient if NBE Plans can be prepared alongside RSSs. There was a strong positive response in our membership survey to the importance of being able to develop an NBE Plan alongside an RSS, at least prior to notification. We recommend that the timing link provided in clause 2 of Schedule 7 is changed so that a hearing on an NBE Plan cannot commence until the regional planning committee has adopted the RSS. This will ensure decision-making still follows the hierarchy of RSS first, then NBE Plan, but it will allow more flexibility for a regional planning committee to move through the planning processes more quickly if it chooses to. We note that this is often how plan processes progress currently. For example, for the Auckland Unitary Plan and the Christchurch Replacement District Plan, strategic direction was developed alongside the rest of the plans, but in both processes, hearings were held on the strategic direction before hearings on the rest of the plans.

45. In our submission points on the SP Bill we recommend that strategic direction is included in RSSs and not in NBE Plans. This will also help with transition as it will enable NBE plans to be developed more quickly.

Tranching

46. **Recommendation 4: consider implementation 'by planning instrument' with one time frame for all regions, rather than transition by tranching**.

47. **Recommendation 5: consider giving the new plans, including RSSs, statutory weight in consenting under the RMA system.**

48. The tranching approach to transition, which would see regions starting work under the new system at different times, brings a high level of complication and confusion to transition. It will not achieve transformational change of the system. It has negative impacts on efficiency for national bodies working across regional boundaries (including iwi). This approach raises issues of fairness and equity between regions, particularly for the way national issues are addressed. For example, it will be difficult to avoid a precedent effect for the way national issues are addressed in the first plans, which has the potential to make it difficult to account for regional variation and the input of local voice for the regions that follow.

49. To elaborate on our concern, if a model approach is taken, we anticipate many organisations will invest heavily in the first tranche (throwing most of their eggs in that basket) to ensure precedents advantageous to them are set. This risks making the first tranche a high-stakes game, placing significant pressure on the process, with locally desired outcomes being secondary to the national interests of the big players. Serious consideration should be given to abandoning the tranching approach and instead progressing transition to the new system 'by planning instrument'. That is, in accordance with the hierarchy of plans, starting with the NPF, with all regions subject to the same time limits.

50. Our membership is supportive of the new system being rolled out in accordance with the hierarchy of the planning instruments. That is, the NPF coming first, followed by RSSs, followed by NBE Plans,

followed by consenting switching to the new system. This makes logical sense to ensure an effective and efficient system.

51. NZPI would be happy to work with the Select Committee on what transition by planning instrument might look like. For example, and as a starter for consideration, if the NPF is notified within two years of the Act getting Royal assent, there could be a requirement for the first RSSs and NBE Plans to be notified within four years of that date. This would provide flexibility for regional planning committees to determine whether they prepared and notified RSSs and NBE Plans together or sequentially. This approach would allow specific commencement dates to be included in the NBE Bill and would provide certainty for the transition.

52. A challenge of transition by planning instrument is that it puts a significant load on the planning profession and associated professions, as everyone is working on new plans at the same time. This issue will need to be addressed by significant resourcing and involvement of central government in nationally important issues, significant funding and coordination for councils, regional planning committees, and Māori, and investment in training and development of practitioners to operate effectively under the new system.

53. We note that transition by planning instrument also allows consideration of giving weight to the new planning instruments in the consenting process as they are prepared, rather than waiting until NBE Plans are finalised. For example, once an RSS is adopted, it could be considered as an 'other matter' in consenting under the RMA, to help ensure consenting decisions did not undermine the intent to the RSS. This would be particularly beneficial if our suggestion of RSSs being the only document with regional strategic direction is accepted (see section of submission on the SP Bill). Consents under the RMA could then be considered against that strategic direction.

Resourcing transition

54. <u>Recommendation 6:</u> That the Select Committee recommend the Government work with NZPI to ensure the right resourcing is provided from central government to ensure the transition is as smooth and effective as possible.

55. It is vitally important that the upscaling of Māori participation in the system is well resourced. If it is not, this will be detrimental not just to Māori, but to the system as a whole. We cannot over emphasise the importance of this. While we support the addition of seeking costs from consent applications for Māori participation, this does not resource iwi and hapu to be involved in plan making processes. NZPI would like to see financial assistance made available to iwi to fully participate in the new system.

56. A corresponding upgraded digital environment would also help with the transition. Consistent data, capture protocols, storage and security options, retrieval, and analysis options are more likely to create a coherent system that gives the public and Māori confidence in the transition. See the section of our submission on digital transformation.

57. The wellbeing of the profession is a key concern for transition. Uncertainty is unsettling. We need to keep existing planners in the profession and entice new people to join, but this is difficult when we face a long and uncertain transition. For example, there will need to be two streams of professional development, one for the RMA and one for the new system, for approximately 10

years. This is a significant burden on the profession. The system will fall over without planners to implement it. NZPI is keen to work with the Select Committee and with Government on resourcing transition to support the wellbeing and ongoing training of the planning profession.

58. We also point out that a delayed or long transition risks confusion, unmet expectations, and loss of social licence from the public and key stakeholders in the system. The Reform has promised much, but there will be no 'on the ground' difference for approximately 10 years, even though planners will have been working on the NPF, RSS and NBE Plans during this time. Clear messaging to the public about what to expect, and when, will help to manage the risk of unmet expectations. We also note that incorporating a complete digital overhaul of central and local government databases, alongside the new legalisation, and making data open source could help with transparency of the new system and help public acceptance of the reforms.

Establishment of the Secretariat

59. We are aware of concern within the planning profession over the establishment and operation of the secretariats that support the regional planning committees. There are minimal provisions on this in Schedule 8 of the NBE Bill, and the lack of detail creates uncertainty.

60. NZPI supports the submission points of Taituara (Local Government Professionals Aotearoa) on the secretariat. We agree with the workforce risks highlighted in that submission, and we agree that certainty needs to be provided for local authority staff whose employment relations will be impacted by this Bill. As a representative for the planning profession, NZPI is keen to work with officials on this area of transition.

61. Planners in secretariats will be institutionally and physically separated from planners undertaking plan implementation, as resource consent processes and enforcement and monitoring responsibilities will remain with the individual councils of the region. We see this separation as a risk to the overall effectiveness of the planning cycle as it potentially interrupts feedback loops that are critical for quality policy development and efficient and effective plan implementation. We are not confident that the monitoring provisions in the NBE Bill are sufficient to overcome this issues (see our comments on monitoring in the section of this submission on outcomes-based planning). NZPI would welcome the opportunity to work with officials to ensure the risks of this separation are appropriately managed through transition.

4. OUTCOMES-BASED PLANNING

Introduction

63. Recommendation 7: That the outcomes-based system in the NBE Bill and SP Bill is strengthened, extended, and supported by a digital technology to realise the full potential of outcomes-based planning.

64. NZPI supports the move to an outcomes-based system for resource management in New Zealand on the basis it provides an aspirational and forward-looking planning approach. 'Outcomes-based planning' that requires us to focus on the future and how we can achieve positive outcomes will allow us to be more purposeful and specific in the way we manage development and the environment to provide for te Oranga o te Taiao and the wellbeing of present and future generations.

65. Outcomes-based planning allows us a greater say in what is OK and what is not, by providing a clearer direction of what we, as a society, are trying to achieve. In terms of plan drafting, achieving outcomes allows us to be more aspirational and craft plan provisions aimed at what we want the future to look like. A planning framework with clear outcomes means more certainty for the environment and communities, making it easier to say 'yes' and 'no'.

66. The change from a focus on managing effects to a focus on achieving outcomes requires changes throughout the whole system, to all aspects of how we manage resource use and the environment. Our review of the NBE Bill has considered how outcomes-based planning is proposed to be achieved by the new system, as a whole. Our overall assessment is that the NBE Bill does not go far enough and will take too long to bring about the change required to realise the benefits of an outcomes-based system. The rest of this section of the submission explains this further and offers solutions. Importantly, we have developed an alternative set of outcomes for section 5 of the NBE Bill, which are the foundation of the outcomes-based planning approach, to demonstrate what we mean by 'outcomes'.

67. Outcomes-based planning needs to be supported by a system overhaul that has digital technology at its heart, to aid in management, monitoring, decision-making and restoration. This looks like coordinated baseline data coupled with data collection, management, protected storage, and accessibility for all. The government needs to consider a nationally consistent data system, which is the same across all regions. This will require a coordinated and appropriately funded digital strategy for resource management, and will ultimately lead to a more efficient system.

Outcomes in section 5

68. Recommendation 8: That the outcomes in section 5 of the NBE Bill are redrafted so that they are aspirational, future-focused end-states that we are to achieve.

69. Recommendation 9: That 'well-functioning urban environments' is defined in the NBE Bill using the text from Policy 1 of the National Policy Statement on Urban Design.

70. NZPI considers that true outcomes are aspirational statements of desired end-states or results. Put another way, they state what we want the future to be. Outcomes are not policies or processes

or actions. They are the end result we are trying to achieve, without specifying how they are to be achieved.

71. NZPI does not consider the system outcomes in section 5 of the NBE Bill to be aspirational, and while some are forward focused, they are not true outcomes. Rather, they represent a list of actions or policies. They are almost exclusively framed with verbs, and are focused on doing something (protecting, reducing, promoting, enhancing, etc). In both subject matter and framing, there are strong overlaps with what we are used to seeing in Part II of the RMA. NZPI sees this similarity as a barrier to transformative change to the way we undertake planning in New Zealand (which we understand is a driver of reform). The benefits of changing to an outcomes-based system will not be realised unless true outcomes are included in the legislation.

72. NZPI has prepared an alternative list of outcomes for those currently in section 5, as a way to demonstrate what we mean by 'true' outcomes (see below). These outcomes are drafted as desired end-states to work towards. **Appendix 2** provides an explanation for the drafting of each of the outcomes. We are not suggesting the exact wording is the final wording that should be included in the Act, but the reframing is the result of significant rethinking and the list makes a good 'strawman'. Largely, our concern is that to change the status quo and realise the full potential of an outcomes-based planning system, the outcomes in the legislation, which are the pinnacle of that system, need to be framed as true outcomes, and the ones currently in section 5 are not.

    a) *Soil, water, indigenous biodiversity, air, coast, wetlands, estuaries, lakes and rivers provide flourishing environments for native flora and fauna.*

    b) *Places of national importance have mana and prominence in local and national identity.*

    c) *The use, development and protection of the environment meets New Zealand's international climate change obligations.*

    d) *Communities and the environment are resilient to and able to adapt to the effects of climate change.*

    e) *Communities are safe from the risks of natural hazards.*

    f) *High quality, well-functioning urban environments meet the diverse social, environmental, cultural and economic needs of people and communities.*

    g) *Rural communities have a strong connection to the rural environment that supports their wellbeing and the wellbeing of the nation.*

    h) *The most highly versatile soils are used for land-based primary production.*

    i) *Infrastructure provides for the wellbeing of urban and rural communities and the health and mauri of the natural environment.*

    j) *Iwi and hapū exercise their kawa, tikanga (including kaitiakitanga), and mātauranga in relation to their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna, and other taonga.*

    k) *Built, cultural and natural heritage is an integral part of local and national identify.*

73. The above list of outcomes does not include a direction of 'protection'. 'Protection' is an action and something that needs to be done in order to ensure a particular outcome is achieved. In removing 'protection' from the outcomes, we have considered what that particular outcome is, and the result is (a) and (b) above. Outcomes worded in this way allow other actions, such as restoration or enhancement, to be implemented with protection, as might be necessary to achieve the outcome. This flexibility ensures all actions that are necessary to the achieve the outcomes can be employed. We also note that protection would not be lost from the legislation as a result of this type of change. The provisions for places of national importance in the legislation are the strongest type of protection offered by the system, and they are in the legislation itself (see sections 55 to 567 of the NBE Bill, and submission points below on 'places of national importance').

74. As well as redrafting the outcomes so they are true outcomes, NZPI has considered the subject matter of the outcomes and made improvements on the shortcomings in the list in section 5 of the NBE Bill. These shortcomings include:

- There is no acknowledgement of the holistic nature of our urban, rural and natural environment, and no positive approach of maximising the benefits of the interconnectedness of our environment.
- There is an excess of language used, which causes confusion. For example, section 5(b)(iii) reads as follows: *To assist in achieving the purpose of this Act, the national planning framework and all plans must provide for, in relation to climate change and natural hazards, achieving the reduction of risks arising from, and better resilience of the environment to, natural hazards and the effects of climate change.* A requirement to assist achieving by providing for achieving the reduction of risks just doesn't make a lot of sense.
- The list of outcomes raises the expectation of the public unrealistically. The outcomes need to be things that plans can actually achieve. For example, 'the removal of greenhouse gases from the atmosphere' is a task that goes well beyond planning, and there is no guarantee that 'the ample supply of land for development' will 'avoid inflated urban land prices'.
- There is not enough emphasis on the quality and liveability of the built environment and the fundamental role of planning in place making and achieving thriving communities.
- Intergenerational equity is missing from the outcomes.
- A focus on rural communities is missing from the outcomes. Although these communities are low population based, they are strong generators of economic returns for the country and contain large natural environments that need protection, management and restoration.
- The outcomes need to be adequate for resource management for 20 or 30 years into the future and should not be too strongly focused on current issues. This takes planning out of the political cycles (national and local) that has seen a shortfall in infrastructure investment.

75. Further explanation on these points is included in the table in **Appendix 2**.

76. We note that there are competing demands and inherent conflicts between the outcomes in section 5. We acknowledge that it is not practical for the legislation itself to resolve these conflicts, and we agree with the proposal that the NPF is the key tool for resolving conflicts at a national level, and NBE Plans are the key tool for resolving conflicts at the regional level. However, resolving conflicts in an efficient manner, as high 'up the chain' as possible, is essential to improving the overall efficiency and effectiveness of the system, and this puts a significant burden on the NPF. If a partial NPF is delivered (as proposed) then the status quo will continue for resolving conflicts, which is inefficient.

The purpose of outcomes

77. Recommendation 10: That the purpose of outcomes in the system is made clear by amending section 3 of the NBE Bill in accordance with our recommended wording in paragraph 145 of this submission, including removing the label 'for the benefit of the environment'.

78. Recommendation 11: That the Select Committee recommends that current objectives in existing national direction and other RMA planning documents are redrafted so they are framed as future end-states.

79. A strong set of outcomes at the national level is essential to set up the rest of the outcomes-based system. Outcomes, along with limits and targets, are a means of achieving the dual purpose of the Act. They should be desired end-states that show us what enabling use, development and protection of the environment, in a way that supports the wellbeing of present and future generations, and what recognising and upholding te Oranga o te Taiao, looks like. Outcomes in the legislation that provide overarching strategic direction on the future state for New Zealand will provide a strong basis for the NPF, RSSs and NBA Plans to develop place- and context-specific outcomes to work towards.

80. The phrase 'outcomes for the benefit of the environment' in section 3 does not adequately convey the role of outcomes in the system, and creates confusion by introducing another label for outcomes (see point below on labels for outcomes). Rather than being for the benefit of the environment, outcomes should be directly related to te Oranga o te Taiao and community wellbeing. Our submission point below under the heading 'purpose' recommends re-wording the 'outcomes' limb in section 3 to account for both these issues.

81. NPZI supports the use of outcomes in place of objectives in the NPF and NBE Plans. In an outcomes-based system, there needs to be a hierarchy or cascade of outcomes from the national level down to the local level, and the ability for communities and iwi and hapū to set context- and place-specific outcomes. This requires outcomes, rather than objectives, to be set in the NPF, RSSs and NBE Plans.

82. We note that this is not a simple matter of changing the label from 'objective' to 'outcome' and keeping the same text. While the practice of drafting objectives as outcomes in planning documents is becoming more common, existing objectives will need to be reviewed, in a similar way we have reviewed the outcomes in section 5 of the NBE Bill and redrafted them so they are outcomes. For example, there are objectives in the existing national direction that are not drafted as outcomes. If these are not reframed as they are brought into the NPF, the outcomes will not

fulfil their purpose of providing direction for the future and we will not move towards an outcomes-based system – we will retain the status quo.

What we do with outcomes

83. <u>Recommendation 12:</u> That the NBE Bill and SP Bill are amended so that outcomes are to be 'achieved'.

84. Section 3 of the NBE Bill states that a purpose of the Act is to enable the use, development, and protection of the environment in a way that 'promotes outcomes'. In other places, outcomes are to be 'provided for' or 'achieved'. 'Promote' is a weak direction that sets a low bar for compliance. It is the same direction used in the RMA for sustainable management, and we understand that the reform is trying to move away from the approach in the RMA. To deliver a purposeful, outcomes-based system, we need to be *achieving* outcomes, rather than promoting them. 'Achieve' is a much stronger direction than 'promote' and is more likely to bring about change. 'Achieve' should be the direction used in the NBE Bill and SP Bill where direction is provided for outcomes.

Labels for outcomes

85. <u>Recommendation 13:</u> That all the different labels for outcomes are deleted from the NBE Bill and SP Bill and just the term 'outcomes' is used in every instance.

86. The language around outcomes needs to be rationalised and standardised throughout the NBE Bill. For example, it does not appear to be necessary to distinguish between 'system outcomes', 'framework outcomes', and 'plan outcomes'. In some places, reference is made to 'environmental outcomes', and in other places just 'outcomes' are referred to. All these different terms result in unnecessary complication and risks confusion during implementation. In particular, the use of 'system' as the label for the outcomes in section 5 is misleading and unnecessary. Just the term 'outcomes' should be used in every instance without any additional labels.

Influence of section 5 outcomes on consenting

87. <u>Recommendation 14:</u> That the error loop between section 5 and section 223 is removed, so that the section 5 outcomes apply to consenting in the restricted situations provided for by section 223 (suggested wording below).

88. <u>Recommendation 15:</u> That section 223 is amended so that the reference to the 'purpose' also includes the section 5 outcomes (suggested wording below).

89. The section 5 'system outcomes' are only to be provided for in the NPF and all plans – there is no requirement to provide for them through consenting (see opening text of section 5). This restriction is likely an attempt to codify the Davidson decision and reinforce the hierarchy of planning, where the legislation is given effect to by the NPF, the NPF is given effect to by the NBE Plans, and consents are assessed against NBE Plans, and therefore there is no need for a consent assessment to consider the outcomes in the legislation (or the NPF). However, the Davidson decision included exceptions where Part II of the RMA could be referred to in a consent assessment. These exceptions are partly codified in section 223 of the NBE Bill, which allows a consent authority to have regard to the NPF only if the plan does not deal with a matter adequately, and to the *purpose* of the NBE Bill only if the NPF does not deal adequately with the matter. Assuming 'purpose' in this case includes the section 5 outcomes, this means there are some situations where it will be necessary to assess a consent application against the section 5

outcomes, but as drafted that section does not allow for that to occur. This has the potential to cause an error loop that is likely to lead to unnecessary litigation.

90. This error loop is easily fixed by removing the restriction of section 5 to the NPF and plans, and leaving the qualifying situations for referring to the system outcomes in consent assessments to section 223. We recommend that the opening statement of section 5 reads as follows, or similar:

> *The outcomes that the use, development, and protection of the environment is to achieve, in accordance with section 3, are: …*

91. We recommend one additional change, which is that the reference in section 223 is to 'the purpose *and related matters in subpart 1 of Part 1 of this Act*'. This would be the equivalent of referencing Part II of the RMA and clarify that the outcomes in section 5 are considered in such an assessment, rather than just the purpose in section 3.

Outcomes in RSSs

92. Recommendation 16: That the SP Bill is amended so that outcomes replace objectives in RSSs, including in section 16.

93. As the SP Bill is drafted, outcomes are not a tool used in RSSs. Rather, RSSs set out a vision and objectives for a region's development and change over time. However, RSSs are intended to assist in achieving the outcomes in the NBE Act.

94. As discussed above, the purpose of outcomes in the system is to provide aspirational, future-focused end-states that we are to work towards. It will be very difficult for an RSS to provide strategic direction for a region without including outcomes. Outcomes in RSSs should translate the outcomes in the Act and the outcomes in the NPF into the regional context and set out, in more detail than the national level, what the future for the region looks like.

95. For consistency with the NBE planning hierarchy and smooth integration of an RSS into that hierarchy, as well as to help embed outcomes-based planning, we consider that RSSs should set outcomes rather than objectives. Retaining the use of objectives in RSS will cause confusion over the difference between objectives in an RSS and outcomes in an NBE Plan. If they are effectively the same thing, which we think they are, then they should be called the same thing rather than increasing the chances of confusion by using different terms.

Consenting in an outcomes-based system

96. Recommendation 17: That the relationship between achieving outcomes and activity status in section 154 NBE Bill is retained.

97. Recommendation 18: That outcomes are given greater weight than effects in the substantive assessment of resource consents in section 223 NBE Bill, for example by changing section 223 so that subsection (2)(c) is removed from the list of things to 'have regard to' and included above that list and given a stronger direction such as 'have particular regard to'.

98. Recommendation 19: That outcomes are given greater weight than effects in the substantive assessment of notices of requirements in section 512 NBE Bill.

99. Recommendation 20: That the permitted baseline is retained for the consideration of effects.

100. It is vital that the revised consenting system gives significant weight to outcomes – in setting activity status, for deciding who should be involved in consent applications (notification and affected party decisions), and for the substantive assessment of applications. Without this weight, there is unlikely to be any change in practice and the focus will stay on managing effects.

101. We support the way meeting and contributing to outcomes is used as a criterion for setting activity status in plans (see section 154 NBE Bill). It makes sense that permitted and controlled activities are those that meet outcomes, that discretionary activity status is used where an activity may not meet outcomes, and those activities that would not contribute to outcomes are assigned prohibited activity status. We note that consideration of effects, and meeting limits and targets are also considerations in setting activity status, and we consider this is appropriate.

102. This submission addresses notification issues, including how notification should work in an outcomes-based system, in a separate section below.

103. NZPI considers that the NBE Bill has failed significantly to apply outcomes-based planning to the substantive decision on resource consent applications. Under the RMA, resource consent assessments need to 'have regard to' objectives and policies of RMA planning documents, just as they are required to have regard to any actual and potential effects on the environment. This gives objectives and policies the same weight as the effects assessment. For outcomes to have greater significance in the new system than effects, the direction to consider outcomes needs to be stronger than the direction to consider effects. However, under section 223 of the NBE Bill, outcomes are given the same weight as effects, which is the same requirement as under the RMA: 'have regard to'. A requirement to 'have particular regard to' outcomes (and limits and targets), or similar strong direction, will be required if we are to work towards and achieve outcomes and realise the transformational change sought by the Government. This could be achieved by changing section 223 so that subsection (2)(c) is removed from the list of things to 'have regard to' and included above that list and given a stronger direction such as 'have particular regard to'. Without this change, discretionary activities will continue to be assessed as they currently are under the RMA.

104. Similarly, a focus on outcomes is lacking in the designation assessment provisions. For example, section 512 of NBE Bill requires consideration of Notice of Requirements (NORs) against a plan or proposed plan and against the RSS, but only for the purpose of assessing the effects of allowing the NORs. This is a significant risk for infrastructure NORs, as infrastructure will be necessary to achieve outcomes and may be required even when there are adverse effects, meaning weight needs to be given to outcomes. Consistency with the RSS and contribution towards achieving outcomes should be a separate consideration to assessing effects, in order to ensure sufficient weight is given to outcomes. If no weight is given to considering outcomes, then little change in practice will occur to that under the RMA, contrary to the Government's intentions for reform.

105. Removal of the permitted baseline is an issue that has attracted strong opposition from our membership. It is a very well established part of consenting with a significant amount of case law behind it. Because effects are still a part of the substantive assessment of resource consents, we consider that retention of the permitted baseline for this particular purpose would be appropriate. However, this should be qualified by relationship to outcomes. That is, the permitted baseline should only be applied in the effects assessment aspects of considering resource consent

applications, and must not be applied to consideration of outcomes. We note that there may be issues with the application of the permitted baseline where permitted activities rely on third party certification or approvals, and this issue should be given further consideration and accounted for in the way the legislation might be changed.

Monitoring and review in an outcomes-based system

106. Recommendation 21: That the monitoring provisions in the NBE and SP Bills are amended so that there is a requirement for a national digital strategy for the planning system, and digital requirements are incorporated alongside the other requirements for monitoring.

107. Recommendation 22: That the national-level monitoring, reporting and evaluation framework in section 836 is extended to integrate with regional-level monitoring.

108. Recommendation 23: That the requirements for regional-level monitoring, and NBE Plan effectiveness monitoring in particular, are reviewed and rationalised, including making regional planning committees the only body responsible for plan effectiveness monitoring.

109. Monitoring and review are important in an outcomes-based system. We need to know if we are achieving outcomes or not and make adjustments to methods if necessary. We also need to understand if the outcomes themselves need adjusting, to respond to new pressures or information. The NBE Act needs to include robust requirements for monitoring and review of outcomes and of the efficiency and effectiveness of methods to achieve them. As drafted, we considered there is considerable room for improvement.

110. At the national level, developing a digital strategy to capture data from multiple sources, which can be used to track the success of the outcomes, is critical. Currently, we are data rich but information poor because we are not able to share and analyse data due to the variety of different platforms and protocols used for its capture and storage. We need to be able to use this data to iterate the outcomes and adjust them over time. For example, NZPI supports the requirement in section 53 of the NBE Plan to enable monitoring data related to limits and targets to be aggregated at a national level.

