// SUBMISSION

NATURAL AND BUILT ENVIRONMENT BILL AND SPATIAL PLANNING BILL

// Local Government New Zealand's submission

// FEBRUARY 2023

Ko Tātou LGNZ.

Local Government New Zealand (LGNZ) provides the vision and voice for local democracy in Aotearoa, in pursuit of the most active and inclusive local democracy in the world. We support and advocate for our member councils across New Zealand, ensuring the needs and priorities of their communities are heard at the highest levels of central government. We also promote the good governance of councils and communities, as well as providing business support, advice, and training to our members.

This submission has benefited from substantial input from Buddle Findlay and Simpson Grierson.

Glossary

CAA – Climate Adaptation Act

CME – compliance, monitoring, and enforcement

EMF – Effects Management Framework

FFLG – Future for Local Government

IHP – Independent Hearings Panel

GPS – Government Policy Statement

LGA – Local Government Act 2002

LGSG - RM Reform Local Government Steering Group

LTP – Long Term Plan

NBEA – Natural and Built Environment Act

NBE plan – Natural and Built Environment plan

NBE Bill – Natural and Built Environment Bill

NPF – National Planning Framework

RM – resource management

RMA – Resource Management Act 1991

RPC – Regional Planning Committee

RSS – Regional Spatial Strategy

SCO – Statement of Community Outcomes

SPA – Spatial Planning Act

SP Bill – Spatial Planning Bill

SREO – Statement of Regional Environmental Outcomes

WSE – Water Services Entity

Executive summary

Resource management (RM) reform will have significant and wide-reaching impacts for councils and communities. It will fundamentally change the way that communities shape and make planning decisions about their unique places. But there's a general lack of understanding across the motu about the gravity of this reform, which concerns LGNZ.

While everyone thinks the current resource management system needs to change and councils support the Government's stated reform objectives, councils doubt whether the proposed system will achieve them. Set out across three pieces of legislation, and introducing complex new processes, the new system will be hard pressed to deliver positive and enduring outcomes for our environment or communities. We're concerned that it will not deliver a simpler, more efficient system and will fundamentally erode local democratic input into planning decisions.

RM reform presents a once-in-a-generation opportunity to shape our natural and built environment and provide for the economic, cultural, and social wellbeing and health of New Zealanders. Significant amendments are required to ensure the reform achieves its objectives and delivers on its promises. This submission sets out concrete recommendations for addressing local government's main concerns.

Local government's main concerns

// The loss of local voice in the new regional planning system. We're concerned that councils' (and ultimately communities') ability to influence critical planning documents and decisions that affect their unique places will be significantly reduced.

// That councils will continue to be responsible for implementing plans that they have limited input into or influence over. This creates accountability challenges and a risk that councils will lack sufficient buy-in to ensure efficient and effective compliance, monitoring, and enforcement (CME).

// That the proposed arrangements for supporting Regional Planning Committees (RPCs) are complex and create accountability issues.

// Interpretation and implementation of new definitions and concepts in the bills. Testing the meaning of these new concepts in court will generate significant costs for councils and communities.

// The need for central government to invest significantly more in its RM Reform programme, so that the costs don't fall exclusively to local government. Transformational reform requires transformational resourcing by central government. This includes funding and resourcing for both iwi/Māori and councils to build their capacity and capability to operate in the new system.

// The potential for misalignment both between the three pieces of RM Reform legislation themselves and with other major reforms, in particular:

- Three Waters Reform;
- the Review into the Future for Local Government; and
- the Government's work on climate change, including the introduction of National Adaptation and Emissions Reduction Plans and Climate Adaptation Act.

// That the Government's work on the proposed Climate Adaptation Act is on a significantly slower track. This is despite the climate change adaptation challenges facing councils and their communities, and the need for this piece of legislation to integrate with the NBEA, the SPA and the proposed National Planning Framework.