111. We also support the requirements in section 836 and associated sections for MfE and other relevant government departments to have an integrated monitoring, reporting and evaluation framework for the operation and effectiveness of the NBE and SPA Acts. Central leadership for monitoring system performance, including national digital solutions, is important in an outcomes-based system. This framework needs to integrate with regional-level monitoring functions rather than just be focused on the national level.

112. The requirements for regional-level monitoring, and NBE Plan effectiveness monitoring in particular, are quite confusing and need to be reviewed and rationalised. We do support the three-yearly monitoring and reporting cycle and consider this creates a good feedback loop to ensure NBE Plans are responsive. However, the monitoring provisions do not represent a comprehensive set of requirements, which is not helped by the provisions being located in a number of unrelated parts of the Bill. We further highlight our issues below.

113. Section 783 sets out monitoring requirements for local authorities, including state of the environment and plan effectiveness monitoring. We support the inclusion of a requirement to

monitor how well policies, rules and other methods in plans are promoting outcomes (although we would like to see 'promoting' changed to 'achieving', in line with our submission points above). However, we are concerned that this section requires all the councils in the region to monitor the efficiency and effectiveness of the same plan, and a plan that they were not responsible for preparing. This is a very inefficient approach. There should only be one assessment of the efficiency and effectiveness of the NBE Plan for the region, and it would make sense for the regional planning committee and its secretariat to undertake this task. We note that a nationally consistent digital system could allow local authorities to undertake monitoring and regional planning committees to utilise the outcomes for regional-level analysis.

114. We note that a function of regional planning committees is to monitor how effectively its plan and its RSS are being implemented by each local authority in the region (section 642). This is a double-up of the above obligation of local authorities to undertake plan efficiency and effectiveness monitoring. It would be very inefficient if both the local authorities and the regional planning committee were undertaking the same monitoring and we reiterate our recommendation that the regional planning committee should have this responsibility.

115. The Bill provides an opportunity to overcome overlaps in monitoring responsibilities through the requirement for a regional monitoring and reporting strategy, to be prepared by the regional planning committee (section 785). This must describe the monitoring responsibilities of each local authority in the region. While this will help with coordination, it cannot change the responsibilities the Act places on each council. This strategy should include a digital component.

116. To identify monitoring provisions in other places, the time period and reporting requirements associated with NBE Plan monitoring are contained in clauses 51 to 53 of Schedule 7 of the Bill. These clauses reinforce the inefficiency and double-up issues identified above, of local authorities doing work that more logically should be the responsibility of the regional planning committees. These provisions need to be included in the overall review.

117. Outcomes-based planning requires good monitoring processes and data and good feedback loops to ensure we are achieving outcomes and make the necessary adjustments to the plans if the outcomes are not achieved. We recommend that the responsibilities for monitoring are rationalised and clarified and supported by a digital strategy. All the provisions relating to regional-level monitoring should be included together in one place in the Act (rather than somewhat hidden in the schedule).

5. MANAGING EFFECTS

Meaning of 'adverse effect'

118. Recommendation 24: That the term 'de minimis' is used instead of 'trivial' in the definition of 'adverse effect' in section 7 of the NBE Plan.

119. There is a definition of 'adverse effect' included in the NBE Bill, which states an adverse effect does not include a trivial effect. Trivial is a new term in the legislation and is therefore likely to need case law to define it. We suggest the term 'de minimis' is used instead of trivial as this is already established in case law and reduces unnecessary litigation.

120. References to 'any adverse effect' in the Bill are to any effect that is more than trivial (or 'de minimis' if our change is accepted). For consenting, this sets a low threshold for effects that need to be managed, compared to 'minor' effects under the RMA. One impact of this will be a greater ability to manage cumulative effects, because rather than the accumulation of 'minor' effects, there will be an accumulation of 'trivial' (de minimis) effects, which means it will take longer for the same level of cumulative effect to be reached. We support this change.

How to manage adverse effects

121. Recommendation 25: That consistent language is used throughout the NBE Bill regarding management of adverse effects: avoid, minimise, remedy, offset, redress. This includes replacing 'manages adverse effects' in section 3 with 'avoids, minimises, remedies, offsets or redresses adverse effects'.

122. The NBE Bill changes the way we manage adverse effects. The RMA provides direction on the management of adverse effects in its purpose (section 5). It requires any adverse effects to be avoided, remedied, or mitigated. The equivalent direction in the purpose of the NBE (section 3) is less specific than the RMA – it requires that adverse effects are managed. 'Manage' is a more general requirement than 'avoid, remedy or mitigate'. This means that it is not immediately obvious how to deal with adverse effects from the purpose of the NBE Bill. It is necessary to look further into the detail of the Bill to understand what is required to 'manage adverse effects'.

123. There appear to be two different ways to manage adverse effects under the NBE Bill – the effects management framework way, and the consenting way. It is confusing, and a challenge for implementation, to have two different ways to assess environmental effects, especially when some of the same terms are used in each assessment.

124. The general duty regarding effects in section 14 is to avoid, minimise, remedy, offset or take steps to provide redress for any adverse effect on the environment arising from an activity. The effects management framework in section 61 uses the same language: avoid, minimise, remedy, offset, provide redress, but also enforces the hierarchy of the steps and states that an activity cannot proceed if, after all the steps are followed and there remain effects, these cannot be redressed. That is, the effects management framework ends in a 'no' if redress for remaining effects is not provided.

125. In contrast, the consents part of the Bill retains the use of 'mitigate' from the RMA, does not use 'minimise', and changes the order in which 'remedy' appears. For example, section 223 requires a

consent authority to have regard to any measure proposed or agreed by the applicant to "avoid, remedy, mitigate, offset, or take steps to provide redress for any adverse effects on the environment", and this terminology is used again in section 231 regarding conditions on resource consents. Clause 6 of Schedule 10, information required in assessment of environmental effects, refers to 'mitigation measures' and makes no reference to minimising, remedying, offsetting or redressing.

126. We acknowledge that the effects management framework only applies to effects on significant biodiversity and specified cultural heritage, unless the NPF directs otherwise. As such, it is a tool to assess effects in 'high stakes' situations where a 'no' may be necessary to provide the level of protection required to meet outcomes. In contrast, there will also be situations where activities that have adverse effects need to be allowed to meet outcomes, and so the NBE Bill provides for exemptions to the effects management framework. We do not see a need to set up a different assessment framework for consenting to deal with the non-high stakes situations. Rather, the same language should be used, but the end point should not be a 'no' – the consent assessment should consider all the relevant factors, including the nature and scale of effects and the contribution the activity makes to achieving outcomes, and be able to result in an approval even if adverse effects will occur.

127. We request the Select Committee amend the NBE Bill so that consistent language is used throughout regarding management of adverse effects: avoid, minimise, remedy, offset, redress. This is essential to provide clarity and avoid unnecessary litigation. This includes replacing 'manages adverse effects' in section 3 with 'avoids, minimises, remedies, offsets or redresses adverse effects', in order to make the requirements for managing effects clear without needing to delve into the Act to understand what 'manage' means.

6. TE AO MĀORI AND TE TIRITI O WAITANGI

128. Recommendation 26: That the NPF include national direction on giving effect to the principles te Tiriti o Waitangi (requires change to section 56 or 58 of the NBE Bill).

129. Recommendation 27: That the NBE Bill is amended so the priority in the limbs of the definition of te Oranga o te Taiao is made clear, in a similar way to the explanation of Te Mana o Te Wai in the National Policy Statement on Freshwater Management.

130. Recommendation 28: That statements on te Oranga o te Taiao (section 106 NBE Bill) are given greater weight in the preparation of NBE Plans and RSSs, and more weight than statements of community outcomes and statements of environmental outcomes.

131. NZPI supports the greater integration of te ao Māori into the planning system provided for under the NBE Bill and SP Bill. This will bring benefits to the whole of the system. We also support the change from 'take into account' to 'give effect to' in relation to the principles of te Tiriti of Waitangi and recognise the significance of this wording change.

132. We alert the Select Committee to the fact that 'giving effect to' the principles of te Tiriti o Waitangi is a new concept for many planning practitioners in New Zealand (we note that the same requirement does apply under the Conservation Act). We expect there to be a period of testing what this means in the planning context through the Courts. NZPI wants to reduce this litigation risk as much as possible by making sure there is a good understanding of what is required to give effect to the principles of te Tiriti in a planning context as soon as possible. We see national direction on this as a key tool to provide certainty. A chapter in the NPF on giving effect to the principles of te Tiriti has the potential to greatly improve the implementation of the new system. This would require an amendment to sections 56 or 58 of the NBE Bill to require direction on giving effect to the principles of te Tiriti o Waitangi. We would be happy to work with officials on this direction.

133. An outcomes-based system provides better opportunity for integration of te ao Māori into our planning system because it provides a focus on the future and a more purposive approach. NZPI supports the incorporation of both te ao Māori (te Oranga o te Taiao) and Pākehā (wellbeing) concepts into the purpose of the NBE Bill (and by default the SP Bill). These both need to be threaded through the drafting of outcomes in the NPF, RSSs and NBA Plans.

134. There is a definition of te Oranga o te Taiao in the interpretation section of the NBE Bill. This definition includes four limbs, (a) to (d). The priority among these limbs is not explicit in the drafting, as it is, for example, for the concept of Te Mana o Te Wai in the National Policy Statement on Freshwater Management. We recommend that this is made explicit in the legislation, in a similar way to the guidance provided on Te Mana o Te Wai in the National Policy Statement on Freshwater Management.

135. Iwi and hapū need to be given the opportunity, resources, and flexibility to participate in a meaningful way to the development of outcomes at all levels. We support the ability for an iwi or hapū to provide a statement on te Oranga o te Taiao to the regional planning committee (section 106 NBE Bill). However, there should be greater weight provided to these documents in the plan development process, particularly if the principles of te Tiriti are to be given effect. They should have greater weighting than statements of community outcomes and statements of regional

environmental outcomes, including in s107 in relation to preparing NBE Plans and clause 14, Schedule 7 NBE Plan in relation to identifying major regional policy issues. These documents should also be considered in the preparation of RSSs.

136. We support the intent of the provisions in the NBE Bill and SP Bill that protect and preserve Māori interests, rights and responsibilities, such as customary marine title and protected customary rights and Mana Whakahono ā Rohe, and that address the relationship of the NBE Bill to other legislation such as statutory acknowledgements and Treaty settlement legislation.

137. We support provisions that provide opportunity for Māori participation in the plan-making system, separate from a role on the regional planning committees. These include iwi authorities having the right to be consulted on NBE Plan development (clause 15, Sch 7 NBE Bill); engagement agreements between regional planning committees and Māori groups that address participation and funding for participation in plan preparation (cl 9 to cl 13, Sch 7 NBE Bill); the identification of 'iwi authorities and groups that represent hapū' as interested parties with associated requirements to be consulted in the SP Bill; and the requirements for IHPs to have skills, knowledge and experience of te Tiriti o Waitangi and its principles; local kawa, tikanga and mātauranga; and Māori in the region (cl 93, Sch 7 NBE Bill).

7. SYSTEM-WIDE MATTERS

138. This section of the submission addresses a number of matters that affect the whole of the system, or particular issues that are addressed throughout the Bills.

Purpose

139. Recommendation 29: That section 3 of the NBE Bill is amended so that what is to be achieved is separated from how it is to be achieved, the reference to future generations is simplified, outcomes are to be 'achieved' and their purpose is made clear, and how effects are to be managed is made explicit (suggested wording below).

140. NZPI supports the dual purpose of the NBE Bill and having the te ao Māori concept of te Oranga o te Taiao alongside the Pākehā concept of wellbeing of current and future generations. This is a significant improvement compared to the RMA and sets the system up well for better integration of te ao Māori.

141. There is a need to provide clarity to the purpose in section 3(a) of the NBE Bill. As drafted, the section mixes up what is to be achieved with how it is to be achieved. Supporting the wellbeing of present and future generations is the purpose, whereas outcomes, limits, targets and managing effects are the means to achieve that purpose. However, the drafting of section 3 combines these all into one list. NZPI prefers the structure in the Select Committee's version of the Exposure Draft. That purpose was in two parts, with the purpose and the means to achieve it separated out. This structure will provide clarity to the purpose. Revised wording for section 3 is set out below.

142. Intergenerational equity is an important principle in the resource management system, and NZPI supports the reference to future generations in the purpose of the Bill. However, we can see issues arising with defining what exactly is meant by "without compromising the wellbeing of future generations". This is a new phrase, and new phrases always raise the risk of litigation (the equivalent phrase in section 5 of the RMA is "to meet the reasonably foreseeable needs of future generations"). We consider this risk can be lowered, and the provision simplified, by just referring to the wellbeing of present and future generations. There is nothing lost by removing 'without compromising', and the purpose has a more positive focus as a result.

143. As discussed above under the heading 'outcomes-based planning', we recommend that the Bill is amended so that outcomes are to be *achieved*. In the revised drafting of section 3 below, we have recommended that use of the environment '*contributes to achieving the outcomes in section 5 of this Act*'. This is an acknowledgment that the outcomes in section 5 are high level, overarching outcomes that we need to collectively work towards and may take some time to achieve.

144. We note that limb (a) of the purpose includes protection of the environment, but that this protection is to be achieved in a way that supports the wellbeing of present and future generations. That is, there is an anthropocentric lens to the protection. The implication of this phrasing is that if protection of the environment cannot be done in a way that supports wellbeing of people, then it does not have to be done. This is potentially concerning. However, it is our understanding that the requirement to uphold te Oranga o te Taiao in the purpose overcomes this, as te Oranga o te Taiao incorporates the concept of the health of the environment and its ability to sustain life, which we understand is not just human life. As such, protecting the

environment for its intrinsic value would be consistent with upholding te Oranga o te Taiao, even if it may be debatable whether this is consistent with limb (a) of the purpose.

145. Our revised wording for section 3 is set out below. These changes include those discussed above and in the 'outcomes-based planning' section of this submission. NZPI requests the Select Committee amends the NBE Bill as follows:

3 Purpose of this Act

(1) The purpose of this Act is to—

(a) enable the use, development, and protection of the environment in a way that supports the well-being of present ~~generations without compromising the well-being of~~ and future generations; and

(b) recognise and uphold te Oranga o te Taiao.

(2) To achieve the purpose of this Act, use of the environment must –

(a) comply~~ies~~ with environmental limits and their associated targets; and

(b) ~~Promotes~~ contribute to achieving the outcomes in section 5 of this Act ~~for the benefit of the environment~~; and

(c) ~~manages adverse effects~~ avoid, minimise, remedy, offset, or take steps to provide redress for any adverse effect on the environment arising from that use.

Decision-making principles

146. Recommendation 30: That section 6 of the NBE Bill is amended so that it applies to all decision-making under the Act, including consenting (suggested wording below).

147. Recommendation 31: That additions are made to section 6 of the NBE Bill to incorporate a requirement to consider the interconnectedness of the natural and built environment and a requirement to achieve integration between outcomes over uses that achieve one outcome at the expense of another (suggested wording below).

148. NZPI generally supports the decision-making principles in section 6 of the NBE Bill. However, we do not think these principles should be restricted to the Minister and regional planning committees. They should also apply to local authorities making decisions in consenting situations.

149. We also consider decision-making principles that assist with resolving conflicts between outcomes should be included. As noted in the 'outcomes-based planning' section of this submission, it is difficult for the Act itself to resolve conflicts, but the Act could provide guidance in the decision-making principles, particularly for the NPF, RSS and NBE Plans, which all have requirements to resolve conflicts. In particular, we think two concepts need to be incorporated, one related to the interconnectedness of the natural and built environment, and the other related to the synergies between outcomes that the Select Committee identified in its report on the Exposure Draft. Amendments could be worded as follows:

> 6(1)(a): every decision-maker must *recognise the natural and built environment as an interconnected system and provide for integrated management that capitalises on the benefits of that interconnectedness*.

New principle 6(1)(e): every decision-maker must *prefer uses that achieve integration between outcomes over uses that achieve one outcome at the expense of another*.

Places of national importance

150. Recommendation 32: That the requirement in section 556 for every *plan* to identify each place in the region that is a place of national importance is amended to be a requirement on the NPF.

151. Recommendation 33: That the limits to exemptions under s565 and s66 are clarified and rationalised.

152. Recommendation 34: That the provisions relating to places of national importance (Sub-part 3 of Part 8 of the NBE Bill) are relocated within the Bill to reflect their importance, either so they come before limits and targets in the NPF part of the Bill or are located within Sub-part 2 of Part 2 of the NBE Bill (duties and restrictions).

153. Recommendation 35: That the relationship between areas of highly vulnerable biodiversity and critical habitat and places of national importance is clarified.

154. Places of national importance are very similar to those matters of national importance that are required to be protected under the RMA. The provisions in the NBE Bill for places of national importance exert strong protection over these places, through the legislation itself (this is not left to planning documents). The provisions effectively provide a prohibition on any activity with a more than trivial (or de minimis) adverse effect in these areas, unless an exemption is granted (see sections 559 and 563). These provisions are therefore very significant. NZPI supports the strong protection provided to places of national importance, but we have a number of recommendations to clarify and improve the provisions.

155. The requirement in section 556 for every *plan* to identify each place in the region that is a place of national importance should be a requirement placed on the NPF. It should be a requirement on central government to identify places of national importance. This is a task that is essential for a national spatial strategy, which is a key part of our submission on the SP Bill (see below section). Central government has the ability to apply national consistency and organise the expertise required to undertake the work this section requires. When linked to such a strong prohibition, as proposed, it is essential the mapping of these areas is done at the national level. Without this mapping done at a national level, the burden this would place on regional planning committees is significant.

156. We also question why it is a requirement of NBE Plans to identify places of national significance, rather than RSSs? Places of national importance will have significant implications for spatial planning of a region. It would be inefficient for these areas to be mapped in NBE Plans, and then be required to account for them in RSSs – this is the reverse of the way the planning hierarchy is designed to work. It is most efficient for these areas to be identified in a national spatial plan or the NPF.

157. The limits to exemptions under s565 and s66 need to be rationalised. For example, the list of situations in which an exemption can be made to the requirement to protect areas of significant biodiversity (s66) is longer than the list of circumstances for exemptions to the protection of areas of highly vulnerable biodiversity, yet areas of significant biodiversity are areas of national

importance and areas of highly vulnerable biodiversity are not. This doesn't seem logical and is difficult to understand.

158. The places of national importance provisions are somewhat hidden in Sub-part 3 of Part 8 of the NBE Bill, which is the part that deals with 'matters relevant to natural and built environment plans'. We assume the provisions are located here because one of the sections provides a direction for mapping in NBE Plans. However, the implications of these provisions are much more wide-ranging than NBE Plans. For example, they place requirements on the Minister and the NPF, and they rely on the effects management framework provisions in Subpart 5 of Part 3 of the Bill (National Planning Framework). The effects management framework provisions are an essential part of the management of two of the places of national importance: significant biodiversity and specified cultural heritage. They should also be a key consideration in the development of RSSs as spatial drivers.

159. Our recommendation is that the places of national importance provisions (all those in Sub-part 3 of Part 8) are relocated into the National Planning Framework Part (Part 3) so that they come after Sub-part 1 (requirement for national planning framework) and before Sub-part 2 (environmental limits and targets). The protection mechanism in these provisions is stronger than that provided by limits, in fact is the strongest protection mechanism in the whole Bill, and therefore needs to be placed before limits in the internal hierarchy of the Bill.

160. The protections in sections 559 and 563 appear to set up an alternative framework to the usual process for most activities, set up by Sub-part 2 of Part 2 of the NBE Bill (duties and restrictions). Sections 17 to 24 set up a premise of use or not of a resource, unless an exception is provided by way of a rule or resource consent. But rules or resource consents do not apply to the places of national importance, and instead an exemption procedure is provided. It may be that the protection and exemption provisions for places of national importance should be located within Sub-part 2 of Part 2 and set up as prohibitions, in a similar manner to section 25 relating to radioactive waste in the coastal marine area. In any event, it would be helpful if the relationship between Sub-part 2 of Part 2 and the places of national importance provisions was clarified in the legislation. We recommended that the Select Committee gets advice on this matter (if this has not already been provided).

161. The labelling of the places of national importance sub-part needs to be adjusted. While specified cultural heritage and areas of significant biodiversity are places of national importance, areas of highly vulnerable biodiversity and critical habitat are not. And yet areas of highly vulnerable biodiversity are subject to a very similar prohibition. In addition, there appears to be no consequence or implication of an area being declared 'critical habitat'. This conflict needs to be resolved.

Quality and amenity of urban areas

162. <u>Recommendation 36:</u> That the focus of the NBE Bill on wellbeing is retained, to allow the quality and amenity of the urban environment to be the subject of national, regional and local outcomes.

163. The removal of direct reference to amenity values from the NBE Bill, including from the definition of 'environment', is of concern to many of our members, particularly urban planners, urban

designers and landscape architects. We received a strong negative response to the removal of amenity values in our membership survey.

164. The quality of the built environment and the amenity it provides are essential to the way we experience our living, working and playing environments. It is a key aspect of our wellbeing and has significant influence on community creation. It is important that we treat urban areas as a complete system. A focus on quantity (e.g. of housing) and function, without the requirement to consider the overall quality of the urban environment, will not deliver good urban outcomes or thriving communities, or healthy well-functioning urban environments. We have incorporated these concepts into the redrafting of the outcomes in section 5, discussed earlier in this submission in the section on outcomes-based planning.

165. We understand that the motivation for removal of direct reference to amenity values is to help overcome NIMBY-ism. It is not necessary to remove amenity values in order to achieve this, as the move to an outcomes-based system, including changes to notification and consent assessment provisions (discussed further below), work together to lessen the influence of NIMBY-ism in the system. The NPF also has the ability to provide strong direction on NIYBY-ism. However, we are comfortable with the removal of direct reference to amenity values, given the focus in the Bills on wellbeing. As discussed above, the quality and amenity of the urban environment is important to our wellbeing, and we will be able to set outcomes that address these aspects of wellbeing in the new planning instruments. The changes we propose to the outcomes in section 5 (included in **Appendix 2** of this submission) provide the basis for this.

Changes to existing activities

166. Recommendation 37: That there is an ability for councils to recover costs for the review of existing consents imposed by the NPF.

167. Recommendation 38: That the checks and balances in sections 139 to 141 of the NBE Bill that apply to rules in plans are applied to the use of powers for reviewing and cancelling consents.

168. Recommendation 39: That the context of outcome-based planning is factored into the operation of sections 139 to 141, including by amending section 131 so that a reasonable use of land is also one that would achieve outcomes.

169. Recommendation 40: That the time period in which existing use rights expire is changed from 6 months to 12 months (section 27 NBE Bill).

170. The NBE Bill allows for changes to existing activities, including those relying on existing use rights and resource consents. Of particular significance is the ability of district rules to override existing use rights in relation to the natural environment, natural hazards and climate change, and contaminated land (regional rules already have this ability under the RMA) (see section 26 of NBE Bill), and the ability for the NPF to direct the review of resource consents (see sections 75 and 76 of the NBE Bill).

171. Any requirement in the NPF for councils to review existing consents will place an additional burden on councils and create significant disruption amongst affected landowners and communities. There should be a requirement for funding and resources to be provided to councils in this situation, on the basis that this review is a national priority and therefore it should be supported by national direction and national funding.

172. We understand the motivation for the increased ability to change existing uses is to provide for stronger protection of the environment and greater ability to reduce risk from natural hazards and climate change. NZPI supports these motivations and we consider the expanded powers relating to existing activities can be an effective part of working towards these goals. However, these powers, if used, are likely to have significant implications for those affected (e.g. cancelling water take consents, or moving people out of harms way). We want to make sure the appropriate checks and balances are in place for the use of these powers.

173. Sections 139 to 141 of the NBE Bill are the replacement for section 85 of the RMA and provide a key check on planning provisions that go 'too far' in restricting the use of land. These sections of the Bill would clearly apply to the consideration of rules in plans that override existing use rights, and we consider this is appropriate. However, we are not clear whether these sections would also apply to changes to existing activities via the NPF and via the change or cancelling of resource consents. We recommend that this is given further consideration, and either these sections of the Bill are amended, or new sections included, to ensure that the use of the powers in the NPF and for reviewing and cancelling consents are subject to a similar level of scrutiny as rules in plans are.

174. We recommend that more consideration is given to the operation of sections 139 to 141 in an outcomes-based system. A 'reasonable use of land' is defined in section 131 as one that does not have significant effects. In an outcomes-based system, a reasonable use should also be one that would achieve outcomes. This would assist in applying these sections in a natural hazard or climate change situation, because if land is not capable of a use that meets outcomes for the community because of the high level of risk, it is clear that it is the risk that makes the use unreasonable, rather than the provision.

175. NZPI anticipates that the Climate Adaptation Act will need to address the circumstances and consequences of changes to existing activities for the purposes of responding to natural hazard and climate change risk. This is a prime example of why it would be efficient and extremely helpful for the Climate Adaptation Act to be considered alongside the NBE Bill and SP Bill.

176. The reduction in the time period in which existing use rights expire, from 12 months down to 6 months, may have unintended consequences, e.g. for rural activities that are seasonal. There was a strong negative response to this change in our membership survey. We recommend that the 12 months provided by the RMA is retained in the NBE Act.

Allocation

177. **Recommendation 41: That the 'may' in section 87 is changed to a 'must', so it is compulsory for the NPF to provide directions relating to the allocation principles and other matters related to allocation, including specific support for the application of section 126 to 129 of the NBE Bill.**

178. NZPI supports the NBE Bill being more directive on allocation of resources than the RMA. This is a critical issue that requires strong national leadership.

179. There is strong support amongst our membership for the allocation principles of sustainability, efficiency and equity. However, it is essential that the NPF provide further explanation for each of these principles, as well as providing guidance for what the application of these principles looks

like in practice. NZPI recommends that the 'may' in section 87 is changed to a 'must', so it is compulsory for the NPF to provide directions relating to the allocation principles and other matters related to allocation.

180. Our membership also showed strong support for the requirement in the Bill for NBE Plans to have allocation methods. NZPI supports the move away from the first-in, first-served principle where resource use is contested, and supports its retention where resource use is not contested. There is strong support in our membership for a merits-based approach to allocation, and some support for the use of a market-based approach, and we support these measures being addressed in the Bill. We note that with the Act itself prescribing how allocation methods are to be incorporated within plans (sections 126 to 129), the scope of any direction in the NPF on allocation is somewhat limited. However, we see benefit in the NPF providing more detailed direction and guidance on applying sections 126 to 129 of the NBE Bill.

181. We note that RSSs need to play a significant role in setting strategic direction for the approach to allocation in a region. Strong strategic direction in the RSS will ensure a more efficient process for developing rules for allocation in NBE Plans linked to the outcomes to be achieved. The changes we suggest in the section of this submission related to the SP Bill, such as NBE Plans being required to 'give effect to' RSSs, will help to cement this strategic importance.

Adaptive management

182. Recommendation 42: That the NBE Bill is amended so that adaptive planning is not restricted to use conditions of consent (sections 86 and 110).

183. NZPI supports the inclusion in the NBE Bill of the ability to use an adaptive management approach to deal with uncertainty. To-date, the precautionary approach has been the main way to address uncertainty, but this is an effects-based approach, focusing on avoiding effects that are uncertain but potentially significant. It is not well suited to an outcomes-based system. Adaptive planning, in contrast, is able to focus on achieving outcomes in a context of uncertainty. It addresses uncertainty by considering different actions based on different triggers, and in this way provides flexibility and allows things to happen rather than promoting an 'avoid' approach.

184. As drafted, the provisions in the Bill related to adaptive management are focused only on applying the approach in resource consent conditions. NZPI considers this to be overly restrictive. Adaptive planning will be most effective if it is available in the policy development stage rather than applied to resource consent conditions only. We envisage that to achieve some outcomes plans will need to outline an adaptive planning approach for pragmatic reasons. We recommended that the phrase 'under section 233' is removed from both sections 86 (NPF) and section 110 (NBE Plans) to allow adaptive planning to be applied as appropriate throughout the planning system.

Infrastructure

185. Recommendation 43: That the NBE Bill is amended so that the NPF is required to provide guidance on the application of the criteria for requiring authorities that provide social, cultural and environmental public benefits.

186. The integration of land use planning and management of the natural environment with infrastructure planning is essential for thriving communities and a healthy environment. NZPI supports the aspects of the Bills that make this integration more achievable.

187. The NPF has a significant role to play in this integration, by resolving conflicts between competing uses of the environment, particularly between infrastructure and the natural environment. The exemptions to limits provided for in sections 44 to 46 NBE Bill, and the exemptions to the effects management framework in sections 64 to 67, allow for this conflict to be resolved in favour of infrastructure and we support this as a pragmatic approach (additional comment on these exemptions is provided in the section of this submission on the NPF). A national spatial strategy, which we address in further detail below in our submission points on the SP Bill, would be a significant tool for applying a spatial lens to resolving conflicts between infrastructure and competing land uses, particularly in relation to the places of national importance.

188. The other role the NPF has regarding infrastructure is ensuring national consistency in the treatment of infrastructure throughout the country. There is strong support from our membership for standards in the NPF on managing the effects of infrastructure.

189. RSSs have a significant role in the management of infrastructure. This is discussed in more detailed in the section of this submission that addresses the SP Bill.

190. NZPI supports the changes to designations in the NBE Bill. These clarify the two-step process of route or site protection followed by construction. In particular, we support longer lapse periods for NORs, and the widening of the types of agencies that can be requiring authorities to include social infrastructure.

191. We also support broadening of the definition of infrastructure to include social infrastructure such as schools and hospitals, and the inclusion of fire and emergency facilities. These additions mean that outcomes for infrastructure will be more holistic and better focused on all aspects of community wellbeing. Similarly, we support the broadening of the criteria for requiring authorities to include operators that provide social, cultural and environmental public benefits. However, we note that guidance on the application of this Ministerial discretion should be provided in the NPF to provide certainty and clarity.

Notification

192. Recommendation 44: That the NBE Bill is amended so that the activity status and notification provisions relating to the NPF and plan-making are relocated out of the consenting part of the Bill and into the NPF and plan-making parts of the Bill.

193. Recommendation 45: That amendments are made so that the link between activity status and notification is used to simplify the notification provisions in the Bill.

194. Recommendation 46: That amendments are made so that the ordering of the notification provisions is more logical, starting with the presumptions of notification and non-notification.

195. Recommendation 47: That amendments are made so that the only exemption to the presumption of notification for discretionary activities is when there is enough information to determine whether outcomes, limits or targets will be met or not.

196. **Recommendation 48: That amendments are made so that the only exemption to the presumption of non-notification for controlled activities is when the additional information is needed to understand the extent of effects.**
197. **Recommendation 49: That amendments are made so that affected parties are only identified for controlled activities for the purpose of gathering information on the extent of effects, and that affected parties are only identified for discretionary activities that are not fully notified.**
198. **Recommendation 50: That the purpose of notification in section 198 is clarified in accordance with NZPI's suggested drafting below.**
199. **Recommendation 51: That section 206 is amended so that the lack of a written approval is the only reason for limited notification.**
200. **Recommendation 52: That the notification provisions for proposals of national significance are updated by removing the minor effects test and replacing it with the equivalent of the updated test in the resource consents part of the Bill (requires changes to sections 369 and 372).**
201. **Recommendation 53: That the Select Committee recommend guidance is provided on the availability and use of alternatives to full resource consent hearings.**
202. **Recommendation 54: That further work is done on options for reducing the costs of notified consent hearings.**

203. The NBE Bill includes significant changes to the way notification of resource consent applications works, affecting both plan-making and consenting. In particular, there is a requirement for the NPF and NBE Plans to either set out the notification status and affected parties for each activity, or direct that the consent authority should do this assessment. NZPI supports the identification of notification status and affected parties in the NPF and NBE Plan wherever possible, as this provides certainty and will help with the 'front loading' of the system, freeing up effort at the consenting stage to focus on substantive decisions.

204. We note that it is easier to address policy issues when determining notification status at plan level. For example, it is easier to address NIMBY-ism by assigning non-notification status to activities that clearly meet outcomes, and it is easier to consider cumulative effects as a factor for notification at policy development stage than at consent stage. In an outcomes-based system, determining notification status at plan development stage is important.

205. However, as drafted the provisions on notification of consent applications are confusing and complicated. There is likely to be a broad spectrum of how planners respond to the provisions, rather than the certainty that the reforms are seeking. We identify improvements to be made in the following paragraphs.

206. The activity status and notification provisions relating to the NPF and NBE plan-making need to be moved into the NPF and NBE plan-making parts of the Bill. As drafted, all the activity status and notification provisions are located in the resource consent part of the Bill. This will be a problem for implementation, as it is easy to miss these provisions when reading the NPF and plan-making parts of the Bill. This is a new compulsory requirement for plans and the NPF the directions in the Act on this need to be obvious and clear. This may result in some repetition or cross-referencing, for example between the NPF and plan-making provisions, but we think this is preferable to having these provisions located in an obscure place.

207. The link between activity status and notification should be used to simplify the notification provisions in the Bill. In an outcomes-based system, it is essential that notification is based on whether an activity will achieve outcomes. Notification should not be a barrier to proposals that achieve outcomes. In the NBE Bill, activity status is linked to whether an activity will achieve outcomes – controlled activities are those that meet outcomes, and discretionary activities are those where there is uncertainty about achieving outcomes or it is likely they will not be achieved (see section 154). The assessment of whether an activity will achieve outcomes has therefore already been made when determining activity status. It seems unnecessary, therefore, to have additional provisions about when notification is required. For example, the requirement in s205(2)(a) to notify an application if there is sufficient uncertainty as to whether an activity could meet outcomes is a double-up of the assessment required when setting activity status under s154.

208. The ordering of the notification provisions causes confusion. The provisions should follow a more logical order. For example, the presumption that controlled activities will not be notified and discretionary activities will be in sections 203 and 204 of the Bill need to be the starting point, after the purpose of notification in section 198. The non-notification and notification presumptions should then be followed by any exceptions to the presumptions – guidance to plan makers on when it might be appropriate to not follow the presumptions and direct a different consideration on a cases-by-case basis at consent stage (which we discuss in further detail below). Next, there should be provisions related to identifying affected parties and the implications when written approvals are not provided (limited notification).

209. The purpose of notification needs to underlie and drive the notification requirements in the legislation. The current drafting of the provisions does not do this. If amendments are made to ensure this is the case, the notification provisions will be simplified. NZPI supports the purpose of notification being to gather information to better understand how an application contributes towards outcomes and/or the extent of its effects. Two things flow from this. One is that discretionary activities should only be non-notified if it is concluded that the consent authority has enough information to determine whether outcomes will be met or not and/or what the extent of effects is (the only exemption to the presumption of notification for discretionary activities). The Bill should be amended so that this becomes the qualification for the 'unless' in section 204 (public notification for discretionary activity). Related to this, the only reason controlled activities should be notified is in order to better understand the extent of effects, as controlled activities will always achieve outcomes (by definition). The Bill should be amended so that this becomes the qualification for the 'unless' in section 203 (public notification not required for controlled activities).

210. The second is that affected parties must be those parties who can provide information on whether a proposal achieves outcomes and/or the extent of effects. Because controlled activities are those that meet outcomes, it will only be necessary to identify affected parties for controlled activities in order to understand the extent of effects. For discretionary activities, it will only be necessary to identify affected parties for activities that are not fully notified. This should be made clear in the legislation.

211. A person who is not the applicant will never have additional information about the application itself, but they may be able to provide information or opinion on how well the application

performs against outcomes and the extent of effects. Amendments to the drafting of the purpose of notification are needed to clarify this. NZPI recommends the following changes:

> *198 ~~A~~ The purpose of notification (whether public or limited notification) and the identification of affected parties of an application for a resource consent is –*
> *(a) To obtain further information about the impact of an application from individuals or members of the public; and*
> *(b) Through that information, to better understand how the proposed activity meets or contributes to outcomes and the extent of its effects ~~including how the proposed activity meets or contributes to the outcomes~~.*

212. If a written approval is not provided from that person, limited notification will occur, and the decision-maker will get to hear from all parties before making a decision on an application. Lack of a written approval should be the only reason for limited notification – the other two reasons in section 206 are not related to obtaining information about the impacts of the application.

213. To provide further explanation for these submission points, we recommend that the process for determining notification status and identifying affected parties during NPF development and plan-making should be as follows:

a) Determine activity status in accordance with s154, and notification status is automatically assigned in accordance with the presumptions in sections 203 and 204 (controlled = non-notified, discretionary = notified).
b) For controlled activities, determine if there are any affected parties in order to understand the extent of effects.
c) For discretionary activities, determine if an application should not be fully notified because enough information is already known about it. If an application should not be fully notified, determine if there are any affected parties.
d) If (b) and (c) are not able to be determined at the policy level, or there are valid reasons to make the determination on a case-by-case basis, provide directions for the consent authority to make notification and affected party decisions.

214. Once the above process has been undertaken at NPF development and plan-making stage, the notification assessment at consent stage becomes very simple:
a) Check notification status in the NPF or NBE Plan and follow directions.
b) If the NPF or NBE Plan directs the consent authority to determine notification status and identify affected parties, follow directions in Act for what to consider.

215. To clarify, the directions in the Act for step (b) in the consent notification decision-making must be linked to the purpose of notification – the consent authority will need to consider if notification or affected parties are likely to provide additional information on how the application contributes to outcomes or the extent of effects.

216. We note that the notification test for proposals of national significance does not appear to have been updated – this still refers to minor effects (see sections 369 and 372). We see no reason why the notification test from the RMA should be retained for proposals of national significance when it has been replaced for resource consents and designations. This would cause inconsistency in the

system and confusion. We recommend that the minor effects test is removed from these provisions and the notification test is updated to reflect the resource consent provisions.

217. NZPI supports provisions in the NBE Bill that allow for reduced costs and time for notification. The changes discussed above are likely to result in more consent applications being notified than currently occurs, and this is a concern given the significant cost and time implications for notification under the current system, unless significant changes are made. We support the ability in section 215 to not hold a hearing on notified applications if sufficient information is available to make a decision. This is consistent with the new purpose of notification and would allow decisions to be made on the papers, thereby avoiding significant costs and delays. We also support the ability to use mediation in section 214 as a helpful way to potentially avoid the time and costs of a full hearing. NZPI also supports the alternative dispute resolution provisions in section 244 to 252, which we discuss further in the consenting part of this submission. We consider these proposals will help to reduce the time and cost implications of notification. However, we note that realising the benefits of these proposals relies on them being used in practice, which requires education about their availability and use. This should be the subject of guidance in support of the Bill.

218. We note that the proposals mentioned above would not reduce costs if a hearing is held on a notified consent. We recommend that further consideration is given to ways to limit the costs of notified hearings. We would welcome the opportunity to work with officials on this.

8. NATIONAL PLANNING FRAMEWORK

219. The NPF has a significant role to play in the new planning system. The NBE Bill provides significant directive power to the NPF – it has the potential to have a strong influence on the other planning instruments in the system. A strong NPF will be one that sets positive outcomes focused on Te Oranga o te Taiao and community wellbeing, and that applies a holistic approach to break down the siloed approach that current national direction is based on.

220. Our comments in the commencement and transition section of this submission highlight the need for a complete NPF to be in place ahead of the development of RSSs and NBE Plans.

The role of the NPF

221. Recommendation 55: That the Select Committee notes the importance of the NPF in the system and considers this in its recommendations related to both the NPF itself and the transitional arrangements.

222. NZPI supports the purpose of the NPF set out in section 33 of the NBE Bill. The NPF must provide strong national direction for nationally important issues and issues that require national consistency, as well as for the resolution of conflicts between these issues. These purposes are all included in section 33.

223. We note that the NPF does need to leave room for local planning in NBE Plans. Not all issues are nationally important, and not all issues need national consistency. The NPF should therefore not overstep the mark. It is essential that regional planning committees are able to create NBE Plans that are fit for purpose for the issues in its particular region, in a manner that accounts for the views of iwi and hapū and local communities.

224. We cannot overstate the importance of the NPF for resolving conflicts between competing uses of land. The importance of this in relation to infrastructure has been discussed earlier in this submission. It is important for many other situations too. This is because the outcomes in section 5 of the NBE Bill (including our amended list) have inherent conflict between them, but no priority.

225. The 'front-loading' of the planning system, so that conflicts are resolved at a policy level rather than at a consent level, is one of the key approaches of the new system. We support this approach. To realise the benefits of this approach, it is essential that the NPF is an integrated document that provides practical direction on priorities and resolution of conflicts. A failure to do this will have significant negative ramifications for the rest of the planning system and create an unnecessary burden on NBE plans.

226. The NPF has a key role to play in addressing data and evidence requirements through the national coordination, management and generation of data and digital tools via a national digital strategy. This is to both develop NBA Plans and to monitor our progress towards achieving outcomes and complying with limits and targets over time, as outlined in our submission earlier. Conflict resolution and certainty are improved by quantifiable data that is displayed and explained simply. There are benefits of efficiency, equity and accessibility to this being addressed at the national level, subject to the need to appropriately address Māori data sovereignty issues.

Limits and targets

227. Recommendation 56: That a definition of 'human health' is included in the NBE Bill (suggested wording below).

228. Recommendation 57: That amendments are made to section 40 NBE Bill to allow mātauranga Māori to be incorporated into limits (suggested wording below).

229. **Recommendation 58: That 'wellbeing' is added each time 'human health' is referenced in the limits and targets section of the NBE Bill, for example in sections 37, 40, 42.**

230. Recommendation 59: That amendments are made to allow limits and targets to be used to manage natural hazards and climate change (suggested wording below).

231. Recommendation 60: That amendments are made to require a national database on the current state of the natural environment to be created, maintained and made open access.

232. Recommendation 61: That sections 38 and 39 of the NBE Bill are amended so that the Minister is required to set limits in the NPF for the compulsory aspects of the natural environment listed in section 38.

233. NZPI supports the role of limits and targets in the new system. Limits are a potentially powerful tool to stop things getting worse, and targets are a very useful tool to ensure we bring about improvements as we work towards achieving outcomes. Applied correctly, these tools will enhance our ability to protect and restore the natural environment and improve the built environment.

234. We have identified a number of areas for improvements to the limits and targets regime and discuss these in the following paragraphs.

235. NZPI recommends that a definition of human health is included in the NBE Bill, so we can be clear about what limits 'to protect human health' are. We have not used limits for protecting human health before, so we need to ensure the legislation tells us exactly what it means. We have considered the World Health Organisation's definition of health, and Sir Mason Durie's definition for a specific New Zealand perspective. Combining these, we suggest the following definition of human health as a starting point for inclusion in the Bill:

> *Human health means a state of complete physical, mental, spiritual and family wellbeing and includes te whare tapa whā: taha tinana, taha hinengaro, taha wairua, and taha whanau.*

236. We note that the existing national direction that is to be transitioned into the NPF will need to be reconsidered against the requirements to protect human health, as no current national direction does this. Without this approach we do not consider the NPF will be achieving the purpose of the NBE Act.

237. As drafted, there does not appear to be an ability for the form of limits to account for te ao Māori, and we think this is a significant lost opportunity. There should be an explicit ability to incorporate mātauranga Māori into limits. We suggest the following change to section 40 to provide for this:

> **40 Form of environmental limits**
> (4) An environmental limit may be—

a) qualitative or quantitative *and incorporate mātauranga Māori*:

238. As drafted, limits for the natural environment relate to the ecological integrity of the natural environment and to human health. We can see potential for limits for the natural environment to be for human health *and wellbeing*. As discussed earlier in this submission, wellbeing is a helpful way to consider the impact that the quality of the urban environment has on our communities. Limits on natural resources can protect wellbeing of communities in urban areas as well as their health. Including wellbeing allows for a more holistic approach to limit setting. We recommend 'wellbeing' is added each time 'human health' is referenced in the limits and targets section of the NBE Bill.

239. NZPI supports the ability to use targets for the built environment (section 47). This will help us to be specific about how we can achieve the outcomes we set in the NPF, RSSs and NBE Plans for the quality of our built environment and other aspects of wellbeing.

240. We recommend that limits and targets are able to be used to manage natural hazards and climate change, which are matters of human health and wellbeing. A limit related to natural hazards and climate change would be a maximum threshold for risk to human health and wellbeing. In situations where risk levels already exceeded that threshold, interim limits could be used. Targets would then be used to work towards a lower level of risk that met the outcome of communities being safe from natural hazards. This is a very simple tool to effectively manage risk.

241. Changes required to give effect to this recommendation include the following:

40(2) Environmental limits must be set as – *(c) a maximum threshold for risk to human health and wellbeing from natural hazards and climate change.*

42(2) Interim limits can be set when the Minister is satisfied *(c) that the existing level of risk to human health and wellbeing from natural hazards and climate change exceeds the maximum threshold.*

50(1) The responsible Minister must set a minimum level target in the national planning framework if the Minister is satisfied that the associated environmental limit is set at a level that represents unacceptable degradation of the natural environment *or unacceptable risk to human health and wellbeing from natural hazards and climate change*.

50*(3)* *The risk to human health and wellbeing from natural hazards and climate change will be unacceptable if it exceeds the maximum threshold set in section 40(2)(c).*

242. Allowing limits to be used for managing risk aligns well with other changes in the Bill that provide more tools to address natural hazards and climate change, such as the ability to override existing use rights and review consents, identified above. It would also trigger a requirement for monitoring and reporting under section 53, which would have significant benefits for natural hazard and climate change risk management.

243. The limits and targets regime is based on the current state of the natural environment at the time of the commencement of the NPF part of the Act (see section 40). It is not clear to us that the current state of all the aspects of the natural environment that require limits, in all parts of the county, is known. If it is not known, the limits and targets regime will fall over before it even begins. This issue needs to be investigated and addressed urgently.

244. NZPI recommends that a national database on the current state of the natural environment is created, to coordinate data and enable the consistent setting of limits and reporting across the country.

245. We have had strong member feedback that limits and targets should be set in the NPF in preference to NBE Plans. This is inline with the 'front loading' principle of the reform. For nationally important matters, and matters that require national consistency, it is most efficient to put the effort into setting limits in the NPF, rather than leaving limit setting to NBE Plans. Leaving this to the NBE plans will place unnecessary burden on regional planning committees and the wider community and our concerns referenced above about tranching will also apply. They are also likely to lead to litigation in NBE Plans. We recommend that the Minister should be required to set limits in the NPF for all the compulsory aspects of the environment identified in section 38.

246. We note that we have found the sub-part of the Bill on limits and targets very confusing and difficult to understand. We put this down largely to the drafting of this sub-part, rather than the logic or merits of the proposals. We have significant concerns about the workability and implementation of this sub-part as it is currently drafted. We have not had the time to redraft the sub-part ourselves, but we would be happy to work with officials to improve the drafting.

Exemptions

247. Recommendation 62: That the criteria and circumstances for exemptions in sections 45, 66, and 565 are narrowed and made consistent with clear parameters for Ministerial discretion.

248. Recommendation 63: That the nature and form of exemptions to limits, the effects management framework, and places of national importance, is clarified in the legislation.

249. NZPI has concerns over the two exemption regimes in the NPF part of the Bill – exemptions to limits and exemptions to the effects management framework. The exemption provisions are very confusing and there appears to be a lot of unnecessary complication. We have a concern over the criteria for exemptions, and we also have a concern over the nature and form of exemptions. These concerns align with the concerns we outline in our submission points above on places of national importance, which rely on the effects management framework in the NPF.

250. We understand the need for exemptions in particular situations, where the protection of the natural environment is not the highest priority (for example, where the only option is for the national grid to go through an area of significant biodiversity). However, these situations should be very narrow, otherwise there is a risk that the integrity and force of the protection regime is eroded. We have concerns that the list of exemptions to the effects management framework in section 66 is very long and includes some vague and inappropriate circumstances (such as 'subdivision'). For limits, the list of 'essential features of exemptions' in section 45 is much shorter than the list of exemptions to the effects management framework, but provides a high degree of discretion to the Minister in granting an exemption or not. A high degree of Ministerial discretion introduces uncertainty into the regime. The policy behind the differences in the two exemption

regimes, and the one in section 565 for places of national importance, is not at all clear. We recommend the criteria and circumstances for exemptions is narrowed in scope, and clear constraints are put on the Ministerial discretion. We have not developed an alternative set of criteria, but we would be happy to work with officials to do so.

251. The nature and form of exemptions is not at all clear from the drafting of the legislation. For example, it is not possible to tell if an exemption to a limit has the qualities of a resource consent, or whether perhaps it is a provision in an NBE Plan. It is regional planning committees that apply for exemptions for particular activities, during the process of preparing its RSS or NBE Plan, which is a very unusual process (and one that could result in a lack of consistency across the country). It is not clear who triggers an exemption from the effects management framework, but the exemption does appear to be a provision in the NPF itself. We recommend the nature and form of exemptions is clarified in the legislation. Again, we have not developed alternative drafting, but we would be happy to work with officials to do so.

Process for preparing NPF

252. <u>Recommendation 64:</u> That the streamlined process for amending the national planning framework in clauses 23 and 24 of Schedule 6 of the NBE Bill is deleted.

253. NZPI does not support the streamlined process for amending the national planning framework in clauses 23 and 24 of Schedule 6 of the NBE Bill. While we appreciate the desire for the NPF to be agile and able to be changed quickly, we do not think this overrides the need for submitters to be heard and for rigorous testing of amendments through a hearing. The NPF is a critical document in the new system, and it will dictate a lot about how we plan for the environment and our communities at the regional and local level. It is essential that any changes that have a more than minor impact on the NPF are subject to a hearing.

9. THE SPATIAL PLANNING BILL

254. This section of the submission sets out our submission points on the SP Bill. Note that our recommendations in this section are not stand-alone recommendations. Rather, they consider the system as a whole and are a collective suite of recommendations where each relies on the others.

National Spatial Strategy

255. <u>Recommendation 65:</u> That the Spatial Planning Act require a national spatial strategy to be prepared by the Minister.

256. NZPI considers that a national spatial strategy is essential for successful spatial planning at the regional level. It would provide strategic national direction that RSSs would be able to give effect to. We acknowledge that the NPF and Government Policy Statements will provide direction to RSSs, but these do not appear to have a spatial element to them, and this is critical.