// The complete absence of direction on both transition from the Resource Management Act 1991 (RMA) to the new system and implementation of the new system. There is currently no clear demarcation between the end of the RMA and start of the new system. If there's not enough time to develop new processes and procedures ahead of transition, there will be huge confusion and uncertainty. This would undermine the reforms. At the moment it's impossible for councils to plan for the future, including how to process consent applications during the transition.

// The lack of alignment between RM Reform and the Future for Local Government Review. Ideally issues relating to local government reform would have been resolved prior to changes being made to RM processes. This could have put clear structures or processes in place to assume responsibility for regional issues.

Our key recommendations for improvement

1. Give councils and communities stronger influence over regional planning decisions. We recommend the Natural and Built Environment Bill (NBE Bill) be amended to require RPCs to "give effect" to Statements of Community Outcomes (SCOs) and Statements of Regional Environmental Outcomes (SREOs) as long as those statements are consistent with the National Planning Framework (NPF) and Regional Spatial Strategy (RSS).
2. Clarify the NBE Bill to make it clear that the local government representatives on RPCs can be elected members or other independent persons appointed by councils who have sufficient knowledge, skills, diversity, and experience to encourage strong accountability back to communities.
3. Explicitly give sub-committees the power to make recommendations, in addition to their current advisory role. The RPC should be required to have "particular regard" to those recommendations. This will strengthen council and community influence over regional planning decisions.
4. Allow regions to choose whether they wish to adopt a joint funding model or fund RPC activities through a regional/unitary model.

5. Give councils greater certainty around transition and implementation, especially in relation to:
    a. The development of the new planning mechanisms (NPF, RSS and NBE plans). These planning mechanisms should be developed in a staged manner, with the NPF, RSSs and then NBE plans prepared sequentially. Developing “model plans” requires time and flexibility, as does establishing processes ahead of the planning processes.
    b. Consenting. There must be clear demarcation of when the NBEA will begin to fold into the RMA and affect consenting. Otherwise processing consents will be complex, confusing and inefficient, undermining the objectives of the RM reform.
6. That the Government commit significantly more funding to RM Reform and seek cross-party support for this. This should include funding to support iwi/Māori to participate meaningfully in the new system, and funding to support local government’s capability and capacity to both engage with iwi/Māori and adopt the new system.
7. Fund the development of guidance. This includes guidance covering all new processes and procedures being established under the bills. Guidance is needed on the content and use of SCOs and SREOs; RPC membership and appointments; and the role of sub-committees.
8. Properly fund consenting, monitoring and enforcement. CME is underfunded in the current RMA system and the new system will increase councils' CME role.
9. Make local government funding of the RPC transparent with appropriate accountability mechanisms. It needs to align with councils' obligations under the LGA and Local Government (Rating) Act 2002.
10. Clarify the relationship between RPCs and the proposed new Water Services Entities (WSEs).

Introduction

Resource management (RM) shapes our communities and their growth, as well as protecting the natural environment. RM has many players but councils bear the most responsibly for delivering the system. It's one of local government's most significant responsibilities, reflecting RM's importance to people and communities.

RM reform will fundamentally change the roles and responsibilities of local government, including how councils and communities make planning decisions about their unique places. The current reform proposals significantly erode local government democratic input. But there's a general lack of understanding across the motu about the gravity of this reform, which concerns LGNZ.

LGNZ agrees that New Zealand's current resource management system is complex and time consuming and doesn't deliver the best outcomes for communities. This adds costs to businesses, communities and iwi/hapū. And councils don't necessarily have the right the tools to enable urban growth and protect the environment.

Everyone agrees we need a simpler, more efficient RM system that both enables development and protects the environment. The reform's objectives make sense. Like the Government, we want an RM system that:

- is more efficient, simple, and cost-effective;
- gives effect to the principles of Te Tiriti o Waitangi;
- protects the natural environment and enables development (including housing and infrastructure) for the well-being of our communities;
- provides strong opportunities for local voice, so that councils and communities have the ability to continue to shape their unique places; and
- supports communities to better prepare for adapting to climate change and risks from natural hazards as well as mitigating the emissions that contribute to climate change.