257. A national spatial strategy would bring together strategic decision-making on national and inter-regional issues such as climate change and natural hazards, nationally important natural areas, significant natural landscapes, transport infrastructure (including major state highways, rail, ports and airports), energy infrastructure (including hydro, geothermal, wind and solar generation, storage, and transmission), and telecommunications infrastructure and data centres. A national spatial strategy is a potentially powerful tool to ensure consistency across the country and address competition for space between nationally important uses, for example biodiversity and transport. As well as addressing competition, it would also address complementary and beneficial relationships, for example infrastructure adaptation to climate change. It could also assist with consistent assumptions on population growth cognisant if immigration policy, and the development of consistent scenarios for long term housing and transport outcomes based on Government Policy Statements.

258. Consistent with the theme of 'front loading' the planning system, a national spatial strategy removes the need for regions to deal with the trade-off between the national good and local adverse effects. This has been a burden left to local councils under the RMA, which has created unnecessary delays in the past. It is more efficient for the system to require these issues to be addressed at the national level.

259. We see a national spatial strategy as a complementary tool that would be part of and work with the NPF. It would provide an overview across all issues and a spatial lens for helping to resolve conflicts between national priorities. Being part of the NPF, it would also provide a much-needed link between the three separate pieces of legislation – the NBA, the SPA, and the CAA. Particularly, a national spatial strategy would be able to address national priorities for managed retreat, based on risk and affordability, promoting fairness and equity across regions. A national spatial strategy also opens an opportunity for the creation and management of national databases and digital tools, which we consider is essential to deliver the efficient and effective operation of the new system.

260. We note that if a national spatial strategy is not prepared, one will arises by default, being the collection of the individual RSSs. This would not be a good result, as the individual RSSs would not

necessarily line up or have any national oversight to them. It would be much better to avoid the issues this creates by the Government 'front-footing' spatial planning at the national level.

Role of RSS in the system

261. NZPI supports the introduction of mandatory spatial planning at a regional level. Long-term, strategic direction for the use, development, and management of the environment has significant benefits in an outcomes-based system. Key functions of RSSs should be to:
    - provide strategic direction on the achievement of outcomes,
    - provide a spatial representation of what the future may look like,
    - provide a spatial lens for resolving conflicts over use of space and resources, and
    - manage cumulative adverse environmental effects.

Purpose of the SP Bill

262. Recommendation 66: That the purpose of the SP Bill in section 3 is changed to be 'provide strategic direction' rather than 'provide for regional spatial strategies' (suggested wording below).

263. We have concerns that the purpose of the SP Bill is not focused on providing strategic direction. As drafted, the purpose of the SP Bill is to provide for a document – the RSS. The purpose of the Bill should be amended so that it is to provide strategic direction for the region. The RSS is the tool to provide that direction, as are the other documents provided for by the SP Bill but not mentioned in the purpose (such as implementation plans). This is easily fixed by replacing 'regional spatial strategies' with 'strategic direction' in the opening statement of section 3 so that it reads: "The purpose of this Act is to provide strategic direction that …". The use of 'strategic direction' rather than '*regional* strategic direction' in the purpose of the SP Bill will allow for the incorporation of a national spatial strategy into the legislation. Our proposed amendment is shown below:

> *3 Purpose*
> *The purpose of this Act is to provide ~~for regional spatial strategies~~ strategic direction that –*
> *(a) Assist in achieving –*
> *(i) The purpose of the Natural and Built Environment Act 2022, including by recognising and upholding te Oranga o te Taiao; and*
> *(ii) The system outcomes set out in that Act; and*
> *(b) Promote integration in the performance of functions under the Natural and Built Environment Act 2022, the Land Transport Management Act 2003, and the Local Government Act 2002.*

Infrastructure coordination

264. Recommendation 67: That the link between RSSs and NBE Plans for designations (such as in section 512 NBE Bill) is only maintained if RSSs are subject to an IHP hearing, otherwise, the designation provisions in the NBE Bill that acknowledge RSS decisions should be deleted.

265. We see the coordination and integration of planning for infrastructure with planning for land use and environmental management as a key role for the RSS. This will be a significant step forwards compared to the RMA and help to overcome challenges for infrastructure such as balancing greater-good issues with local effects. However, we note that the focus needs to be on all infrastructure, and not just publicly owned infrastructure.

266. We also support the link between the SP Bill and the designation provisions in the NBE Bill. In particular, the acknowledgement in section 512 of the NBE Bill that, if the infrastructure has been identified in the RSS, there is no need to consider alternatives or whether the infrastructure is necessary for achieving the outcomes in planning documents. This will save revisiting decisions made in the RSS process. However, we only support this link on the basis that our recommendation below that RSSs should be subject to an IHP hearing is accepted. This link for designations between the RSS and the NBE Plan highlights the importance and influence RSSs have on future processes under the NBE Bill, which will affect how people are able to use property. If there is no hearing for an RSS, the designation provisions in the NBE Bill that provide acknowledgement for RSS decisions should be removed.

Strategic direction overlap with NBE Plans

267. Recommendation 68: That the RSS is the only regional planning document that provides regional strategic direction (amendments required to NBE Bill to achieve this).

268. Recommendation 69: That NBE Plans are required to 'give effect to' RSSs (amendments required to the NBE Bill to achieve this).

269. Both RSSs and NBE Plans are required to provide strategic direction for the region (see section 15(1)(a) of the SP Bill and section 102(1) of the NBE Bill). This is an overlap that will cause confusion and inefficiencies. It also undermines the role and importance of the RSS in the overall system. An RSS needs to be more than a high-level document that sits on a shelf – it has an important strategic role.

270. We consider that the RSS should be the only document that provides strategic direction in a region. The requirement for NBE Plans to provide strategic direction in s102 of the NBE Bill should be removed. This will increase the importance and effectiveness of the RSS in the system and save a significant amount of duplication.

271. With strategic direction located only within RSSs, we consider that NBE Plans should be required to 'give effect to' RSSs, rather than be consistent with them as under the current drafting. The language of 'be consistent with' does not appear in the RMA so would be new to the practice of planning and therefore likely to attract litigation and case law to define exactly what it means. By comparison, the meaning of 'give effect to' is well established. The use of this direction would reinforce the place of the RSS in the planning hierarchy and provide greater certainty into the system. Without these two changes (strategic direction in RSSs only and NBE Plans to 'give effect to' RSSs), RSSs will contribute very little to the delivery of the purpose of the NBE Act and we would question their value in the overall planning system.

272. We note that these recommendations would change the significance of the RSS in the system, which is our intent. Commensurate with this, it is essential that RSSs are subject to a compulsory, IHP hearing. We discuss this further under the 'process and decision-making' heading.

Other content of RSS

273. Recommendation 70: That the SP Bill is amended so there is a requirement for an RSS to provide strategic direction on the achievement of outcomes in a region, to recognise and uphold te Oranga o te Taiao, and to provide strategic direction on planning for the wellbeing of present and future generations (suggested wording below).

274. Recommendation 71: That the requirement in section 17 of the SP Bill for RSSs to provide a vision and objectives be amended so it is a requirement to provide a vision and *outcomes* (suggested wording below).

275. Recommendation 72: That section 17 of the SP Bill is amended to require RSSs to include a spatial representation (maps and plans) to support the strategic direction on achieving outcomes (suggested wording below).

276. Recommendation 73: That sections 17 and 18 of the SP Bill are deleted and simplified requirements for the content of RSSs included in section 16 (suggested wording below).

277. The scope and contents of RSSs as set out in sections 15, 16, 17 and 18 of the SP Bill need amendments to ensure RSSs fulfil their potential in the system to provide strong strategic direction on planning for wellbeing and te Oranga o te Taiao in a region.

278. It is essential in an outcomes-based system, that the RSS provides strategic direction on the achievement of outcomes in a region. There is no requirement for an RSS to do this in the SP Bill. This is despite the fact that part of the purpose of the SP Bill is to assist in achieving the outcomes in the NBE Bill. There is also no reference to the other parts of the purpose of the SP Bill in the scope or contents of an RSS, being to recognise and uphold te Oranga o te Taiao, and to provide strategic direction on planning for the wellbeing of present and future generations. These requirements need to be added to the SP Bill so that RSSs are an effective document in the new system.

279. As discussed in our submission points on outcomes-based planning, the requirement in section 16 of the SP Bill for an RSS to set out a vision and objectives for the region should be a requirement to set out a vision and *outcomes* for the region. This will require translating the national-level outcomes in section 5 of the NBE Bill and any national outcomes expressed in the NPF into the local context and adding any strategic-level outcomes that are important to the region but not covered by the national-level outcomes.

280. Maps and plans will be an essential part of RSSs, but there is no requirement in the SP Bill for these to be part of RSSs. The requirement for RSSs to include a spatial representation of what the region will look like in the future, alongside strategic direction and actions on how to get there, needs to be included in section 16 of the SP Bill. Without these changes, the value of the RSS is significantly reduced in the new outcomes-based planning system.

281. Section 17 of the SP Bill contains a long list of key matters that an RSS must address, and section 18 sets out criteria for other matters that may also be addressed in RSSs. The benefits of a list reduce the more things that are included in it. There is a risk that the list and criteria in sections 17 and 18 will cause confusion and hinder implementation when considered alongside other requirements for RSSs such as direction in the NPF and the requirement to give direction to NBE Plans. We consider that the list and criteria in sections 17 and 18 are not necessary and that these sections should be deleted. Instead, we consider that the requirements can be simplified while also providing greater integration of RSSs with the rest of the planning system and providing flexibility to regional planning committees on what needs strategic direction and spatial planning in its region. This is further explained in the bullet points below:

- The outcomes in section 5 of the NBE Bill provide a list of outcomes that RSSs need to assist in achieving. Therefore, there should be strategic direction on what those outcomes look like in the region and how they are to be achieved in the regional context.

- The NPF will set direction for RSSs on particular matters. Therefore, there should be strategic direction in RSSs as directed by the NPF.

- RSSs are required to provide strategic direction to NBE Plans, and the NBE Bill sets out a list of what NBE Plans must include (sections 102 and 103). Therefore, there should be strategic direction on the matters identified in sections 102 and 103 of the NBE Bill within the RSS.

- We discuss below our recommendation that the preparation of RSSs includes a requirement to engage with interested parties and the public on major regional policy issues. Therefore, there should be strategic direction on the major regional policy issues identified through that engagement process (which are likely to have some overlap with outcomes, NPF direction and the requirements for NBE Plans discussed above).

282. These requirements should sit alongside the requirement already in the SP Bill for RSSs to provide for integrated management.

283. Our suggested changes to sections 15 and 16 of the SP Bill to account for the above submission points are set out below:

> ***15 Scope of regional spatial strategies***
> *(1) A regional spatial strategy must—*
> *(a) set the strategic direction for the use, development, protection, restoration, and enhancement of the environment of the region in a manner that achieves the outcomes in section 5 of the NBE Act for a time-span of not less than 30 years; and*
> *(b) provide for the integrated management of the environment, including by providing strategic direction for the resolution of conflicts between and among the outcomes in section 5 of the NBE Bill and for the instruments in the planning system that are referred to in **section 4**; and*
> *(c) support the efficient and effective management of the environment; and*
> *(d) give effect to the national planning framework to the extent that the framework directs; and*
> *(e) otherwise be consistent with the national planning framework.*
>
> ***16 General contents and form of regional spatial strategies***
> *(1) A regional spatial strategy must—*
> *(a) set out a vision and ~~objectives~~ outcomes for the region's development and change to provide for the wellbeing of present and future generations and to recognise and uphold te Oranga o te Taiao over the period covered by the strategy; and*
> *(b) set out the actions that must be taken as a matter of priority to achieve that vision and those ~~objectives~~ outcomes (the* priority actions*); and*
> *(c) provide strategic direction on the following~~, to the extent that the regional planning committee considers they are of strategic importance to the region~~:*

(i) ~~the key matters listed in section 17~~ any matters requiring strategic direction as directed by the national planning framework; and

(ii) ~~any other matters that the regional planning committee considers are of sufficient significance in terms of section 18~~all the matters set out in sections 102 and 103 of the NBE Bill; and

(iii) the major regional policy issues identified through consultation with interested parties and the public [cross-reference to the section that requires this]

(iv) the integrated management of the environment; and

(d) include spatial representations that support the vision, outcomes and strategic direction.

Process and Decision-making for RSS

284. As drafted, regional planning committees are the sole proponent of RSSs, with the secretariat to provide expert input to assessing public feedback or considering the merits of the contents of the RSS, but no external input to the decision-making process. Regional planning committees have no direct political accountability, and there is a lack of checks and balances in the SP Bill on the decision-making powers of the committees. NZPI considers amendments are required to ensure RSSs are a robust and effective part of the revised planning system through robust and effective processes and decision-making.

Key issues with process and decision-making

285. Recommendation 74: That the SP Bill and NBE Bills are amended so that RSSs have more importance in the system, and correspondingly greater scrutiny in their development.

286. There needs to be a direct relationship between the level of influence a document has and the level of scrutiny the document is subject to. We understand the desire for RSSs to be high-level documents that can be prepared relatively quickly without bogging down the rest of the system. An RSS process that is a burden to the system rather than a benefit would not be helpful. It is NZPI's view that the SP Bill has not struck the right balance. As explained above, RSSs need to have a strong influence on the system. Otherwise, they risk being ineffectual and a waste of effort to prepare. The consequence of having a strong influence on the system is that their preparation must be subject to a high degree of rigor. We consider it is worth putting the effort into developing a robust RSS that provides meaningful and specific direction to NBE Plans. The development of effective RSSs will not be a burden on the system, as an effective RSS will lessen the degree of analysis required at the NBE Plan development and hearing stage.

287. A key risk to the efficient operation of the revised planning system is re-litigation of issues addressed in an RSS through the NBE Plan process. This will occur if the direction in the RSS is not sufficiently clear and certain, and if parties affected by the direction in an RSS were not involved in the development of the RSS. A robust and transparent process to prepare and decide on an RSS is the key way to manage this risk.

Hearings and appeals for RSSs

288. Recommendation 75: That the SP Bill is amended so there is a compulsory requirement for a hearing by an independent hearings panel on RSSs.

289. **<u>Recommendation 76:</u> That the SP Bill and NBE Bill allow for the same IHP to be in place for both the RSS and NBE Plan hearing, when the regional planning committee considers this appropriate.**
290. **<u>Recommendation 77:</u> That the SP Bill is amended to provide appeal rights for RSSs that reflect appeal rights for NBE Plans.**

291. NZPI wants to see a fair and transparent process for decision-making on RSSs. Currently, this is not provided for in the SP Bill as there is no requirement to hold a hearing on submissions and no appeal rights. There was a strong negative response in our membership survey to hearings on RSSs being optional. NZPI seeks that hearings are made compulsory for RSSs.

292. Although RSSs do not directly impact communities (because they need implementation plans and NBE Plans to implement them), RSSs do change the way planning will affect communities in the future. This is because RSSs will resolve contests for land and other resources between competing uses, including protection of the environment, over at least the next 30 years.

293. An example of the influence of RSSs can be seen in the designation provisions in the NBE Bill, as addressed under the 'infrastructure coordination' heading above. Designations get less rigorous assessment under NBE Plan preparation if they have been considered in the RSS, and designations can have a significant effect on communities, as well as individual property owners. In addition, RSSs will have a strong influence on funding, particularly of infrastructure (for example, see the changes the SP Bill makes to the Local Government Act and the Land Transport Management Act). Decisions made on RSSs will therefore have a significant effect on infrastructure providers, developers, and communities. As a further example, RSSs will identify areas that require protection, as well as areas vulnerable to the effects of climate change and conversely areas that are appropriate for urban growth. How NBE Plans and other implementation instruments deal with the use, development and protection of the environment within these areas will have a significant effect on the communities within and around those areas. It is therefore essential that communities and all other parties potentially impacted by the flow-on effects of RSS decision-making have the opportunity of a fair and transparent hearing.

294. Hearings are important as a way of involving all parties and having a robust and open contest for the use of space and management of resources to achieve the outcomes of the new system. It allows interdependencies to be highlighted and understood, which may not be well traversed in initial submissions. Hearings also allow robust testing of assumptions and justifications for particular courses of action, and can result in modified or alternative proposals that are more appropriate than those initially proposed.

295. NZPI has considered the appropriate nature of a hearing on an RSSs, given the three broad options within the SP and NBE Bills (regional planning committee holds hearing, commissioner hearing, or IHP hearing). We consider that an IHP hearing should be required for RSSs, to ensure the right level of scrutiny is applied, given the significant implications of an RSS. This will ensure that independent experts consider the submissions and make robust recommendations to the regional planning committee for a decision.

296. We see efficiencies in using the same IHP to hear and make recommendations on the RSS and the NBE Plan. This would ensure consistency throughout the process and allow for efficiencies when NBE Plans are heard directly following the hearing of an RSS.

297. We support having no merit appeals on RSSs, on the basis that there is an IHP hearing on submission to an RSS. We consider that appeal rights should reflect appeal rights under the NBE Bill, with appeals on points of law to the High Court being available for decisions made on RSSs. We consider this reflects the level of influence an RSS will have in the overall planning system.

Process for preparing RSSs

298. Recommendation 78: That the 'major regional policy issues' step in the NBE Plan preparation process is relocated into the RSS preparation process (amendments required to SP Bill and NBE Bill to achieve this), and that a requirement is added, for the regional planning committee to report back on how it responded to public feedback on major regional policy issues.

299. A consequence of removing the requirement for NBE Plans to have strategic content is that there is no need for the NBE Plan preparation process to require notification of major regional policy issues. Rather, this step should be part of the development of an RSS. We see significant benefit in the development of strategic direction in an RSS being based on an initial engagement process that seeks to understand what the major policy issues are for a region. It is not possible for a RSS to resolve contests for space between competing uses and provide strategic direction unless the committee knows and tests what those competing uses are.

300. In effect, this would be a strengthening of a requirement already in the SP Bill to 'provide opportunity for interested parties and the public to participate in determining the matters to be included in the draft strategy and their relative importance' (clause 2(2) of Schedule 4 of the SP Bill (Step 1: preparation of draft regional spatial strategy)). This requirement should be replaced with the requirement in Schedule 7 of the NBE Bill to notify major regional policy issues. This approach creates efficiencies in the system to enable regions to deliver their NBE Plans faster.

301. A key missing step in Schedule 7 of the NBE Bill for major regional policy issues is a requirement for the committee to report on how it responds to feedback on the major regional policy issues. The lack of transparency this results in was a key concern in the feedback from our membership survey. To address this alongside the relocation of this step to the preparation of an RSS, a minor addition can be made to the content of the draft evaluation report required to be prepared by the committee for a draft RSS. Clause (2)(4) of Schedule 4 of the SP Bill should be amended to include '*a summary of how the regional planning committee has responded to the feedback on major regional policy issues and how the draft RSS addresses (or does not address) the feedback*', or similar.

302. A further implication for the NBE Plan preparation process is that there would be no need for the proposed new enduring submission step. This is a submission opportunity that applies in conjunction with the notification of major regional policy issues, allowing a submitter to lodge a submission before an NBE Plan is notified. We see no disadvantages of removing this step from the NBE Plan preparation process, as it will remain in the system, just as part of RSS development rather than NBE Plan development. We understand the early and meaningful engagement in the policy development process is a key motivation behind the enduring submission option. However,

the development of the RSSs is the first step for regional-level policy development, so a greater level of engagement at this stage meets the requirements of being early and meaningful. A key benefit of strengthening the RSS process and its importance in the system is the corresponding ability to reduce the burden of NBE Plan development, and removing the major regional policy issues step from that process will do this.

Time limit for preparing RSS

303. Recommendation 79: That a time limit of two years is introduced to the SP Bill for the notification of a draft RSS, with notification of major regional policy issues required within the first 12 months.

304. There is no maximum time period for preparing an RSS in the SP Bill. By comparison, there is a 4-year limit placed on the preparation of NBE Plans. The system would have more certainty if a maximum time period for preparing an RSS was included, especially considering that the trigger in the NBE Bill for preparing an NBE Plan is the adoption of an RSS. There was a very strong positive response in our membership survey for having a time limit for preparing and deciding on an RSS.

305. We recommend a maximum 2-year time limit is set for the notification of a draft RSS, with a requirement to notify major regional policy issues within the first 12 months (the time limit currently in the NBE Bill for NBE Plans). We do not consider it is helpful to place a time limit on the hearing and decision of the RSS, as the time required for that process needs to be able to reflect the number and nature of the submissions received on it to ensure quality recommendations and decision-making. We consider enough certainty will be provided into the system by having a time limit for the notification of a draft RSS.

Government representative on committee

306. Recommendation 80: That if our recommendation for a national spatial strategy is not accepted, the requirement for a Government representative to be a member of the regional planning committee for RSSs is made compulsory.

307. Government involvement in RSSs is essential, to provide certainty for successful implementation. Often, completing Government priorities are left to be resolved by local councils, which is not an appropriate or efficient situation. Rather, it is the Government's responsibility to resolve any internal conflicts. The use of 'may' in Clause 2 of Schedule 9 of the NBE Bill means that the central government role on regional planning committees for RSSs is not guaranteed. NZPI seeks that 'may' is changed to 'must' so that the role is compulsory.

308. We note that a national spatial strategy would resolve the differing and conflicting government priorities, and could mean that a Government representative was not necessary on the RSS committee. If our recommendation of a national spatial strategy is accepted, we do not see such a need to change the 'may' to a 'must'.

Stakeholder involvement in RSSs

309. Recommendation 81: That amendments are made to provide recognition for cultural knowledge and diverse communities in the preparation of RSSs (section 25 SP Bill and clause 1 of Schedule 4) (suggested wording below).

310. Recommendation 82: That amendments are made to require engagement with 'interested parties' in the development of RSSs, rather than just an opportunity to provide feedback.

311. **Recommendation 83: That amendments are made so that those who are likely to have implementation responsibilities have a greater role in the development of RSSs, such as the role of appointing bodies in Step 2 of Schedule 4 of the SP Bill.**
312. **Recommendation 84: That statements of community outcomes and statements of regional environmental outcomes remain voluntary documents.**

313. As the first step in the regional-level policy development process, engagement on the RSS needs to reach as many people as possible. Partnership and collaboration with iwi and hapū, infrastructure providers (public and private), developers, environmental groups, and communities will be essential to producing workable and implementable RSSs.

314. In support of the Aotearoa Pacific Practitioners Special Interest Group, NZPI considers that there would be benefit in other cultural communities being included as interested parties for the preparation of RSSs, and for consideration of cultural diversity to be part of RSS development. Understanding and providing for diverse cultural values is critical to the development and function of a region. Cultural values and practices determine the way people use land and water and contribute to different transport patterns. We recommend two key amendments to allow for this:

    a. Add 'cultural knowledge' to the list of the types of evidence and advice that a regional planning committee can consider in section 25 of the SP Bill: ***(25)(2)(b)*** *Mātauranga Māori and any technical evidence and advice that the committee considers appropriate including but not limited to other cultural knowledge.*
    This addition could be supported by a definition of 'cultural knowledge': *Knowledge about some cultural characteristics, history, values, beliefs and behaviours of another ethnic or cultural group.*

    b. Add 'diverse communities' to the list of interested parties in clause 1 of Schedule 4 of the SP Bill: ***(h)*** *relevant non-government organisations, including organisations that represent the interests of the relevant industry sectors and diverse communities of a region, and other groups with an interest greater than that of the public generally*.

315. NZPI supports the list of 'interested parties' in Clause 1 of Schedule 4 of the SP Bill. In particular, we support the inclusion of private sector infrastructure providers and operators being on this list, as private as well as public infrastructure will be affected by RSSs.

316. We note that the role of interested parties in the preparation of RSSs is no greater than that of the public generally. There is merely a requirement that those on the list are encouraged to participate, along with the public generally. The list therefore has limited use. To remedy this, there should be a requirement to engage with these parties in the development of an RSS, rather than a requirement to provide an opportunity for engagement.

317. Implementation plans are an essential part of an effective RSS and NZPI supports their inclusion in the system. There was strong member support for these plans in our membership survey. However, there is a risk in that those with responsibilities in the implementation plan need to provide agreement to having those responsibilities, but there is no equivalent agreement required to the RSS itself, which will set the outcome that the implementation plan is to achieve. It will be a fundamental flaw if an infrastructure provider, for example, does not agree to implementing an

aspect of the RSS that relies on them. To overcome this, a greater role should be given to those who are likely to have implementation responsibilities in the development of RSSs. This role could be the same as that of appointing bodies in Step 2 of Schedule 4 of the SP Bill – the ability to review a draft RSS before it is notified and identify risks in the implementation and operation of the draft RSS. This would allow any issues with implementation responsibilities to be addressed well before the need to seek agreement for responsibilities in implementation plans.

318. There is a need for the local voice of communities to be heard in the development of RSSs, particularly in the identification of major regional policy issues. We support the SP Bill's direction in section 32 that engagement on the development of an RSS must encourage participation by the public. Planners have the skills to ensure engagement with the community is effective. A notification process aimed at identifying major regional policy issues, as we recommend above, as well as an opportunity to make submissions on a draft RSS, provide two formal opportunities for public participation in the process. We also note that local councils are identified as interested parties and are appointing bodies. As such, they have opportunity to represent the views of their communities in the development of the RSS. With these opportunities in place, we do not think it is necessary for statements of community outcomes and statements of regional environmental outcomes to also be prepared for RSS development, but we support the ability of local councils to prepare these documents if they wish to.