However, as this submission will explain, LGNZ has significant concerns that the three new pieces of RM legislation will not achieve these objectives and provide a simpler, more efficient system, while ensuring appropriate local input and involvement.

Reducing the number of plans will not necessarily drive simplicity and efficiency. The Bills add significant complexities, many non-essential complications, unnecessary length to the statutory framework and expensive governance and plan making processes for communities and ratepayers. The focus of reform should not be on the number of plans, but on simplicity, efficiency, and integration, otherwise there is the real possibility of repeating the issues that have plagued the Resource Management Act 1991 (RMA). We are yet to see evidence of intended cost or time savings under the new system.

We are also concerned that the Government's proposals significantly reduce the role that councils and communities play in critical planning decisions. Regions are not homogenous, and taking a regional approach to planning will fail to reflect districts' and cities' unique circumstances. This undermines councils' local democratic role, and the responsibility they have to provide opportunities for communities to input into critical decision-making. It also has the potential to undermine councils' important placemaking role.

This reform will pre-empt any outcomes from the Future for Local Government Review. It would have made better sense to wait for those outcomes before making changes that could undermine it or be inconsistent with its recommendations. Local government reform would potentially rethink structures, including the best way to address regional issues.

While we are pleased that some of the suggestions of the RM Reform Local Government Steering Group (LGSG)[1] made around local input have been picked up and reflected in the draft legislation, many local government concerns previously (and repeatedly) raised remain outstanding. We are disappointed that these concerns haven't yet been addressed, and that we're having to raise them again.

Sufficient time must be taken to get this legislation right because it will shape our natural and built environment for generations to come. RM plays a significant role in New Zealanders' economic, cultural, and social well-being and health. This legislation must be amended for the reform to achieve its objectives and deliver a better system.

Our concerns about the proposed reform

This submission outlines a large number of local government concerns, critically around loss of local voice and funding.

Loss of local voice

Local government's biggest concern is the significant reduction in the role of local voice. This includes councils and communities having less input into and involvement in the new system. Reducing local voice will undermine local government's critical placemaking role and fails to recognise that communities understand their unique and diverse natural and built environments best.

The planning framework will play a fundamental role in the new system. However, plans will be developed by Regional Planning Committee (RPCs), not councils. Councils and therefore

[1] The Resource Management Reform Local Government Steering Group (LGSG) was established by the Ministry for the Environment in 2021. The purpose of this group is to advise the Government on the RM system reforms. The LGSG is made up of a mix of elected members, chief executives, and senior council officers. The LGSG produced advice for the Ministry for the Environment, *Enabling local voice and accountability in the future resource management system*, in February 2022.

communities will have only a limited role in preparing plans. This will result in the loss of community voice and reduce influence over critical decision-making about their unique place, with responsibility shifted almost exclusively to the RPCs. This is a major concern for councils.

Excluding local government and communities yet requiring them to implement core parts of the new system, will not fulfil the Government's objectives. Despite plans being developed at 'arm's length' from them (and so potentially not having community buy-in), councils will still have to implement them, through CME. This is likely to impede efficient and effective implementation of the plans, particularly if councils disagree with aspects of them.

Our strong, repeatedly expressed preference has been for RPCs to be stewards of the planning process, and for councils to retain responsibility for making decisions about their place. Councils could have been directed to collaborate more on planning for regional outcomes, and that the role of the RPC could have been to ensure consistency and strip out unnecessary duplication where necessary. However, given the Government hasn't taken our preferred approach, this submission focuses on ways to improve the RPCs as proposed in the legislation.