Relationship of RSS with other legislation

319. Recommendation 85: That the connection in the SP Bill between the Local Government Act and the Land Transport Management Act is retained.

320. Recommendation 86: That changes are made to section 24 of the SP Bill so that the National Adaptation Plan is a consideration in the preparation of RSSs.

321. As planning documents that coordinate actions across a number of different organisations, it is essential that the SP Bill provides for integration of regional spatial planning with other planning for wellbeing. In particular, with planning under the Local Government Act and the Land Transport Management Act.

322. NZPI supports the requirements of section 4 of the SP Bill and the changes the SP Bill would make to the Local Government Act and the Land Transport Management Act set out in Schedule 5 of the SP Bill. These changes would require long-term plans to set out steps to implement the priority actions in the RSS, require regional land transport plans to be consistent with RSSs, and require RSSs to be taken into account when the Government policy statement on land transport is prepared or reviewed.

323. In line with our submission points above, the requirement for NBE Plans to be consistent with RSSs in section 4 of the SP Bill should be changed to a requirement to 'give effect to' RSSs.

324. We are concerned that there is no relationship between the Climate Change Response Act and the SP Bill. In particular, there is no requirement for the National Adaptation Plan (prepared under the Climate Change Response Act) to be considered in the development of RSSs. The first National Adaptation Plan places significant reliance on the planning system for achieving its goals and should be a consideration in the preparation of RSSs. There is a requirement to update the National Adaptation Plan every 6 years, meaning it is likely to change a number of times over the

lifetime of the SP Bill. Future RSSs need to be able to respond to future iterations of the National Adaptation Plan. The National Adaptation Plan should be specifically identified as a matter the regional planning committee has to have regard to under section 24(3) of the SP Bill.

Spatial planning timeframes

325. Recommendation 87: That amendments are made to clause 2 of Schedule 4 of the SP Bill so that consideration of the impact of long-term climate change is part of the scenario development for RSSs (suggested wording below).

326. Recommendation 88: That amendments are made to clause 2 of Schedule 4 of the SP Bill to require scenarios for RSSs to account for the requirements of long-lived assets and uses of land that are difficult to change.

327. NZPI supports the minimum 30 year planning horizon for RSSs set out in section 15 of the SP Bill, with a 9 year review cycle, and a 3 year review cycle for implementation plans. Long-term planning is necessary to provide clarity for investment in the future we are planning for, especially for infrastructure assets that have long lives and large costs. Thirty years is not as long as the lifetime of infrastructure and urban development, for example, but we acknowledge that it can be difficult to engage a community in planning for longer than thirty years into the future.

328. Once established, it can be very difficult for areas of urban development to adapt to the effects of climate change, especially if that adaptation involves some form of managed retreat. Understanding long-term climate change impacts is essential in regional spatial planning. While an RSS might provide strategic direction for the next 30 years, this direction needs to be based on an understanding of climate change impacts over at least the next 100 years, as those impacts will affect the communities we establish over the next 30 years. Consideration of longer-term climate change scenarios will ensure we are not making decisions now that will later need to be undone.

329. Schedule 4 of the SP Bill requires a regional planning committee to consider scenarios when preparing a draft RSS. Consideration of the impact of long-term climate scenarios should be included in this direction. The Intergovernmental Panel on Climate Change (IPCC) has developed four scenarios for climate change, based on how successful (or not) we are at reducing carbon emissions. NIWA has downscaled these scenarios into New Zealand regional scenarios. This means there is information to consider four different scenarios for climate change impacts when developing RSSs. This information should be used in the preparation of RSS. NZPI recommends that an amendment should be made to clause 2(3) of Schedule 4 of the SP Bill along the following lines: "… the regional planning committee must also prepare scenarios that *consider climate change effects over at least the next 100 years, using at least two of the IPCC's representative concentration pathways, one of which must be RPC8.5*".

330. The concept of considering a long-term scenarios, such as 100 years, but planning for the first 30 years of that period, has advantages for other issues as well as climate change. For example, assets with long lives such as rail corridors, renewable energy sites, and hospitals; and land uses that are difficult to change or retrofit, such as industrial land. We recommend additional changes are made to Schedule 4 of the SP Bill to require scenarios for RSSs to account for the requirements of long-lived assets and uses of land that are difficult to change.

10. NATURAL AND BUILT ENVIRONMENT PLANS

331. This section of the submission addresses matters related to the scope and content of NBE Plans, and then addresses matters related to the process for preparing NBE Plans.

332. There are two key reform themes we have considered in preparing this section of the submission:

a. 'Front-loading' of the system, resulting from an increased focus on plan development over case-by-case resource consent assessments. We support this approach. An emphasis on plan development provides more certainty in the system and will result in overall efficiencies once all plans are in place.

b. 'Regionalising' planning, where one NBE Plan and one RSS is prepared for each region. We support this approach. Regional-level, combined land use and environmental planning will provide for a more holistic and Aotearoa-based approach to planning. Our natural and built environments are not separate and distinct from each other; water and land are interconnected, and regional-level planning should allow for better integration.

Scope and content of NBE Plans

333. The following paragraphs address the scope and content of NBE Plans.

What NBE Plans must include

334. Recommendation 89: That amendments are made to section 105 of the NBE Bill so that outcomes, policies and rules 'must' be included in NBE Plans.

335. As drafted, NBE Plans 'may' contain outcomes, policies, rules and other methods (section 105(1)). This 'may' should be changed to a 'must'. It is essential that NBE Plans contain outcomes, and then ways to achieve those outcomes, being policies and rules. Only 'other methods' should remain optional.

NBE Plans to 'give effect to' RSSs

336. Recommendation 90: That amendments are made to the NBE Bill so that NBE Plans are required to 'give effect to' RSSs (section 104 and others).

337. We support the requirement in section 97 of the NBE Bill for NBE Plans to 'give effect' to the NPF. However, for the reasons explained above in our submission points on the SP Bill, we consider that NBE Plans should be required to 'give effect to' RSSs, rather than be consistent with them. As drafted, the bulk of policy planning is to be done by NBE Plans. This has implications for the time it will take to develop NBE Plans. However, if RSSs have a more significant role in the system to provide strategic direction to NBE Plans, and NBE Plans are required to give effect to that direction, the policy planning task will be shared between both documents and the time required to develop an NBE Plan will shorten. 'Consistent with' should be changed to 'give effect to' in all provisions that relate to the relationship between NBE Plans and RSS in both Bills.

Resolving conflicts at policy level rather than consent assessment

338. **Recommendation 91: That amendments are made to section 99 of the NBE Bill so that regional planning committees are directed to resolve at the policy level rather than leave this for consent assessments (suggested wording below).**

339. The NBE Bill has an emphasis on the planning documents in the system resolving conflicts between the outcomes in section 5 of the Bill. This is a requirement for the NPF, RSSs, and NBE Plans. Section 99 of the NBE Bill requires regional planning committees to consider the extent to which conflicts should be resolved by the NBE Plan, or by resource consents and designations. That is, discretion is provided for whether an NBE Plan is front-loaded or not. NZPI consider it is essential for committees to be directed to resolve conflicts in the plan over resolving them in consents. Without this direction, there can be no certainty that plans will be front-loaded. It takes more effort (more information and more time) to prepare more certain plans that resolve conflicts at a policy level rather than at a consent level, and strong direction in the legislation will help overcome any resistance to the more difficult option (the easier option being high use of the discretionary activity category). The importance of this for creating the new outcomes-based system and changing the way we do planning cannot be underestimated. NZPI recommends section 99(2) is amended as follows:

> ***99(2)*** *In addition to the matters set out in this Part and those listed in* ***section 6*** *(decision-making principles), a committee must ~~have regard to the extent to which it is appropriate for~~ give priority to resolving conflicts between system outcomes ~~to be resolved by~~ in the plan ~~or by~~ rather than resource consents or designations, subject to direction by the national planning framework.*

No strategic content in NBE Plans

340. Recommendation 92: That the requirement for NBE Plans to have strategic content that reflects the major policy issues of the region in section 102 of the NBE Bill is deleted (and the requirement transferred to the SP Bill instead).

341. As discussed in our submission points on the SP Bill, we seek that the requirement for NBEs to have strategic content that reflects the major policy issues of the region in section 102 of the NBE Bill should be deleted, and this content be included in RSSs instead.

Non-regulatory methods

342. NZPI supports the ability in section 105 for an NBE Plan to include non-regulatory methods, provided funding for these measures is in place (as required in the Bill). We have come to rely heavily on rules and regulation under the RMA, even though the RMA allows for integration of non-regulatory measures. While rules and regulation might work for managing adverse effects, in a system focused on achieving outcomes, NBA Plans will need to consider rules alongside non-regulatory measures such as incentives, education, conservation and restoration programmes, etc.

Matters to be disregarded

343. Recommendation 93: That amendments are made so that the list of matters to be disregarded in section 108 is included for the proportionate and urgent plan changes processes.

344. Recommendation 94: That new terms used in the matters to be disregarded, including 'scenic views' are defined in the legislation.

345. Section 108 of the NBE Bill includes a list of matters that must be disregarded when preparing and changing NBE Plans, and this same list is repeated in other places in the Bill so that it applies throughout most of the planning system. NZPI understands the list is intended to address NIMBY-ism, and we support its inclusion in the Bill. The provision identifies *effects* to be disregarded. Our understanding is that in an outcomes-based system, this means that positive outcomes relating to

the matters listed can still be developed, which we think is appropriate. For example, an outcome could state: "social housing is integrated into communities in a socially and culturally sensitive way". This would allow consideration of what is required to ensure social and cultural sensitivity and deliver thriving communities where wellbeing is specifically provided for.

346. We note two issues with the list of matters to be disregarded that require amendments. One, the provision is not included for the proportionate and urgent plan change process, which we assume is a mistake, and we recommend it is included for these processes. Two, we note that the provision uses new terms such as 'scenic view'. We are unclear what this reference is covering and a definition of this and other new terms will assist with implementation and help to reduce the risk of litigation.

Rules in NBE Plans

347. Recommendation 95: That the terms 'controlled' and 'discretionary' in relation to activity categories are replaced with completely new terms, such as 'type 1' and 'type 2'.

348. Recommendation 96: That sections 154 and 156 of the NBE Bill are relocated into the plan-making part of the Bill and located within or alongside section 117.

349. Recommendation 97: That the use of limits, targets and outcomes as the basis for determining activity categories (section 154) is retained in the NBE Bill.

350. Section 117 deals with the purpose and effect of rules. Rules are an important part of NBE Plan content. We support the purpose of rules in plans set out in section 17(1), particularly the statement that rules enable a local authority to achieve the outcomes and policies specified in the plan. This is an important acknowledgement of the role of rules in an outcomes-based system. We also support the requirement in section 117(4) for the plan to assign responsibility for administering each rule to the regional council or to one or more territorial authorities. This is a helpful direction that will assist with implementation.

351. We support that there are four activity categories for which rules can be made, two of which require resource consents (controlled and discretionary, as drafted). This will help to simplify consenting requirements. However, we see confusion arising from the use of the RMA terms 'controlled' and 'discretionary' in the new system particularly as these terms have different meanings in the new system. To help implementation and to avoid confusion, we suggest new labels for the activity categories that require resource consent. New labels could be as simple as 'type 1' and 'type 2'. This would mean there were rules for permitted and prohibited activities, and rules for type 1 and type 2 activities that trigger resource consent requirements. Without changing the naming of the consent categories, we are concerned that the old meaning of the consents will be applied (as they are generally well understood in the community), reducing the overall intent of the new system.

352. We note that the guidance for how to decide which activity category to assign to an activity, which is a decision that needs to be made at plan development stage, is located within the resource consent part of the Bill, in section 154. This obscures it from those who need to apply it. This section needs to be move into the plan-making part and be positioned alongside or within section 117, which is the section that identifies the activity categories. This is consistent with our submission points above on notification, and the need for the notification provision for NBE plan-making to be relocated into the plan-making part of the Bill.

353. We support the use of limits, targets and outcomes in determining activity categories in section 154. It is essential that in an outcomes-based system, activity status reflects whether an activity achieves outcomes or not. It is also essential that compliance with limits is linked to activity status, otherwise the limits will have no teeth.

354. Another section that affects the way rules are drafted, rather than how they are applied, is section 156, on requirements for permitted activities. This section should also be located within the plan-making part of the Bill, alongside the other provisions for making rules discussed above.

355. We support the broadened scope for permitted activities in s156. There is a clear ability to require certification, require reports, involve third parties and require written approvals for permitted activities. These changes have the potential to result in greater use of permitted activities in plans, and thereby provide more certainty.

356. As stated in the section of this submission on notification, NZPI supports the ability for NBE Plans to set notification direction. This will help with the 'front loading' of the system and free up effort at the consenting stage to focus on substantive decisions. We also reiterate another submission point from the notification section, that the directions for plans to set notification status need to be moved to the plan-making part of the Bill, to ensure they are seen and acted on. This is important content for NBE Plans.

Process for preparing and deciding on NBE Plans

357. NZPI supports changes that will reduce the adversarial nature of the plan-making process, including use of alternative dispute resolution early in the process and removal of most *de novo* appeal rights. Emphasis on early and meaningful involvement in plan-making, early resolution of conflicts including in accordance with tikanga Māori, and an inquisitorial focus, should produce well supported, good quality plans.

Local input

358. Recommendation 98: That statements of community outcomes and statements of regional environmental outcomes are retained as optional documents.

359. Recommendation 99: That statements of community outcomes and statements of regional environmental outcomes are to be given 'regard' rather than 'particular regard' in the plan development process (e.g. in section 107 NBE Bill).

360. Local decision-making is an important underpinning concept in our resource management system and it is well recognised that local diversity and values can be very important to community wellbeing. While we support strong national direction on national issues, we also support local input to decision-making on place-specific matters and the achievement of important place-based outcomes. It is important that regional and local communities, and iwi and hapū, have input to the outcomes set in NBE Plans, especially in a front-loaded system with reduced appeal rights and a more permissive consent framework.

361. We are not concerned that there will be a loss of local voice in a regionalised plan-making system. One of the key roles of planners is to work with communities to develop visions for the future and methods to achieve those visions. This role will not change because the plan is a regional one rather than a district one. What we consider to be most important to ensuring local voice is heard

in regional planning is resourcing. If there are sufficient planners within the secretariat of the regional planning committee, there will be engagement with local communities.

362. We do see that there is a reduced voice for local councils in a regionalised planning system. Rather than having autonomy over the land use and environmental policy and regulation within their own district or region, that policy and regulation will be set in collaboration with all the other councils, and iwi and hapū, in the region. Against this context, we understand the desire for local councils to provide statements of community outcomes and statements of regional environmental outcomes. However, we do not think they are necessary documents to ensure that the voice of local communities is heard in a regional planning context.

363. We support the ability to prepare community and environmental outcome statements being optional. We would be concerned if these documents were made compulsory. These documents do bring disadvantages for the efficiency of the system, and they have the potential to cause confusion with the public. This is because they add an additional layer of planning instrument and an additional planning process – this adds complexity rather than simplifying the system. The creation of these documents could raise the expectations of the public that the outcomes within them will be carried into the NBE Plan, when this may not be the case due the regional collaboration required in setting outcomes.

364. We also have concerns about the weight these documents are afforded in the plan making process. They are to be given 'particular regard', which is a significant amount of weight. However, these are documents with minimal process requirements and that explicitly do not have to comply with any of the documents in the planning hierarchy. This means a community outcome statement that is contrary to the outcomes in section 5 of the NBE Act will be given particular regard in the development of the NBE Plan. This is not logical, threatens the planning hierarchy, and will present challenges for the development of NBE plans. If these documents are prepared, they should be a matter to be given 'regard', rather than particular regard.

365. Although not our preference, if our recommendations on statements of community and regional environmental outcomes are not accepted, consideration should be given to requiring the preparation of these documents to follow the Local Government Act consultation process. This would at least give some rigor and certainty to the process for their preparation.

Evaluation assessment

366. Recommendation 100: That clause 25 of Schedule 7 of the NBE Bill is amended so that mātauranga Māori is a consideration in evaluation reports.

367. Clause 25 of Schedule 7 is the replacement for section 32 of the RMA. NZPI supports the simplified nature of the plan evaluation requirements. It provides flexibility to prepare a report that is fit for purpose for the particular plan or plan change being considered.

368. We recommend one change is made to clause 25, to require consideration of mātauranga Māori in the development of plan provisions. This will help support the better integration of te ao Māori into the plan development process.

Two-step notification

369. Recommendation 101: That the 'major regional policy issues' notification step for NBE Plans is deleted from Schedule 7 of the NBE Bill and relocated into the SP Bill.

370. Recommendation 102: That enduring submissions are removed from Schedule 7 as part of the relocation of the major regional policy issues step to the SP Bill.

371. Recommendation 103: That as a consequence of the above recommendation, the requirement to notify an engagement register is amended so this is not attached to the notification of major regional policy issues, and rather the engagement register is required to be notified within 3 months (or similar) of the resolution to begin drafting the NBE Plan, with a requirement for those registering to identify the topics or issues they are interested in (changes to clause 16 of Schedule 7 of the NBE Bill).

372. Recommendation 104: That as a consequence of the above recommendation, the requirement to have an engagement policy in clause 17 of Schedule 7 of the NBE Bill has a time limit added to it for the first policy, which is 3 months (or similar) from the notification of the engagement register.

373. As discussed in our submission points on RSSs, we recommend that the first step of the NBE Plan notification requirements (notification of major regional policy issues) is relocated into the preparation of the RSS.

374. In addition to the reasons set out in the RSS section of this submission, this relocation will address a number of issues we see with the major regional policy issues step of the NBE process. If our recommendation to move this step is not accepted, NZPI would want these issues to be addressed in another way. These issues are:

- A lack of transparency in how a regional planning committee responds to feedback on major regional policy issues. Schedule 7 does not require any reporting on how a committee responds to feedback. This needs to be a compulsory part of the process, including if this step is related into the RSS preparation process (see our recommendation on this in that section of the submission).
- Strategic direction needs to be set and confirmed prior to decision-making on the substantive part of the NBE Plan. It is very difficult to prepare a plan without the strategic direction first being set, and plan processes are often amended to allow for this to occur (for example the Auckland Unitary Plan hearing process and the stage 1 appeals on the Queenstown Lakes Proposed District Plan). It would be difficult to achieve this based on the current drafting of Schedule 7. But if the strategic direction is confirmed in the RSS, then the NBE Plan process becomes more straightforward, without the complication of trying to develop strategic direction at the same time as developing the rest of the plan.
- Independent testing of strategic direction. As currently drafted in Schedule 7, the feedback on the major regional policy issues is considered by the regional planning committee (and secretariat) but is not tested or assessed by any independent experts. IHPs should consider the feedback on the major regional policy issues and the strategic direction needed to respond, and provide robust and independent advice so that regional planning committees can make informed decisions on strategic direction.

- Enduring submissions. There is no need for enduring submissions if the major regional policy issues and strategic direction are developed in the RSS process. The purpose of enduring submissions in the NBE process and the benefit to a submitter of making one, are unclear. We do not see enduring submissions as a useful addition to the plan development process and do not think they would be well utilised. A much more effective way of having early and meaningful engagement on policy development is to have a formal submission process on strategic direction via the RSS. We note that if NBE Plans are prepared alongside RSS, as we recommend, there is even less requirement for enduring submissions.

375. NZPI does see benefit in the retention of the engagement register and engagement policy requirements in Schedule 7 of the NBE Bill, even if the major regional policy issues notification is transferred to the SP Bill. These steps allow people interested in the development of the NBE Plan to identify themselves on a register, and require the regional planning committee to prepare an engagement policy for the development of the NBE Plan. Both these steps allow for early and meaningful engagement in the NBE Plan development process, and they should be retained.

376. As drafted, these steps occur alongside the notification of major regional policy issues. To be retained for NBE Plan preparation without major regional policy issues, a new 'trigger' is required. The new trigger could be a point in time after a resolution to begin preparation of an NBE Plan. For example, establishment of the engagement register could be within the first 3 months, and the engagement policy could be within the first 6 months. To assist the regional planning committee prepare the engagement policy, there should be a requirement for people registering on the engagement register to state what topics or issues they are interested in. This will allow for early engagement on the development of an NBE Plan, prior to notification, to be more effective.

Evidence with submissions

377. Recommendation 105: That an alternative term to 'evidence' is used in Schedule 7 of the NBE Bill for the requirement to provide 'evidence' with submissions. An alternative such as 'all supporting information' should be used.

378. Recommendation 106: That amendments are made to Schedule 7 of the NBE Bill so that there is additional time, after the 40 working days to make submission, to provide 'all supporting information'.

379. NZPI supports the requirement to provide evidence with submissions (see clause 34 of Schedule 7). There was a strong positive response in our membership survey to the requirement to provide evidence with submissions, as a way to encourage early and meaningful engagement in plan development.

380. However, we recommend an alternative term is used to 'evidence'. Evidence has a particular meaning in planning practice, being a formal statement from an expert presented to a hearing panel or judge. We do not think a formal statement of evidence is what is intended here, especially when an IHP has a discretion to require evidence be provided at a hearing. Rather, the term 'all supporting information' is likely to better convey what is required.

381. We have concerns over the 40 working day time period for submissions, when there is a requirement to provide all supporting information with submissions. Supporting information is likely to include technical reports and assessments that will need to be prepared by experts. When a full plan is notified, it takes a significant amount of time to review it and understand its implications, before being in a position to engage experts and have those experts undertake an assessment and write a report.

382. We suggest retaining the 40 working day period for making submissions, and requiring the submission to list the supporting information that will be provided. There should then be a longer period to submit the information identified, perhaps of four months. The purpose of providing 'evidence' or supporting information with submissions is to provide for meaningful engagement, and meaningful engagement takes time. The time pressures for the preparation of supporting information for a plan process can be a significant burden on the planning and related professions. More time will make better provision for the wellbeing of all involved. We recommend providing that time, to ensure a worthwhile and manageable process.

383. This additional time to provide supporting information would also overcome the potential reluctance for lay submitters to make submissions that require 'evidence' or all supporting information. Lay submitters are unlikely to have the resources to pull together evidence within the 40 day submission period. But they might not be as discouraged with additional time to seek expert support.

384. We have not drafted changes to address our submission points on evidence with submissions, but we are happy to work with officials to do this.

IHPs

385. Recommendation 107: That reference to 'accreditation' for members of IHPs (Schedule 7) is clarified in the legislation.

386. Recommendation 108: That amendments are made to the functions of IHPs in Schedule 7 so that additional process efficiencies can be realised, such as issuing draft decisions and IHPs remaining in place for one to two years after a decision to be able to address interpretation or implementation issues.

387. NZPI supports the increased emphasis on first instance decision-making on plans through the requirements in Schedule 7 relating to IHPs. A high quality, robust hearing and recommendations is essential for good decision-making by the regional planning committees, particularly with the removal of most *de novo* appeal rights.

388. There was a strong positive response in our membership survey to the role of the Chief Environment Court Judge in overseeing the appointment of Independent Hearings Panels. We support the list of skills, knowledge and experience required to be part of an IHP in clause 93 of Schedule 7.

389. We recommend Schedule 7 is clearer on what is meant by 'accreditation' for IHP members. Transparency on this is important. Specific training for commissioners on IHPs is likely to be required. We anticipate something more fit-for-purpose than the current Making Good Decisions programme will be needed, although that programme will likely still be appropriate for

commissioners on consent hearings, for example. Clarification on 'accreditation' in the legislation would be helpful.

390. We recommend additions are made to the functions of IHPs in Schedule 7, so that additional process efficiencies can be realised. An IHP should be required to issue draft decisions so that changes to plan drafting and potential unintended consequences can be considered before the decision is finalised. In addition, there would be efficiency benefits in an IHP remaining in place for one to two years after a decision on an NBA Plan is issued, and the IHP having the power to make changes to the NBA Plan as a result of interpretation or implementation issues. These would be changes that are beyond the limited scope of clauses 16 and 20A of the RMA and would avoid the need for a plan change or undertaking an Environment Court declaration process.

Private plan changes

391. Recommendation 109: That amendments are made to clauses 72 and 73 of Schedule 7 to clarify the circumstances for accepting an independent plan change, and to strengthen the grounds for rejecting an independent plan change.

392. NZPI supports the ability for independent plan changes to be made to NBE Plans. We support that there should be no ability for independent plan changes to change strategic content of NBE Plans, but note that this will be an unnecessary provision if all strategic content is located in an RSS as we recommend.

393. We recommend the grounds for accepting or rejecting an independent plan change in clauses 72 and 73 of Schedule 7 be strengthened. The circumstances for accepting an independent plan change need to be clarified in the legislation. For rejecting an independent plan change, rather than the tests being 'inconsistency' with the NPF or RSS, the test should be 'would not give effect to' the NPF or RSS, to ensure the same level of test as all other plan content. If the grounds for rejecting independent plan changes are not strengthened in this way, there will be a significant risk that these types of plan changes could undermine the strategic direction set of the region, as well as the outcomes, limits and targets that have been set through what is a very thorough and robust process.

Plan change processes

394. Recommendation 110: That amendments are made to Schedule 7 to provide flexibility to regional planning committees to delegate decision-making on plan changes and to set bespoke processes that match the nature, scale and significance of a plan change.

395. NZPI supports the proportionate and urgent plan change processes included in Schedule 7. These alternatives will help to bring agility and responsiveness to the plan-making process. We recommend that other options are also included to assist with agility and responsiveness, such as allowing regional planning committees to delegate decision-making and set bespoke processes to match the nature, scale and significance of a change would provide agility and responsiveness in the system.

396. As drafted, the NBE Bill provides full appeal rights to the Environment Court for proportionate and urgent plan change processes. We understand this is because these processes do not have the same safeguards as the standard process. However, we anticipate an unintended consequence where merit appeals on these processes negate the shorter time period for the first-instance

hearing. This may become a factor in regional planning committees deciding not to use the proportionate or urgent plan change processes. We recommend that rather than full appeal rights to the Environment Court, there is a requirement to seek leave from the Court to appeal. This will provide a safeguard to ensure that appeals with real merit can be made and discourage appeals without merit.

Appeals

397. The removal of most *de novo* appeal rights is intended to reduce the time for plans to become operative and reduce the adversarial nature of the plan-making process, by incentivising early and meaningful involvement in plan development. NZPI supports these intentions. We consider the risks that merit appeals address are covered in the provisions of Schedule 7. In particular, the risk of poor quality decision-making is addressed by the requirements on IHPs, discussed above. The risk of losing beneficial Environment Court processes such as conferencing and mediation is addressed by IHPs having the power to direct those processes for hearings on NBE plans and plan changes. The provision of evidence with submissions gives more time and information for consideration of issues and resolution of disputes. With these provisions in place, we support the approach to appeals in the NBE Bill.

Time frames for NBE Plans

398. We support the four year timeframe for preparing NBE Plans, from a resolution to begin drafting to recommendations from the IHP. We consider this is sufficient time for meaningful engagement in the process. Removal of the major regional policy issues step allows more time for policy development, and provides the time to accommodate the additional time for submitters to provide supporting information following their submissions.

11. CONSENTING

399. This section of the submission addresses provisions relating to consenting, as set out in Part 5 of the NBE Bill.

400. NZPI observes that consenting will continue to be the element of the system that is most regularly experienced by members of the public. It can be a challenging and uncertain part of the planning system for participants, and NZPI supports the introduction of measures that will lead to more consistency, clarity, certainty, efficiency and cost-effectiveness in the consenting provisions of the NBE Bill. While much of the consenting sections of the NBE Bill are not dissimilar to their current RMA equivalents, there are some positive steps forward in a number of areas. NZPI considers that some further refinement is required to fully achieve the intentions of the reform.

Pathways

401. The NZPI supports the availability of a range of consenting pathways that respond to the differing nature, scale, and complexity of proposals. We consider that use of tailored alternative consenting pathways can be an appropriate and efficient means to achieve the purpose of the NBE Bill in some circumstances.

402. In addition to the 'standard' pathway, two other existing pathways from the RMA are retained – direct referral to the Environment Court and the Board of Inquiry process for projects of national significance. The retention of these pathways is supported. The former enhances efficiency by circumventing the costs and time required for a council hearing process where an Environment Court appeal is inevitable, and the latter is of particular value in considering large infrastructure projects. These benefits are still valid and will be of value in the new system.

403. The proposed fast-track consenting process is currently in existence, but is applied through the COVID-19 Recovery (Fast-track Consenting) Act 2020 rather than the RMA. The fast-track process has proven to be an effective pathway for consenting projects of significant scale that contribute to economic stimulation and provide infrastructure, housing or other public benefits. The NBE Bill clarifies the use of the fast-track process for identified projects, with an emphasis on scale. NZPI supports the continued existence of the fast-track consenting process, and also supports its integration within the NBE Bill rather than in separate legislation.

404. The only new consenting pathway is the affected applications consent process. The NZPI understands this to be a process for allocating use of limited and oversubscribed resources, such as taking water from an aquifer or river for land irrigation purposes. We support the resource allocation principles that would apply (sustainability, efficiency and equity), and consider these to be important high-level guidance for the process. NZPI considers that the affected applications consent process is a helpful tool for sustainably managing natural resources that are under pressure.

Permitted activities

405. Recommendation 111: That the lapse dates for PANs, certificates of compliance, and existing use certificates be amended to 5 years.

406. Recommendation 112: That section 27(1) should be amended to state that existing use rights should lapse where a use has been discontinued for a continuous period of 12 months.

407. <u>Recommendation 113:</u> Section 302(7) should be deleted.

408. <u>Recommendation 114:</u> That a definition of 'temporary' non-compliance be included in the NBE Bill in relation to deemed permitted activities.

409. <u>Recommendation 115:</u> That further guidance be provided in the NBE Bill to confirm the thresholds and circumstances when PANs can be utilised in NBE plans.

410. The NBE Bill describes permitted activities as "*Activities that do not require a resource consent but may be subject to other requirements*." There are two proposed sub-categories of permitted activities that have not previously been part of the RMA; being Permitted Activity Notices ('PAN') and deemed permitted activities.

411. A PAN must be obtained in respect of a particular activity if an NBE Plan or the NPF states that a PAN is required. The merits of a PAN are acknowledged by NZPI, and we consider that they provide a useful means of ensuring that activities meet certain standards in a NBE Plan, enable cost recovery and monitoring, and provide a means to require that third party approvals are obtained (such as from a road controlling authority or infrastructure provider, for example). Activities that might be categorised as controlled activities under the RMA could be identified as a permitted activity in an NBE Plan albeit with a requirement to obtain a PAN.

412. However, the characteristics of the PAN process are essentially the same as those of a resource consent process. A 10-working day timeframe for processing will apply, a processing fee will presumably also be required, and there will be a need for information to be provided to the consent authority to confirm compliance with permitted standards. That is not problematic in itself, but NZPI does have a concern that there may be a temptation for consent authorities to adopt a cautious approach and identify a significant number of permitted activities as requiring a PAN. That outcome would defeat the intention of enhancing efficiency in this part of the consenting system. NZPI considers that more guidance as to when PANs can be utilised in NBE plans would be helpful, with particular emphasis on identifying a clear threshold below which a PAN is unnecessary and inappropriate.

413. Deemed permitted activities are enabled through provisions in s157 of the NBE Bill. These provisions essentially allow a consent authority discretion to reach a conclusion that '*close enough is good enough*' for activities that have marginal non-compliance with Plan requirements, or have adverse environmental effects that are no different in character, intensity, or scale than they would be in the absence of the marginal or temporary non-compliance.

414. <u>NZPI supports in principle the opportunity for deemed permitted activities</u>, primarily because they have the ability to reduce cost, time delays and unnecessary use of stretched local authority resources by avoiding resource consents that do not add any value in terms of contribution to system outcomes or mitigation of adverse effects. Like any provision that relies on the discretion of a consent authority, there is potential for difficulties and challenges in its implementation, and particularly with regard to the interpretation of what constitutes '*marginal or temporary*' non-compliance in any given situation. We consider that NBE Plans can and should be drafted to provide some further guidance on this question. In relation to the concept of 'temporary' non-compliance, NZPI considers that a definition is required and suggests that definitions of temporary activities in existing plans may be helpful. For consistency, an appropriate definition could be included in the NPF. Definitions in plans often differentiate temporary activities on the basis of

the nature of the use and its effects. For example, a noise limit exceedance from a music festival may be temporary for a weekend and a crane infringing a height limit to construct a building may be considered as temporary for a period of 12 months.

415. NZPI supports the wording applying to deemed permitted activities in section 157 that requires any adverse effects to be "*no different*" in character, intensity, or scale than they would be in the absence of non-compliance, as this provides some certainty as to the extent that consent authorities can divert from a complying situation (compared with, for example, the drafting of both the NBE Bill and RMA existing use provisions that enable effects to be the same "*or similar*" to those of a previously permitted activity).

416. It is noted that the lapse dates in relation to PANs, certificates of compliance, and existing use certificates would reduce to three years rather than five years (as exists under the equivalent RMA provisions). Additionally, the NBE states that existing use rights are lost if the use of land is discontinued for a continuous period of 6 months (compared with 12 months under RMA). NZPI does not support the shortened lapse periods proposed, and considers that they should align with the lapse periods applying to resource consents and deemed permitted activities, for reasons of consistency and because they are similar to a resource consent (for example, a certificate of compliance is a deemed resource consent under s297(2) of the NBE Bill and an EUC is treated as a resource consent under s301(1)). NZPI also considers that the period of discontinuation for existing use rights should also remain at 12 months, to provide for potential seasonal fluctuations in activities.

417. It is noted that the lapse date for a PAN is stated twice in the NBE Bill (at s302(7) and s303(2)). It is recommended that the first of these references is deleted to avoid repetition.

Conditions

418. The NBE Bill introduces some changes to the nature and application of conditions of resource consent. The most significant new aspect of the provisions relating to conditions is an increased focus on positive effects. This is aligned with, and supports, the emphasis in the NBE Bill on achieving outcomes. NZPI supports the amendments in this regard and, in particular, the explicit ability for conditions to give rise to positive effects (with the applicant's agreement) or be directly connected to any positive effects.

419. Another element that is supported is the provision for conditions to employ an adaptive management approach (s233), where an activity can be monitored, managed, and expanded in accordance with pre-determined '*check-points*' that are set out in the conditions of consent. While such conditions are used from time to time in the current RMA system, their use would be specifically mandated and supported where appropriate under the NBE Bill.

420. The NZPI see some significant advantages in these adaptive management provisions, which would manage risks associated with an activity that might be somewhat uncertain, and would have the potential to provide better protection for the environment and the achievement of the outcomes. Some tolerance for risk is desirable in a more aspirational planning system that is seeking to achieve desired outcomes, and adaptive management conditions can encourage decision-makers in that regard.

Alternative dispute resolution

421. Recommendation 116: The accreditation requirements in Schedule 7 Clause 82 should be clarified to refer to the 'Making Good Decisions' commissioner accreditation programme, or any future replacement of it.

422. Recommendation 117: That there is an amendment of the ADR provisions to confirm that the consent authority can be a party to ADR.

423. Sections 244-252 of the NBE Bill introduce new provisions relating to regional Alternative Dispute Resolution ('ADR'). The ADR provisions cover '*plan directed*' and '*voluntary*' ADR, and the purpose of ADR is to resolve disputes efficiently and in a manner that is proportionate to the nature of the dispute.

424. NZPI supports the ADR provisions. If successful, these provisions will be a tool that is available to assist parties to resolve minor disputes amongst themselves, without utilising system resources (such as hearings and the Environment Court) that are better used for resolution of other matters. ADR is used currently in the Environment Court and it is appropriate that it is available more widely in the planning system.

425. We consider that the ADR provisions as currently drafted strike an appropriate balance between fairness and efficiency. In particular, NZPI supports curtailing appeal rights entirely on voluntary ADR and enabling appeals from plan directed ADR determination to the High Court on points of law and only with leave of the Environment Court. NZPI also supports the adjudicator's decision being binding where agreement is reached, and that the adjudicator is required to determine both the disputed matter and the consent application simultaneously. On this latter point, we consider that only accredited commissioners should be used as adjudicators, given that they will possess the necessary skills to determine the application as well as the disputed matter. The NBE Bill confirms that adjudicators must be 'accredited' (s251(1)), but the definition of that term relates only to someone with a qualification approved by the Minister (Schedule 7, clause 82). NZPI recommends that the accreditation requirements be clarified to refer to the 'Making Good Decisions' commissioner accreditation programme, or any future replacement of it.

426. There is one aspect of the ADR provisions that is unclear. We have assumed that the 'parties' involved in ADR can include the consent authority itself. If so, the ADR provisions would provide a useful tool for resolving disputes of interpretation or similar matters between an applicant and a consent authority, without the need to seek a declaration from the Environment Court or lodge an objection (under the new equivalent of s357 of the RMA). NZPI recommend that there is an amendment of the ADR provisions to confirm that the consent authority can be a party to ADR.

Duration of consents

427. Recommendation 118: That the maximum duration of consents to discharge, take or divert water be given further consideration.

428. NZPI seeks that further consideration be given to the proposal in section 275 of the NBE Bill to limit the duration of consents to discharge, take or divert water to a period of 10 years (unless otherwise altered by a Plan, or related to identified key public infrastructure).

429. The NZPI membership has a range of different views in relation to this matter. On the one hand, we can appreciate that there may be a number of reasons that support a reduced consent duration for water rights including, but not limited to, climate change, Te Tiriti issues, evolving national policy, changing technology, and unresolved or misunderstood cultural matters. Conversely, NZPI is aware that a 10-year duration for a consent may not be sufficient to encourage or support significant investment in important infrastructure and new industries that have other benefits (such as employment and economic growth). We are also cognisant that any climate change issues can be addressed through the proposed provisions that enable review of the duration of a consent.

430. NZPI does not have a firm position in relation to the duration of water rights, other than it considers that this matter needs further consideration.

Timeframes

431. There are no specific proposals to significantly amend the consenting timeframes that would apply to resource consent applications. The NZPI supports that approach. It is currently challenging for planners working in the system to meet existing statutory timeframes, and tightening the mandated time for undertaking process tasks would only succeed in putting more pressure on already-strained planning professionals. Tangible enhancement of efficiency and reduction of delay can only occur through a combination of better resourcing and/or simplification of the resource consent process. The NZPI sees some potential for process improvements in the proposals to 'front-load' the planning system within NBE Plans, so that a disproportionate amount of time is not wasted addressing notification or interpretation issues at each time an application is processed.

432. We support the small change to timeframes to exclude the applicant's review of draft conditions from the mandated statutory processing period. While the review of draft conditions is a courtesy that is regularly extended to applicants, the time to enable this can only be excluded with an applicant's agreement. The changes that are proposed reinforce good practice and codify the current approach of many consent authorities.

Notification

433. Recommendation 119: That s205(2)(c) and (d) be deleted.

434. Recommendation 120: That s206(a) and (c) be deleted.

435. Recommendation 121: That s207 be amended as set out below.

436. The NBE Bill proposes some significant changes in relation to the notification provisions relating to resource consent applications. At a high-level, the Bill seeks to elevate and simplify notification questions as far as possible by determining these at the Plan level. This approach is strongly supported by NZPI, for efficiency and certainty reasons that are addressed more fully in the plan development sections of this submission. However, there remains opportunity for notification determination to occur at the individual resource consent level and there are a number of matters that are of interest to NZPI and about which we wish to comment.

437. NZPI notes that the NBE Bill includes a 'purpose of notification', that applies in relation to both public notification and limited notification. This purpose is focused on information gathering about the application and the proposed activity it seeks to have consented, including its effects and the contribution that it makes to the system or plan outcomes. Notably, the purpose does

not seek public participation for the sake of it. NZPI supports the establishment of a stated purpose of notification and agrees that the purpose should be for the procurement of information that enhances the quality of decision-making.

438. There are separate criteria proposed for public and limited notification (sections 205 and 206 of the NBE Bill). The criteria are relatively simple to navigate as notification is required if any of the stated matters apply, and that simplicity is supported by NZPI.

439. With regard to public notification, NZPI considers that there is merit in notification where uncertainty exists as to whether an activity could meet or contribute to outcomes, or where a limit would be breached (s205(2)(a)) or where there are clear risks or impacts that cannot be mitigated by the proposal (s205(2)(b)). However, NZPI does not support some of the other criteria that are proposed. One criterion requires public notification where there "*are relevant concerns from the community*". We consider that this criterion should be deleted as it is both vague and unrelated to the stated purpose of notification, and has the potential to undermine the efficiency of the consenting process. There is clear potential for the loudest voices in communities and 'NIMBYs' to intervene in the process for reasons that may not directly relate to the merits of the proposal. Such disruption to the process would appear to run counter to Policy 6 of the NPS-UD, for example, which acknowledges that change in a community can detract from amenity values but is not in itself and adverse effect.

440. The criteria for limited notification also have some deficiencies. In particular, notification must occur if "*it is appropriate to notify any person who may represent public interest*". We consider that there is a disconnect between this criterion and the concept of limited notification, which the NZPI would not expect to require broader public involvement.

441. Both sections 205 and 206 also contain a criterion that notification should occur if "*the scale or significance (or both) of the proposed activity warrants it*." Again, this provision does not seem to relate to the purpose of notification, which should be the reference point for determining appropriate notification criteria. Retaining these words will see litigation as they are not used currently. The 'scale or significance' criterion is reminiscent of the 'special circumstances' catch-all in the RMA and is unnecessary and out of context in these sections of the Bill. NZPI recommends that this criterion is deleted in respect of both public and limited notification.

442. NZPI broadly supports the provision in s207 that prohibits (public or limited) notification if the activity is clearly aligned with the outcomes or targets set by legislation or plans; and there is no affected person. We note that there is a grammatical issue with section 207 as currently drafted, insofar as it states that notification should not occur if one or both of the criteria apply, but the criteria are conjunctive through the use of the word "and". NZPI assumes that both criteria must apply, so some amendments are required. We also consider that the requirement to "*prohibit*" notification should more appropriately be redrafted to state that notification should not occur, in order to avoid any possibility of confusion with *prohibited activities* as used elsewhere in the NBE Bill. The amendments sought are set out below:

> ***207 Prohibiting public or limited notification***
> *A decision maker must not ~~prohibit~~ publicly notify ~~and~~ or limited notify~~ication of~~ an application for a resource consent if satisfied that ~~1 or~~ both of the*

following apply:

(a) the activity is clearly aligned with the outcomes or targets set by legislation or plans; and

(b) there is no affected person.

443. There are some other related aspects of notification procedures that NZPI has commented on elsewhere in this submission. Those matters concern the NBE Bill's proposal to mandate notification or non-notification depending on the activity status of a proposal, and for any exceptions to these mandatory requirements to be addressed at Plan or NPF level.

Decision-making

444. Recommendation 122: That there should be priority assigned to outcomes in s223, through amendments.

445. Recommendation 123: That section 223 is amended as set out below (in addition to the above).

446. Recommendation 124: That equivalent wording to that contained in RMA s104(2) is added to the NBE Bill.

447. Section 223 of the NBE Bill sets out the matters that a consent authority must have regard to when making a decision on a resource consent application. There are seven matters identified, together with any submissions received in the case of a notified application.

448. NZPI is satisfied that most of the listed matters are appropriate. However, we consider that there should be priority assigned to outcomes if the NBE Bill is to successfully initiate a move towards achieving the outcomes. At present, that is not the case as outcomes have no greater focus in decision making than is assigned to effects or other matters (some of which seem relatively less important, such as the track record of an applicant). An option to prioritise outcomes over effects and other matters is to only consider those matters when they are inconsistent with outcomes.

449. In addition, NZPI consider that there should be an amendment to s223(2)(d)(i), which requires consent authorities to have regard to any inconsistency with "*policies and rules in a plan*". While there is merit in requiring consideration of inconsistency with policies, it is NZPI's view that there is a flaw in requiring consideration of whether a proposal is inconsistent with rules in a Plan. Every resource consent application will be inconsistent with some rules in a plan, because that is the reason for an application being required in the first place. NZPI recommends s223 is amended as follows:

223Consideration of resource consent application

(1) …

(2) The consent authority must have regard to—

(a) …

(b) …

(c) …

(d) the nature and extent of any inconsistency with—

(i) any policies ~~and rules~~ in a plan; or

(ii) the national planning framework; and

(e) …

450. There are also matters that must be disregarded when considering an application for a resource consent. These are noteworthy because a number of them are new and somewhat unusual. The NZPI does not have a particular view on whether these matters are appropriate or not, other than to note that it is not aware that any of the new matters (such as s223(8)(c)-(e)) have consistently been significant issues in respect of decisions on resource consent applications under the RMA.

451. NZPI consider that there is value in retaining the permitted baseline concept within the new legislation (it is currently included in s104(2) RMA). Our understanding is that the permitted baseline has not been retained in the NBA Bill because it was thought that it is not required in an outcomes-based planning system. Although that premise might be sound, the NBE Bill as drafted maintains a significant emphasis on 'effects' within the consenting process. In that context, there is no cogent case for removing the permitted baseline concept and NZPI considers that it will simply re-emerge through caselaw over time if not explicitly provided for through the NBE Bill. It is only logical that the effects of activities that would be permitted are a useful benchmark when considering any effects of an activity that is proposed, and the permitted baseline also provides a useful tool in resisting NIMBYism. Further, it is noted that the removal of permitted baseline provisions is somewhat haphazard, given that the concept is still employed to an extent in some instances (for example, s157(1)(b), relating to deemed permitted activities). NZPI recommends that equivalent wording to that contained in RMA s104(2) is added to the NBE Bill.

Information requirements

452. There appears to be some emphasis in the NBE Bill on managing information requests relating to resource consent applications. Overall, the amendments to current provisions attempt to temper the extent and nature of requested information. Proposed provisions include a requirement for information requests to be proportionate to the scale and significance of the proposal, and within the scope of the activity. There is also a need for consent authorities to consider whether effects can be adequately assessed from information already provided, and whether more information is needed to determine if the application meets relevant outcomes.

453. NZPI supports the inclusion of clear parameters to guide information requests. We are aware that the further information process can become contentious, and consent authorities have been accused at times of overreaching or using the further information process to manage timeframes. Additional guidance can only benefit the process, improve decision-making, and reduce disputes.

454. NZPI is also supportive of the further information provisions that relate directly to the achievement of outcomes. Specifically, we welcome the requirement in s184 for requested information to relate to outcomes associated with the proposed activity (although effects are also mentioned). Additionally, Schedule 10 requires that further information can be requested to demonstrate how the activity will meet or align with applicable outcomes (including environmental targets and limits).

Iwi engagement

455. It is clear that the NBE Bill provides for increased iwi engagement in the planning system, at all levels. The effective operation of the system as a whole will rely on active iwi engagement, and iwi will only be able to participate effectively if they are adequately resourced. One tool that the NBE Bill introduces in this regard is the ability for consent authorities to recover consent engagement costs on behalf of Māori groups (s164(2)). NZPI strongly supports this new provision

as it considers that it is a positive step towards facilitating effective and active iwi engagement in the resource consent process.

12. COMPLIANCE, MONITORING AND ENFORCEMENT

456. Compliance, monitoring and enforcement ('CME') functions are essential components within any effective planning system, and the move towards outcomes-based planning (with targets and limits) only reinforces the importance of these functions. NZPI notes that there are a number of significant changes proposed in relation to CME. These changes introduce new and improved tools that have the potential to enhance CME practice and, overall, the NZPI supports the changes to the current CME provisions in the RMA.

Notification declarations

457. Notification determinations on resource consent matters are currently only able to be legally challenged through judicial review proceedings in the High Court. The process is costly, time-consuming, and requires a legal flaw in process to be demonstrated rather than enabling a merit-based determination. The NBE Bill proposes to shift the resolution of notification issues to the Environment Court, by providing the Environment Court with the ability to make a declaration in respect of any issue or matter relating to the notification status of an activity.

458. NZPI supports this addition to the Environment Court's powers. The Environment Court is a specialist court with expertise and experience in relation to planning matters, and is therefore better-placed to determine complex notification questions. While an application for declarations is still a significant step, it is less of a barrier than the existing avenue for resolution of notification issues and is therefore less likely to prevent meritorious challenges to poor decision-making simply due to process.

Contamination and pollution remediation

459. There are two related provisions in the NBE Bill that address remediation of contaminated or polluted land or water. These are based on a 'polluter pays' principle. Section 700 of the NBE Bill provides the Environment Court with the power to make an enforcement order requiring a polluter of contaminated land to remediate the land or pay the costs necessary to prevent or remedy adverse effects. NZPI supports this power as it protects the environment and promotes fairness by placing the costs of pollution with the polluter rather than the community. Linked to the polluter pays powers, and also supported by NZPI, are provisions that enable NBE regulators to require that a 'financial assurance' is given to provide security for the costs and expenses of remediation or clean up in connection with a particular activity.

Compliance track record

460. A notable new feature of the NBE Bill is the focus on past or current performance of consent holders in terms of compliance. A proposed provision (s719) enables the Environment Court to revoke or suspend a resource consent (on application from an NBE regulator) if it is satisfied that there has been ongoing and severe non-compliance in relation to a consent on the part of the consent holder. NZPI supports the introduction of this new power. Similarly, we note and support the ability of consent authorities to prevent the transfer of a consent based on the compliance history of the transferee (where enforcement action has been taken).

Deterrents

461. Several of the proposed new tools have significant deterrent value, and are supported by NZPI for that reason.

462. For example, it is proposed that the Environment Court will have the power to make a monetary benefit order whereby a person is required to pay the value of any monetary benefit from committing an offence. This would seem to be of particular utility where the value of land is enhanced significantly through unlawful actions such as tree removal. The uplift in land value would be payable by the offender in those circumstances. This '*proceeds of crime*' provision would address the current situation where maximum fines may be manifestly inadequate to deter offending if the financial gains are substantial enough. NZPI supports this new provision.

463. In addition, the NBE Bill proposes that the Court and NBE regulators be given further deterrent powers. The Environment Court can make an 'adverse publicity order' requiring a consent holder to publicise non-compliance in relation to a resource consent. This is effectively a '*name and shame*' power. An adverse publicity order could be a powerful tool in some instances, due to its ability to impart reputational damage, and could be particularly effective with respect to corporate compliance. There are also provisions in the NBE Bill that enable NBE regulators to obtain 'enforceable undertakings' in connection with a matter relating to a contravention or alleged contravention. An enforceable undertaking effectively provides an agreed ability to enforce the undertaking in the event that there is a breach, and may include agreed compensation or penalties.

Fines and penalties

464. The NBE Bill proposes to make some significant increases in the maximum fines that are payable upon conviction for an offence. Fines not exceeding $1,000,000 are enabled for individuals, while corporate entities can be fined up to $10,000,000 (equivalent fines in the current RMA system are $300,000 and $1,000,000). The maximum term of imprisonment would decrease slightly from the current two-year term to 18 months.

465. NZPI considers that the amended maximum fines provide a more appropriate disincentive for offending and reflect the increasing costs incurred by regulators and the courts in undertaking CME functions. The reduction in the maximum prison term is also supported because it provides greater flexibility (as it is less than two years) and because the NZPI sees imprisonment as a last resort (and likely of limited effect) in cases of environmental offending.

13. A FIT-FOR-PURPOSE DIGITALLY-ENABLED NBA AND SPA SYSTEM

466. The material in this section of the submission has been prepared by NZPI's PlanTechNZ Special Interest Group. This group explores the implications of digital technologies for planning practice. The group comprises planners from a variety of roles and organisations around New Zealand and includes planners who have had experience working with the innovative application of digital technologies to New Zealand planning practice and/or in overseas planning systems with good use of digital and/or data technologies.

467. This part of the submission identifies key overarching recommendations in **bold**, followed by more detailed recommendations in *italics*.

Overview

468. The reforms provide the opportunity to create a fit-for-purpose digitally-enabled system which best serves New Zealand now and over the life of the new system. **Our review of the Bills has identified that there is a significant missed opportunity in this regard.** This will have a critical impact on the ability to undertake truly successful reform and deliver on the reform objectives such as effectiveness and efficiency.

469. Our review has focused on the following aspects of the system:

a) How data is managed in the new system, recognising the fundamental importance of good data systems as a foundation for any modern system;

b) Whether the processes in the system are designed to be 'digital-ready' (so that they can be readily applied by computing systems) and likely to be carried out with modern digital systems and tooling; and

c) How the public access the environmental information and data generated via the operation of the system (reflecting open government principles).

470. Based on the above themes, we recommend the following areas of improvement:

a) Requiring a robust data collection and sharing system with national and system-wide consistency;

b) Improving the drafting of the Bills to promote ease of implementation of processes by computing systems;

c) Encouraging the use of modern digital systems and tooling as the default in administering the processes and key tasks in the system;

d) Providing more certainty on processes in the Bills to facilitate the two points above;

e) Providing a right for the public to access environmental information and ensuring that information and data are made available in user friendly digital formats;

f) Obliging those with powers or duties under the new system to provide

environmental information and data in ever improving ways to keep pace with system needs and citizen expectations;

471. **<u>Recommendation 125:</u> Consistent with the discussion earlier in this submission, we recommend that the Select Committee requires a national digital strategy be prepared to guide how digital is deployed and implemented throughout the new system.**

472. We have prepared a set of recommendations for each of the two Bills which apply the above in more detail. There are three sections that follow:
   i. an introduction and explanation about why a digitally enabled system is important
   ii. recommendations for the NBA
   iii. recommendations on the SPA.

Introduction and why digitally enabling the system is critical to success

473. Technological advancements have already changed our world significantly. We consider this Bill does not create a new system that is sufficiently robust for today's technologies, let alone emerging technology. Digital technologies are transforming our collective ability to understand and take action on our natural and urban environment, resulting in opportunities to expand our horizons in all directions:

   a) Scale: From the macro scale it is now possible to feasibly monitor whole environments and even NZ in its entirety (e.g., via imagery captured by satellites and supplemented by other aerial imagery sources such as drones). Right down to the nanoscale or atomic scale (e.g., in genetic technologies e.g., environmental DNA or eDNA – see the EPA's webpage on eDNA, the monitoring of wastewater to monitor COVID infection at the 'by city' scale)

   b) Location: Any environment in New Zealand, from high-density built environments to the most remote natural environments could be equipped with remote sensing technologies including the Internet of Things (IOT) to augment existing satellite, LIDAR, spectrometry and aerial data to enable monitoring and real time intervention

   c) Comprehensiveness: Rather than monitor target or selected sites to extrapolate to general trends we can now monitor whole parts of the environment relevant to an issue and for meaningful durations (e.g., overseas monitoring is moving from annual monitoring of 10% of national indicator sites to frequent coverage of 80% of national area on some environmental issues)

   d) Without Delay: Technology can allow effects to be identified in real time or near real time, when this can be translated to human intervention to truly avoid adverse environmental impacts (e.g., including water and air quality, stormwater and wastewater flows, groundwater saturation, ground, air and water temperatures and concentrations of minerals including oxygen, nitrogen and phosphates)

   e) Without the resource limitations imposed by hourly rates for human labour (e.g., through augmentation with artificial intelligence technologies and remote sensing technologies). By automating data processing including visual imagery, acoustic

signatures, for fauna identification and heat signatures for mammal, pest, fisheries and bird management and to offer new insights)

f) Proactiveness: Data collected over time enables the ability to create sounder future predictions (and even digital twins of real-life systems and/or environments) and presents the opportunity to act proactively.

474. The emerging possibilities for environmental management over the life of this new legislation are unlike anything we have seen before. While we don't know the full extent of this yet, we already have sufficient information around the technologies, opportunities and challenges to make provision for future environmental management systems in this legislation. These technologies can help, not just in the management and monitoring of the environment, they can also influence how people can interact with the system. Relevant international examples include the Digital Transformation Strategy embarked on by the Scottish Government that has developed a shared cloud platform for planning[2].

475. Modern citizens expect more of any regulatory system, such as access to environmental data, easy to understand environmental information (e.g., Augmented Reality/Virtual Reality (AR/VR), 3D models), timely and automated processes, good user experiences via the digital technologies they are used to using in most other spheres of life. The new system needs to deliver this digital functionality to keep pace with the expectations of the public.

476. Digital technologies, while an essential part of the modern world, are currently under-utilised in New Zealand's planning and resource management in comparison to other sectors and systems. Digital approaches offer opportunities for all parts of the system. The benefits include more efficient processes, innovation, accessibility and environmental effectiveness.

477. These reforms are about improving the system, making it more effective and efficient and making it more accessible to all people. Designing a modern digital regulatory system for the environment is critical to delivering on the reform objectives of efficiency and effectiveness.

478. These Bills should not be permitted to be silent on these emerging issues. If they are, the considerable opportunities mentioned cannot be realised. At this Bill stage, important parameters can be set by the Select Committee to ensure a fit for purpose digitally enabled system:

a) Create a duty for key system actors such as central and local government to provide environmental information to the public and a corresponding right for the public to have such access, this should be open source and consistent nationally and regionally (e.g., New South Wales Government has created a planning portal that demonstrates what is possible[3])

b) Encourage the use of shared software platforms and technologies for the key processes under the Act as this is the most efficient way to carry out modern processes and deliver good user experiences to the public from the system

2 https://www.gov.scot/publications/transforming-places-together-scotlands-digital-strategy-planning/
3 https://pp.planningportal.nsw.gov.au/nsw-planning-portal-0

c) Ensure the mandate for and parameters around a foundational data ecosystem to collate, organise and make available data (preferably open source) from throughout the system including national consistency and data standards, and ensuring wherever possible that environmental data is spatial data (e.g., GPS allows us to log locations spatially of what is happening on the ground – Trap.nz is a free website recording trap, bait, monitoring, and biodiversity outcome data.

Recommendations on NBE Bill

479. The key changes we wish to see in the NBE Bill, which affect provisions throughout are:

a) Provide a specific right for the public to access environmental information that is produced within the system

b) Specify that the default approach to system implementation is modern digital; systems, which are designed to deliver efficient and effective processes, user focus and aid transparency

c) Set a mandatory obligation to provide environmental data

d) Set deadlines on changes (b), (c) and (e)

e) Require a system wide data collection and sharing system to be established

f) Require tracking of progress on introducing changes (b), (c) and (e).

Provide a specific right for the public to access environmental information

480. <u>Recommendation 126:</u> Provide a specific right for the public to access environmental information that is produced by the system.

481. Environmental information should be readily accessible to the public via the internet in user friendly formats such as interactive dashboards. Make it clear that where data is held in an electronic form that can be transmitted easily then it should be provided free of charge. Subject to general submission points by the NZPI on improving the structure and drafting of the NBE Bill, this could be achieved by:

a) Adding a new clause to the NBE Bill providing this right

b) Adding a definition or clause to explain what 'environmental information' would be subject to (or excluded from) this new right

c) Referring to this right where relevant in other clauses, for example in Section 13 Environmental Responsibility add a new clause "Every person has a right to access environmental information about the natural and built environment to enable that person to carry out the above environmental responsibility".

Explanation

482. The provisions in the NBE Bill reflect dated thinking on access to environmental information and timeliness of reporting. Information sharing requirements are at the macro scale involving information collated and aggregated over time. The Select Committee needs to change the Bill so

that the public can easily access a wide range of environmental information. This is needed because:

a) checks and balances of the system are mainly at a macro not micro-level

b) focus is needed on the public that uses the system

c) the public faces barriers to accessing environmental data and information

d) the Bill should enable access to justice, innovation and engagement.

483. There has been no change to sharing key system data such as resource consent data at any stage in the life of the RMA. Now is the time. The NBA is about a generational change towards our environmental system; it is incumbent to the Select Committee to ensure that the system is modernised in a way that enables those who care about their local environment to understand what is happening around them, when it is happening. While most do not, there are some councils that proactively release data such as resource consents, showing it is already possible to do this. Changes to the NBA can be made to ensure this happens across the country.

484. These changes are needed because change will not happen otherwise.

a) The changes to statistical reporting about the environment being addressed by the PCE, LINZ and MfE do not respond to these concerns.

b) Making system implementers responsible to make access to environmental data easier can only happen through change to the primary legislation focused on the environment, not tweaks or reliance on LGOIMA or statistical reporting.

485. We ask that this right be introduced into the NBE Bill at this stage so it is clear to the public that this legislation is fit for purpose and promotes open access for the public to environmental information. We anticipate that the scope of 'environmental information' that will be readily accessible will start off relatively limited (but better than what is currently available under the RMA) and over the life of the legislation will become broader in scope. The provision of such a right will allow those (such as local authorities) with a mandatory obligation to provide such information to prepare the required digital and data sharing systems.

Specify the default approach to implementation is modern digital systems

486. <u>Recommendation 127:</u> Specify that the default approach to system implementation is modern digital systems, which are designed to deliver efficient and effective processes, user focus and aid transparency.

487. Alternative approaches should be by exception, not design. This can be supported with specific functional requirements for each process under the new system. For example, digital functionality of plans, digital functionality of consent processes, digital case management requirements for the Environment Court. In addition to digital systems for carrying out system processes, digital tools should also be encouraged for complex tasks in the system (e.g., scenario and option analysis and evaluation, simulation models, digital twins). Specify modern digital systems by:

a) Ensuring all processes set out in the NBE Bill are drafted in a form which is 'digital-

ready' (i.e., are drafted for ease of implementation of the process via computing systems)

b) *Requiring all those with roles to deliver processes under the system to adopt modern digital systems to operate those processes offering efficient and effective processes, user focus and aid transparency and integrating with the data system requested below including:*

   i. *Create functional requirements for each process under the new system. For example, digital functionality of plans, digital functionality of consent processes, digital case management requirements for the Environment Court*

   ii. *Create the framework and powers for the regional portals recommended in the Randerson Report or, better still, a national portal to ensure a consistent user experience for lodging and processing resource consents and the ability for agencies to collect robust data*

   iii. *Create an option for consent holders to self-report their progress on CME responsibilities via a CME platform thereby reducing the load on consent authorities to initiate all consent monitoring*

   iv. *Create a duty for central and local government to seek input from certain public data sets as part of consultation on processes under this system in relation to locations or issues (as this saves submitters having to bring public data in other systems to processes)*

   v. *Require the first NPF (and subsequent versions) to introduce further staged requirements to improve digital functionality, data systems and standards.*

c) *Requiring specific complex tasks to incorporate digital tooling (as this provides a resource for all involved in the matter to take part and makes the evidence more transparent) including:*

   i. *For preparation of NPF, especially around establishing limits and other NPF content which can be better understood with robust digital dashboards, digital twins and the like;*

   ii. *For policy analysis and evaluation process steps to require the use of digital tools including scenario exploration software, simulation models or digital twins; and*

   iii. *For public engagement/notification processes*

d) *As addressed elsewhere in this submission, making the roles and functions of regional planning committees and local government clearer and with regard to efficient digital resourcing;*

e) *Creating a duty to create collaborative relationships between agencies to foster shared technologies*

f) *Notwithstanding the promotion of modern digital systems above, also protecting the right of any member of the public to not have to adopt digital in order to*

participate in the process.

Explanation

488. Each system process (e.g., giving effect to the RSS, NPF, NBE plan making, consenting, compliance/monitoring/enforcement, and appeals to the Environment Court) follow defined workflows as set out in the legislation which can be automated in software. This sort of digital transformation is occurring internationally and in many existing government systems. As this Bill introduces a whole new system, it is important that it enables as far as possible digital approaches for implementation of system processes. The consenting portal suggested in the Randerson Report is a good example of an area of the system which could benefit from a good technology platform. These are more effective, more efficient and better respond to the needs of various system users.

489. There is also the possibility to deploy software solutions for common but complex tasks in the system. For example:

a) Scenario planning software – to evaluate options and impacts to support processes such as the NPF and limits and targets, land use planning, RSS, NBE plans for policy development. The public and iwi should have the ability to also interrogate any such tool, and adjust the variables to understand different perspectives as this builds engagement with the issue.

b) Digital twins of environments and networks such as infrastructure provide support to deal with the complexities of modern environments and systems and again should be available to the public as important baseline information.

c) Public engagement software – to enable effective and efficient engagement with the public on system processes (providing a consistent user experience for public engagement and the ability to present information in the ways that is best understandable to the specific person e.g., text, charts, maps, interactive dashboards, immersive technologies such as AR/VR.

d) The addition of public portals to augment largely scientific data with Mātauranga Māori and citizen science[4] information shows great potential, international examples include Digital Coast[5].

490. Both software for system processes, and software to support complex tasks within the system could connect or integrate with the new data ecosystem sought above. This would strengthen data capture in the system which in turn would improve software and automation.

491. The SPA and NBA Bills are silent on these possibilities. Whilst the law ought not prescribe specific software, these Bills should require and empower the use of software solutions to promote efficiency and effectiveness and consistency and use of data management systems. Unlike central government digital services, SPA and NBA digital services are delivered by a range of local government organisations and others. Collaboration and working together to procure these technologies will not occur without considerable effort. The Select Committee can encourage this to occur and ensure the success of any such endeavours by setting some requirements and provisions around this.

4 https://www.zooniverse.org/projects/victorav/spyfish-aotearoa/about/research
5 https://coast.noaa.gov/digitalcoast/

492. It is also important to be clearer in this legislation around what falls under the remit of regional planning committees vs each local authority. In places the NBE Bill creates duplicated processes, with each local authority in a region monitoring or reporting against the NBE plan. Carefully considering roles and responsibilities, and the realities of software procurement and economies of scale can help the Select Committee clarify the best decisions for these roles and responsibilities.

493. It would be preferable for the supporting technology to be developed at least regionally, if not nationally, to get best return on investment. Good digital systems are expensive to develop and only really feasible in a country like New Zealand on a nationwide basis (whether this is a national solution or an endeavour by all agencies to develop a joint solution). There are good examples of innovative use of technology in specific parts of the existing RM and local government systems which could be developed further with current expertise, this is not reinventing systems from scratch but utilising what we have better and making it consistent nationally so the data can be effectively used.

494. Whilst it would be unreasonable to expect all system processes to have this digital functionality from the outset of the new legislation, the staged introduction of the Bill to different regions offers the ability to develop pilot projects of these workflows in suitable software. If the Act requires these then implementing agencies don't need to decide *if* they will provide a digital solution, the focus will be on *how* they provide a digital solution.

495. Finally, the way that the Bill sets out processes is not 'digital-ready' for implementation by computing systems. Many processes in this Bill are drafted similar to how these processes are set out in the RMA at present. However, the way that these processes now work in practice has evolved and will continue to evolve. The drafting of these processes should be set out to reflect how they will be implemented – via an ever-increasing degree of digital support.

Create an obligation to provide environmental information

496. <u>Recommendation 128:</u> Set a mandatory obligation to provide environmental information.

497. Oblige local authorities (and others with duties under the act) to provide the public with access to environmental information (scope to be determined but at a minimum specific types of data such as resource consents and resource consent compliance data about discharges to the environment) on the Internet by:

a) adding to sections 643 and 645 of the NBE Bill a new function for local authorities to facilitate public access to key information such as resource consent data

b) creating a new section that sets out the obligation

c) adding a specific obligation in section 786 of the NBE Bill to require local authorities to publish on an Internet site that is accessible to the public free of charge environmental information (scope to be determined) but including at a minimum a register of resource consents and resource consent compliance data about discharges to the environment

d) extending the duty to gather information and keep records under section 816 of

the NBE Bill to providing this information as open source

e) including powers to set standards that will ensure sound data management.

Explanation

498. The NBE Bill does not contain an obligation on local authorities (or others who hold records or information) to make environmental information (scope to be determined but including at a minimum resource consents or consent data) easily available to the public. Any monitoring of functions or obligations (like section 783) will not relate to these matters.

499. Reporting in the Bill is focused at a system-level, not at an individual level. They are not local or immediate; they're generally aggregated data over time. For example, compliance and monitoring strategies may include strategies to address reporting obligations under the NPF (section 83), regional planning committees may how local authorities undertake specific monitoring functions (section 785); the National Māori Entity must monitor and report (section 663); reporting and monitoring of the NPF (section 83); the chief executives of the responsible departments must consolidate reporting on monitoring and evaluation for both Acts to enable an integrated view of overall system performance (clause 837); the Parliamentary Commissioner for the Environment reviews evaluation reports (clause 838).

500. Although the NPF will be created to provide direction on the integrated management of the environment in relation to matters for which national consistency is desirable (section 33(a)(ii)), this direction is insufficient to impose an obligation on local authorities as the provisions in the NBA which empower the creation of that direction do not focus on ease of use of the system or access to data by the public.

501. Although the NPF contemplates standards, methods, or requirements these are limited to the matters referred to in section 17 to 22 and noise. There is no scope to have standards, methods, or requirements relating to making information such as resource consent information available in a useful format on the Internet.

502. Although the NPF provides regulation-making powers (in clause 858(b)) about the manner in which applications, notices, or any other documentation that may be required under this Act are to be processed, including (ii) requirements that apply to specific consents or activities and (iii) service requirements and related administrative matters, these are not sufficiently explicit to justify regulations about the form that information including resource consent information should be made available and they are not mandatory.

503. New proposed checks and balances are at a macro, not a micro-level. The system changes included in the NBA to keep the system under evaluation and evolution are not designed to work for a person who wants to understand what is happening to their local environment. They're designed by institutions for institutions. They contemplate information gathering at a macro level, to be shared between institutions and considered by institutions in a slow manner. Jo/e Public has to ask: how does this help me, now? This isn't any better than the old system for me. Why doesn't the system automatically give me access to the specific information about my local environment that I care about? I want to know what is happening down the end of my road, right now, being discharged into my local river, lake, air catchment, beach. Why not design

transparency into the system? Why not let me check with my own eyes the data that I care about? Why not release information now instead of hiding it in a synthesis report released in years from now in a manner that is meaningless to me and not when I need it?

504. Focus is needed on the public that uses the system. The public often speaks up for the environment. It is members of the public from all walks of life who would like to easily get information from councils about the environment, resource consents and compliance with them in their local communities when they see an issue. That includes iwi, journalists, local activists, neighbours, schools, and academics. There is nothing proposed to systematically make this easier. A new environmental system should be designed to serve the public and be outward-looking, not just inward facing institutions with limited roles for the public.

505. The public faces barriers to accessing environmental data. It isn't new information that is being sought: LGOIMA currently obliges councils to release environmental data, like copies of resource consents and records of compliance monitoring required under resource consents. Councils are not under any obligation to proactively make it easy for the public to access information and this strains the resources of them. The data is only released after a member of the public has to jump over numerous hurdles and it may not be what they want. So, it is hard and expensive for the public to get a joined-up picture of what is happening in a microcosm, whether that is the local street, river or valley. The data is held by councils in a black box and only released piece meal upon request and payment of a fee.

506. The Bill should enable access to justice, innovation and engagement. With access to environmental information there can be greater access to environmental justice, more opportunity for people to use that information to innovate and create solutions that help the environment, and easier and better kaitiaki and community engagement with their local environment and understanding of the compliance, monitoring and enforcement of those who use it. A response at a micro-level and real-time is needed, not reliance on bureaucratic processes focused on macro-data undertaken over years. People properly informed can properly engage in debate. Without there cannot be true "public participation" in a system. Without it a potential voice for the environment is lost.

Set a deadline for these obligations

507. <u>Recommendation 129:</u> Set a deadline for these obligations.

508. The introduction of mandatory obligations for local authorities to provide environmental information, along with amendments for modern digital systems (discussed above) and system wide data collection and sharing system (see below) will require timeframes and deadlines. For example, on environmental data this may include, without undermining the obligation to provide the public with easy access to resource consent data, set a clear timeframe for local authorities to work towards a systematic response to the local authority obligation by specifying timing in:

a) the new section that sets out the obligation, or

b) amending section 2 NBE Bill (addressing the commencement of provisions) to cross reference to the obligation and when it will commence, e.g., after Royal Assent or another date.

Explanation

509. There are three key points in this submission which also require deadlines to be included in the NBE Bill:

a. introduction of mandatory obligation for local authorities to provide environmental information

b. requiring use of modern digital systems

c. requiring a system wide data collection and sharing system, along with amendments for modern digital systems and system wide data collection and sharing system, will require monitoring of progress.

510. Environmental Information: Without undermining the obligation to provide the public with easy access to environmental information such as resource consent data, the Bill must set a clear timeframe for local authorities to work towards a systematic response to the local authority obligation by specifying timing in the NBE Bill.

511. Modern digital systems: The NBE Bill must set clear timeframes for each grouping of system implementers (e.g., local authorities) as to when the requirement for modern digital systems in certain processes must be undertaken.

512. System wide data collection and sharing system: The NBE Bill must set clear timeframes for each grouping of data collecting system entities (e.g., local authorities) as to compliance with the new data system requirements.

Require a system wide data collection and sharing system to be established

513. <u>Recommendation 130:</u> Require a system wide data collection and sharing system to be established.

514. Enable a nationally consistent approach to data gathering and sharing so that data is consistent nationally, regionally and locally. A nationally consistent approach to the format of data capture and release can be created by:

a) requiring the Ministry for the Environment to administer the environmental data system, with the objective to make it transparent, user friendly, consistent and effective;

b) obliging all agencies within the system to cooperate in the establishment, review and supply of a comprehensive environmental data system to support this act;

c) creating a duty for central and local government to seek input from the public about appropriate public data sets as part of consultation on the establishment and review of the data collection system;

d) requiring the data management system to incorporate data generated under the Spatial Planning Act;

e) creating and requiring the use of a national consenting portal, similar to that recommended in the Resource Management Review Report, but at national level;

f) enabling participants in the system (consent holders and people with permitted activities that must report) to voluntarily report their progress on CME responsibilities via a national portal or CME platform;

g) extending the scope of the NPF so that it can set out ways that local authorities must make resource consent information available in a useful format on the Internet by amending the purpose of the NPF (section 33(a)) so that it includes providing directions on the integrated management of the environment in relation to transparency and accessibility of environmental data, specifically including data relating to resource consent applications, decisions, compliance with conditions of resource consent conditions; and

h) amending section 80(2) NBE Bill to require the NPF, as a mandatory matter, to set qualitative or quantitative standards relating to transparency and accessibility of environmental data, specifically (b) methods, processes, or technology to implement such requirements;

i) amending sections 635 and 636 NBE Bill to empower and require Ministers to specify a consistent approach to environmental information and data by adding those powers to those for the Ministers for the Environment and Conservation in respectively; or

j) extending regulation-making powers to enable a regulation to prescribe the ways in which local authorities must make resource consent information available to the public in a useful format by adding a new scope to the regulation-making power relating to local authority functions under the NBA and SPA in section 850 NBE Bill or adding or amending the list of general regulation-making power in section 858(b) NBE Bill so that it clearly contemplates provision of environmental information (scope to be determined) but including at a minimum resource consents, resource consent compliance data about discharges to the environment within regulations that can prescribe documentation requirements;

k) enable participants in the system that are not agencies (like applicants for resource consent or those seeking permitted activity status) to be obliged to provide data at specific points in planning and consenting processes - this can be through regulation-making powers or as part of functions for local authorities or national entities;

l) amending section 232 NBE Bill (where particular conditions that may be included in resource consent and include (f) to provide information to the consent authority in a specified manner) so that conditions must require information about the environment including discharges to the environment to be provided in a manner that is consistent with directions in the NPF or regulations.

Explanation

515. At the heart of all modern systems is data. The value of the information which is created and passes through the existing RM system is immense but almost none of this is captured as data. The new system needs a more purposeful approach to information management, particularly data management and data architecture.

516. By international standards we are not capturing the data flowing through the existing RMA system. As data-dependent technologies (big data, analytics and machine learning and artificial intelligence) are deployed in the new system a lack of good data is going to have significant impacts. These technologies offer the efficiencies we are seeking from the system as they can automate many tasks. An end-to-end digital planning system is required and this is founded on a good data ecosystem. There needs to be a nationally consistent approach to the format of data capture and release. It should be transparent, user friendly, consistent and effective.

517. For clarity, this is unlikely to be a single digital product or database. By necessity it will be formed by linking a range of existing data resources in a way that the entire data system for the NBA can be enhanced. It also needs to work with the SPA or via two interconnected networks of data. While the details of this should be developed further via the NPF, it is imperative that important aspects of this are created as a fundamental part of the act itself as this will influence how all system processes should be designed and implemented. Previously New Zealand has been considered a small market and not targeted with the best digital products and we lag behind in this digital transformation. But international examples show even small countries like Estonia can employ smart city and mobility options like there Intelligent Transport Infrastructure[6].

518. Recognising the value of information in management of the environment is critical. What we know about an environment greatly impacts how effectively we can manage it. The Select Committee should consider whether this should be reflected in Part 1 and to Part 2, Section 13. This approach would then filter through the other parts of the Bill. For example, while there is no direct power to collect data around permitted activities, a specific power to do this can significantly enhance the understanding of activities being undertaken in an area. Information from both permitted and activities which require a resource consent are vital to keeping an up-to-date environmental data system. At present requirements around permitted activities are limited to the effects – this needs to be broadened so information can be required of a permitted activity as a pre-condition of permitted status.

519. Spatial data is of particular importance to an environmental system such as the NBA. Particular provision should be made for sound management of spatial data including:

    a) If data has a spatial component, it should include spatial attributes so it can be linked to the places/area it relates to;

    b) Spatial identifiers should be unambiguous, this ensures the location of for example a resource consent application is clearly recorded in the data. The extent of land covered by an application does not always relate to legal boundaries so a robust system of spatial identifiers is required to support sound spatial data practices; and

    c) Refer submission on SPA Bill for further detail in relation to spatial planning.

520. While the design of the detail of a data system is something for technical experts, the Bill needs to set some important parameters for this as it shapes how all those working under the system must deal with information. This should include:

6 https://e-estonia.com/solutions/smart-city-and-mobility/mobile-parking/

a) A clear requirement for a supporting data system which works seamlessly at any level (national, regional or local);

b) Identify responsible agency(ies) for the data system and its operation;

c) Duties and powers of those administering processes under the Act to collect data via those processes;

d) Measures to ensure sound data management e.g., ensure consistency of data, accuracy of data, data standards;

e) Requirement for all those under the NBA to provide information at certain trigger points in processes and in specified formats to enable ease of data collection (for example when lodging a resource consent application);

f) Part e. above should be linked to a national spatial plan implementing the SPA and networked to all of the RSS; and

g) Powers to ensure compliance with the above data requirements.

Require tracking of progress

521. Recommendation 131: Require tracking of progress on these obligations.

522. The introduction of mandatory obligation for local authorities to provide environmental information, along with amendments for modern digital systems and system wide data collection and sharing system will require monitoring of progress. Amendments for this will vary but for example on the environmental information: Monitor, track and publish of progress of local authorities providing the public access to environmental information (scope to be determined) but including at a minimum resource consents and resource consent compliance data about discharges to the environment on the Internet by:

a) ensuring the methods of monitoring of implementation and effectiveness of the NPF (section 53 NBE Bill) and directions to local authorities for monitoring and reporting (section 83 NBE Bill) include consent data through the potential scope of the NPF (section 33(a) NBE Bill) and mandatory matters (section 80(2) NBE Bill); and

b) as noted above, adding a new obligation in section 786 NBE Bill (which requires NBE regulators to publish on an Internet site that is accessible to the public free of charge information about their functions, duties, and powers) that refers to a register of resource consents and compliance data about discharges to the environment and/or compliance with the specific obligation to release information within a set timeframe.

Explanation

523. There are three key points in this submission which also require active monitoring of progress to be included in the Bill:

a) introduction of mandatory obligation for local authorities to provide environmental information

b) requiring use of modern digital systems

c) requiring a system wide data collection and sharing system, along with amendments for modern digital systems and system wide data collection and sharing system, will require monitoring of progress.

524. All three of these changes will require continuous improvement and advancement of system implementation over time. The NBE Bill needs to require effective tracking of progress to ensure these improvements are made.

525. Environmental Information: Monitor and track progress of local authorities providing the public access to environmental data (such as resource consents and resource consent compliance data about discharges to the environment) on the Internet.

526. Modern digital systems: Monitor and track progress of those organisations who operate system processes (e.g. local authorities, Environment Court) and the improved use of digital methodologies to provide constantly evolving levels of user service and/or better implementation. Measure progress by user-focused or operational performance such as the extent of automation of processing.

527. System wide data collection and sharing system: Monitor and track progress of system actors who handle data (e.g., local authorities, Ministry for the Environment, Environment Court, Environmental Protection Agency) in progress towards a system wide data collection and sharing system.

Recommendations on the Spatial Planning Bill

528. The key changes we wish to see to the SP Bill which affect provisions throughout is:

a) Amending the SPA to be more directive on the process for RSS;

b) Requiring a robust data collection and sharing system;

c) Specifying that modern digital systems should be used;

d) Enabling the public to interact with RSS information and digital tools; and

e) Requiring that all RSS are available via a national platform

Amending the SP Bill to be more directive on the process for RSS

529. <u>Recommendation 132:</u> Amend the SP Bill to be more directive as to the process which must be followed for RSS.

530. Greater certainty and national consistency on these processes will support increased use of digital technology and software in the process (thus enabling the potential benefits of a more digital approach such as more effective and efficient processes, with greater transparency and public participation). Be more directive by:

a) *Amending sections 15-19 SP Bill to be more directive on the scope and contents of RSS*

b) *Sections 30 to 34, Schedule 4 SP Bill and other amendments to set out a clearer and more consistent process for RSS preparation*

c) *Creating an obligation in section 68 SP Bill to publish regulations on any aspects of the methodologies which cannot be specified in the SP Bill.*

Explanation

531. The SP Bill contains few directive requirements as to the process which each region must follow in the preparation of RSS. Without such direction each region will adopt different methodologies and deliver different RSS output. With so much process to define, it will be difficult for each region to simultaneously engage with how technology can best facilitate a robust process. Opportunities for more efficient and effective processes via software can be lost in these circumstances. Do not leave the contents and form of the RSS to later NPF/regulation provisions (as is proposed in clause 16) - more specific requirements must be established within this Bill as to the contents, form and methodology of RSS.

532. Amending this Bill to be more directive on the process for RSS will support better deployment of modern technologies in the process for RSS. Such technology can improve effectiveness and efficiency of processes, make processes more transparent to the public and encourage public participation. As a range of government and non-governmental organisations operate in more than one region, it allows these organisations to better participate across RSS in multiple regions as well. Where key information on the best process is not yet known, the Bill should oblige this to be provided via secondary legislation (section 68 currently does not oblige this).

Require a robust data collection and sharing system to support the development of RSS

533. <u>Recommendation 133:</u> Require a nationally consistent data collection and sharing system to be created.

534. This will support the development of RSS and that such a system 'stays live' once RSS are adopted by:

a) *Introducing stronger direction on how information should be collated and shared when carrying out the processes under the SP Bill*

b) *Obliging all agencies within the system to cooperate in the establishment, review and supply of a comprehensive data collection and sharing system to support this act*

c) *Defining how this data collection and sharing system may interact with a similar system sought for the NBA*

d) *Introducing the requirement for national consistency by ensuring each region's data is consistent with a set of data principles and management practices*

e) *Introducing a requirement to keep the system current as an ongoing resource.*

Explanation

535. The preparation of RSS will be one of the most complex information collation exercises that has been asked of local government and other interested parties. Done right, this can create a useful regional data hub and also the opportunity to aggregate data to provide information nationally. However as currently drafted in the Bill, there is too much uncertainty on this information management aspect.

536. By providing stronger direction in the Bill on how data should be collated and shared, the Select Committee can ensure a robust ongoing data resource is created (rather than a one-off exercise which will immediately become dated once complete). Data should be able to be shared nationally, regionally, inter-regionally and locally. Data should also generally be available to all, not just the responsible organisation and/or local government. Furthermore, data with a geographic or locational attribute should be made available as spatial data. To achieve such a data system, the Bill must require that data is created and collated using a set of standards and with consistent terminology and collation methodologies. This would ensure that each region's RSS is founded on local data but managed in a nationally consistent manner.

537. There should also be an enduring responsibility to keep the data system up to date, providing for the data to remain live. This creates a resource for local government in the region, central government and all others with an interest in the data. Approaching data with this mindset will also encourage that this work is undertaken to make full use of automation (and avoid it being a manual one off data collection exercise).

Specify that modern digital systems should be used

538. Recommendation 134: Specify that the default approach to the processes under the SP Bill (for example, collation of information and evidence, preparation of draft RSS, engagement on the RSS, implementation plans, review of RSS) should use modern digital systems.

539. This can be achieved by:

a) Ensuring all processes set out in the SP Bill are drafted in a form which is digital-ready' (i.e., are drafted for ease of implementation of the process via computing systems)

b) Requiring those with powers, duties or interests under this Bill (such as regional planning committees, local authorities and where applicable interested parties) to deliver, or participate in, such processes with modern digital systems

c) Requiring specific complex tasks (e.g., devising and evaluating scenarios, option analysis) to incorporate digital tooling (as this provides a resource for all involved in the matter to take part and makes the evidence more transparent) via digital functionality requirements

d) As addressed elsewhere in this submission, making the roles and functions of regional planning committees and local government clearer and with regard to efficient digital resourcing

e) Creating a duty to create collaborative relationships between agencies to foster

shared technologies.

Explanation

540. Regional spatial planning, RSS and the process to prepare RSS are complex. Regional planning committees and local authorities should be required to use software to make this process more manageable, transparent and efficient. Using such software will significantly improve the robustness of these processes and the engagement of stakeholders in these processes.

541. Each local authority has different existing methodologies for its existing strategy and plan-making including Geographic Information Systems (GIS), mapping approaches, automated workflows and data management practices. There is a risk that considerable time can be wasted in defining how the regional planning committees and the local authorities approach RSS exercise. To gain consensus compromises may need to be made and it is unlikely that best practice will be achieved in this environment. It is important that the time and effort expended by all parties on this endeavour is used to full effect.

542. Whilst the law ought not prescribe specific software, these Bills should require and empower the use of software solutions to promote efficiency and effectiveness, consistency, transparency and participation. This is an excellent time to modernise our processes around data management, spatial information management, tasks supported by software and other technologies.

543. As well as software to assist managing the workflows of processes under this Bill, there is considerable opportunity around software for complex tasks. For example RSS require scenarios and options to be assessed. Each region should be required to bring all inputs together into a regional scenario model. Requirements need to be set in the Bill around the digital functionality of such a model. For the first round of RSS this may be scenario modelling software or a simulation model, but subsequent rounds of RSS may increase the digital functionality requirements to more of a digital twin as more sensors are deployed in the environment.

Enable the public to be able to interact with the information and digital tools

544. <u>Recommendation 135:</u> Enable the public (and other stakeholders) to interact with the data collection and sharing system and the modern digital systems, especially the tooling.

545. This can be achieved by:

a) Creating a new section to oblige regional planning committees to make available digitally, via the Internet, user friendly portals for the public to access the supporting data for RSS via the nationally consistent data collection and sharing system

b) Creating a new section to oblige regional planning committees to make available digitally, via the Internet, user friendly portals for the public to participate in regional spatial planning and the draft RSS including ability to interact with software for complex tasks such as scenario modelling software, simulation models and/or digital twins as applicable

c) Requiring the public notification of the draft RSS in Schedule 4, Section 4 to include the above which enable the public to explore the spatial planning, the scenario analysis and the option evaluation in interactive form rather than just documents

d) Adding a definition or clause to clarify the scope of environmental information, data and digital tooling which regional planning committees (or others with powers or duties under the SP Bill) must make available to the public.

Explanation

546. An important part of modern spatial planning is allowing the public to interact with the data and the options and scenarios. It fosters engagement to be able to adjust variables in models to determine how this influences the spatial planning. The Bill should include a requirement which enables this for the public (and organisations, businesses, environmental groups, interest groups and other collectives), so people can explore the information for themselves which greatly fosters engagement with the process. Support for individuals to do this could be provided via a Friend of the Submitter type approach currently used for major projects under the RMA.

Require that all RSS are available via a national platform

547. <u>Recommendation 136:</u> Require that all adopted RSS, including supporting data systems, are accessible to the public via a national platform.

548. This can be achieved by:

a) Adding a new section which requires adopted RSS and associated information to be made available on a national website

b) Adding a timeframe and a tracking progress requirement for the above.

Explanation

549. There is benefit in being able to collate RSS at the multi-region and national scale. The benefit of digital technology is that once a digital resource is created it can be shared on a range of platforms. Whilst RSS will be made available from agencies within the region, it should also be required that a national portal is created to view all RSS in one Internet location. This should include access to supporting information such as the data system. This would create an extremely valuable national resource.

14. CONCLUSION

550. NZPI thanks the Select Committee for the opportunity to provide this submission on the NBE and SP Bills. As planners, we have an in-depth understanding of how the current system works, and we have put considerable effort into understanding how the proposals for the new system will work. We see the potential in what is proposed in the Bills, and we have made suggestions for how to better realise that potential.

551. NZPI wishes to be heard in support of this submission and we are happy to do that in Wellington.

552. Contact details are as follows:

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APPENDIX 1: MINOR CHANGES TO NBE AND SPA BILL

The below table sets out minor changes to the NBE Bill and SP Bill to correct errors, provide clarity, or improve implementation, without significant changes to the underlying approach.

Section	Change	Explanation
s7 'hazardous substance' definition	Replace the word 'includes' with 'means', as follows: '*hazardous substance ~~includes~~ means any substance defined in section 2 of the Hazardous Substance and New Organisms Act 1996 as a hazardous substance*'.	As drafted, the definition is inclusive, which means it could also include other things, which raises uncertainty and litigation risk. Clarity should be provided, for example by making the definition specific with the use of 'means' instead of 'includes'.
s7 'infrastructure' definition	Amend para (f) of the infrastructure definition to provide clarity on the meaning of '*district or regional*' resource recovery or waste disposal facilities.	Para (f) lists *district or regional resource recovery or waste disposal facilities"*. It is unclear whether "*district or regional*" refers only to local government operated facilities. It seems to exclude multi-district or inter-regional facilities, or privately run facilities. Clarity is needed.
s7 'mining' definition	Add the definition of 'mining' from the RMA into section 7.	The definition of mining from the RMA has not been carried over into the NBE Bill. This will cause implementation issues with national direction, such as the NPS Freshwater Management, which cross-references the RMA definition of mining.
s7 'outcome' definitions	Delete the definitions for: framework outcomes, system outcome, and plan outcomes.	As a consequence of our submission point on labels for outcomes (that there is no need for labels), the definitions for the different types of outcomes should be deleted.
s7 'regional spatial strategy' definition	Insert the correct reference to the Spatial Planning Act: *regional spatial strategy, in relation to a region, means the spatial strategy that is made for the region under the ~~Strategic~~ Spatial Planning Act 2022*	This is a typographical error that needs correcting.
s7 'waste or other matter' definition	Replace with definition of 'waste or other matter' with a more specific definition, such as: '*waste or other matter means unwanted or unusable materials and substances of any kind or description'*	The definition of 'waste or other matter' has been carried over from the RMA, but there is a lost opportunity in not considering a more specific and therefore more useful definition. Consideration should be given to improving it with the suggested here, or something similar to the OECD terminology: '*Waste refers to materials that are not prime products (that is, products produced for the market) for which the generator has no further use*

		in terms of his/her own purposes of production, transformation or consumption, and of which he/she wants to dispose.'
S61	Consider remaining the effects management framework the 'effects management hierarchy'.	Until the release of the Bills, the 'framework' set out in section 61 has been referred to as a 'hierarchy'. This is because it is a hierarchy – it is a series of steps that need to be taken in the order prescribed. Because the term 'hierarchy' reflects what the section requires, it conveys more meaning than 'framework' and would be a more helpful label.
s66	Add examples of activities that would provide nationally significant benefits outweighing adverse effects to para (o) of section 66, such as: new or expanded public hospitals, public schools and universities, renewable electricity generating plant, and treatment and disposal of sewage and refuse.	Section 64 to 66 of the NPE Bill would enable exemptions from the framework rules for certain types of activity, including those that would provide nationally significant benefits outweighing adverse effects (para (o)). Clarity could be provided by adding examples to paragraph (o), to assist in understanding what it means.
s71	Change section 71 to require the regional planning committee to give public notice of its intention to make such an amendment, specifying the exact amendment to be made. Also, after a plan has been amended for that purpose, the regional planning committee should give public notice of the exact amendment made.	Section 71 of the NPE Bill would enable amending of regional plans to avoid conflict with a framework rule, without using the Schedule 7 process. Even so, such amendments to the plan ought not to be done in private.
s79	Amend section 79(2) so that it refers to section 81(c) rather than 81(b)	This is a cross-referencing error that needs amending.
s100	Correct subparagraph (3) as follows: *in accordance with the local authority within which <u>the</u> planning ~~the~~ committee operates (host local authority).*	This is a typographical error that needs to be corrected.
s104 and s109	Delete section 109 and the corresponding heading 'consistency with regional spatial strategies'.	Section 109 repeats section 104 and should be deleted.
s117 and s122	Delete section 122	Section 122 repeats section 117(3)(e) and should be deleted.
s141	Delete subparagraph (1)(b)(i).	There is an error in the drafting of section 141. There is no need for the person with the interest in the land to agree to be made an offer to acquire land – the offer needs to be made first, and then the person can decide to

		accept it or not. The procedure if the offer is or is not accepted is set out in subparagraph (4).
s302	Amend section 302 so there is a requirement for the payment of the appropriate administrative charge.	There should be consistency between the payment of fees for permitted activities notices and certificates of compliance and existing use certificates.
s302/s303	Delete s302(7).	s302(7) and s303(2) are identical.
s654	Delete subparagraph (5)	Subparagraph (5) is repeated as section 647. Section 647 should be retained and section 654(5) deleted.
New, to be inserted where appropriate in NBE and SP Bill (suggest Part 12 or Schedule 7 of NBE Bill)	**XXX Eligibility of decision-makers** (1) This section relates to the making of any decision under this Act or under the Spatial Planning Act about the contents of any framework, strategy, or plan, or any submission, or the grant or refusal of any consent, or terms or conditions of consent. (2) Any person, however otherwise well-qualified, and whether elected or by whomever appointed, is ineligible to take part in any decision-making whatever under this Act or the Spatial Planning Act, if that person is not in all respects entirely and truly impartial, independent of, and open-minded to, every applicant, submitter and witness, and of every issue or interest involved in the proceedings, and any possible outcome of them. (3) Any person who has cause to suspect, or becomes aware of being ineligible to take part in decision-making, is personally responsible for immediately withdrawing from decision-making in the proceedings	Decisions under these Bills may include decisions adopting planning instruments containing rules and other provisions constraining private activities. Persons who have interests in the outcome of those decisions, or who are otherwise impartial, ought not to be making them. Although that may be implied by law anyway, to avoid uncertainty it would be preferable for the legislation to contain express provision to that effect.
s708	Delete 'risk of' from subsection (1)(f): *requiring the person to cease, or prohibit a person from starting, anything specified in the abatement notice to avoid the risk of imminent ~~risk of~~ harm.*	There is a grammatical error in subsection (1)(f) that needs correcting.
Schedule 7, clause 24	Change the cross-reference in clause 24(1)(a) from subclause (2) to clause 25: *prepare an evaluation report in accordance with ~~subclause (2)~~ clause 25; and*	This is a cross-referencing error that needs to be corrected.

Schedule 7, clauses 140 and 141	Make amendments to reduce the overlap between clauses 140 and 141.	Clauses 140 and 141 of Schedule 7 have significant overlap that needs to be consolidated.
Schedule 10	Delete clause 6(1)(c) and 7(1)(f) from Schedule 10.	Hazardous substances are not managed under the RMA or the NBE Bill, yet there is still reference to hazardous installations in Schedule 10. These references appear to be unnecessary and should be deleted.
Schedule 10	Delete the heading 'Part 1'.	There is no need for Schedule 10 to have a heading 'Part 1' as there are no other parts in the schedule.
Schedule 11	Clause 17(2)(b) – should read 'to any' instead of "tony".	This is a typographical error that needs to be corrected.
Schedule 11	Clause 19(3) – should read '274' instead of '2743'.	This is a typographical error that needs to be corrected.

APPENDIX 2: OUTCOMES IN SECTION 5 NBE BILL

The table below sets out NZPI's redrafted outcomes, which are put forward as alternatives to those currently in section 5 of the NBE Bill to illustrate what we mean by 'outcomes'. The table provides an explanation for each of the outcomes.

Revised text	Explanation
5. *The outcomes that the use, development, and protection of the environment is to achieve, in accordance with section 3, are:*	Re-worded to provide clearer and stronger direction. There is no label for the outcomes, in accordance with our submission points on outcomes-based planning. The revised wording ensures these outcomes apply throughout the whole Act, rather than just to the NPF and plans. Section 5 is an elaboration of section 3(a)(ii), so the language of section 3 and a direct reference to that section is used, rather than the less specific language of 'to assist in achieving the purpose of this Act'. The outcomes are to be 'achieved' rather than 'provided for', as 'achieved' is a stronger and more certain direction.
a) *Soil, water, indigenous biodiversity, air, coast, wetlands, estuaries, lakes and rivers provide flourishing environments for native flora and fauna.*	This is a replacement for (a)(i). It is an outcome that tells us what we want the future state of our natural environment to be and is intended to be aspirational so we can aim high. This outcome will: • allow for actions such as protection, restoration, and enhancement, • provides for te Oranga o te Taiao to be upheld, and • supports the use of limits and targets.
b) *Places of national importance have mana and prominence in local and national identity.*	This is a replacement for (a)(ii) and (iii) and (h). This outcome is about how we as humans perceive or experience the environment (the original wording refers to natural character, outstanding natural features and landscapes, and access to the coast) and is intended to provide the reason why we want to protect these areas. Protection is provided for in the Bill itself (s555 to s567). Places of national importance are defined in s555, so there is no need to list them all in the outcome.

c) *The use, development and protection of the environment meets New Zealand's international climate change obligations.*	This is a replacement for (b)(i) and (ii). An outcome related to greenhouse gases needs to be something that plans and planners can actually achieve, and needs to be connected to other legislation on climate change. This outcomes tells us that if we are doing things right, planning decisions are a significant part of addressing climate change.
d) *Communities and the environment are resilient to and able to adapt to the effects of climate change.*	This is a replacement for the part of (b)(iii) that refers to resilience. A single focus provides greater clarity than the original focus on resilience and risk. This outcome tells us clearly what we need to achieve regarding resilience to climate change.
e) *Communities are safe from intolerable risks of natural hazards.*	This is a replacement for the part of (b)(iii) that refers to risk. It provides a clear statement of what we need to achieve regarding risks from natural hazards. It allows risk management to respond to the particular situation, rather than requiring a blanket reduction in risk. Reduction will not always be necessary.
f) *High quality, well-functioning urban environments meet the diverse social, environmental, cultural and economic needs of people and communities.*	This is a replacement for the urban part of (c). It is a simple and clear outcome for how we want our urban environments to be. 'High quality' is important to ensure we are aiming for the best experience we can provide for the 87% of our population that lives in urban areas. There are significant issues with the detail contained in the four sub-clauses of the original outcomes in section 5. There is no need to specify further details in the revised outcome, as 'high quality' and 'well-functioning' require us to do what is necessary to achieve this outcome. It is the role of the NPF is to provide further direction and detail. A definition of 'well-functioning' will also provide further explanation. We recommend using the text of Policy 1 of the National Policy Statement on Urban Development, which covers the issues listed in the original (c) of section 5 of the NBE Bill.
g) *Rural communities have a strong connection to the rural environment that supports their wellbeing and the wellbeing of the nation.*	This is a replacement for the rural part of (c). Rural communities deserve their own outcome, rather than being incorporated within a largely urban focused outcome. This outcome recognises the importance of the land to the wellbeing of rural communities, and the contribution rural communities make to our national wellbeing.
h) *The most highly versatile soils are used for land-based primary production.*	This is a replacement for (d). It is largely the same as the original, but re-phrased so that it is a true outcome.

i) Infrastructure provides for the wellbeing of urban and rural communities and the health and mauri of the natural environment.	This is a replacement for (i). The original outcome has been re-worded so it is a true outcome. It acknowledges the importance of infrastructure for providing for wellbeing and upholding te Oranga o te Taiao.
j) Iwi and hapū utilise and exercise their kawa, tikanga (including kaitiakitanga), and mātauranga in relation to their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna, and other taonga.	This is a replacement for (e). It is largely the same as the original, but re-phrased so that it is a true outcome.
k) Built, cultural and natural heritage is an integral part of local and national identify.	This is a replacement for (g), expanded to include built and natural heritage and re-phrased as a true outcome. This outcome sets the future state for our heritage and allows us to preserve, protect and restore as appropriate for the situation.