There is significant uncertainty about RPCs' membership, role and function, and the arrangements for supporting them. This includes how RPCs will fit within councils' current statutory roles, functions, and accountabilities. We see risks in terms of:

- the RPC's accountability to the community. We are concerned that the local democracy links to communities are going to be compromised.
- Councils being required to manage and deliver on multiple (and potentially conflicting) responsibilities, including roles and obligations under the Local Government Act 2002 (LGA).
- The working arrangements between the RPC, secretariat and councils appear unnecessarily complex and raise potential employment law issues. Further consideration of these legal issues and greater clarity on the relationship and accountabilities between councils and RPCs is required.

Funding

Another significant concern is funding. The legislation requires councils to fund the processes that develop NBE plans and Regional Spatial Strategies (RSSs) despite removing councils' plan-making responsibility.

A key issue is that the current provisions provide little clarity about councils' relationship with secretariats and influence over RPC budgets and resourcing. If the Government wants to remove councils from the plan-making process by developing new bureaucracy, then the funding mechanisms must have transparency and accountability oversights. Communities need to know what the RPC is being paid and why.

We are also concerned that councils and iwi/hāpu will have to fund the strengthened the role of iwi/hapū in the system. As the direct Treaty Partner, central government must ensure that Māori are properly resourced to participate in the new system, rather than passing that cost to local communities and local government. Central government must meet the costs of supporting iwi/Māori to participate meaningfully in the new system. Central government must also financially support councils to build their capacity and capability to engage with iwi/Māori in the new system.

Guidance on all new processes in the new system will be critical. This guidance should preferably be developed by local government and iwi/Māori or alternatively by the Ministry in partnership with local government and iwi/Māori. Either way, central government must fund the development of such guidance. LGNZ and Taituarā are ready to help and could be funded to do this work.

CME underpins any RM system. Under the RMA, CME is underfunded, resulting in poor environmental outcomes. Given that the NBE bill proposes to increase councils' CME roles, central government must fund these additional obligations otherwise the reform will be compromised.

There are also concerns about how local authority funding for the new system including funding the RPC and secretariat for plan development, fits into current funding processes under the LGA and the Local Government (Rating) Act 2002. There needs to be alignment between the funding obligations in the new legislation and this local government legislation and it is essential that all local government funding mechanisms under the new system are transparent to rate payers. This is a critical issue. Guidance for councils on how to incorporate these activities in their LTPs is required along with the addition of checks and balances over RPC budgets and spend by the Auditor General.

Transition

There is no guidance about the transition from the RMA to the new system. This means councils will struggle to plan and the processing of consenting will be complex. Councils need more certainty about when and how RM will transition to the new system. This doesn't necessarily need to be prescribed in the legislation but is vital for successful implementation.

Key considerations for transition

There must be sufficient time and flexibility to establish necessary processes and procedures before the plan making processes start. This includes establishing the RPCs and ensuring that Treaty settlements will be upheld in the new system. New planning mechanisms must be developed in a staged manner, with as efficient and streamlined a process as possible. This will also take time and flexibility.

- Sufficient time is needed to develop the NPF to ensure it is right. It should be co-designed with local government and iwi/Māori.
- The first regions ready to develop their RSS can establish model RSSs. Once models are established and there's been enough time for any necessary improvements to the RSS making process, remaining regions can follow these models when developing their RSSs, with generous timeframes.
- The first regions ready to develop their NBE plans can establish model NBE plans. Once models are established and there's enough time to make any necessary improvements, remaining regions can follow these models in the development of their NBE plans, again within generous timeframes.

If the new plans are developed in tranches and/or specific timeframes, councils urgently need clarity about which tranche each region will be part of. This should be determined in consultation with local government.

Councils need clarity about when consenting processes will begin to fall under the NBEA as opposed to the RMA – with the Bill amended to make this clear. Without clarity, there will be unnecessary complexity, confusion and inefficiencies in consenting. The implications of this are so severe that the whole new system will be undermined.

Further thought also needs to be given to the practical implications of the three-year expiry provisions in Schedule 15 of the NBE Bill. Councils are concerned there could be a huge number of consents that need to be re-consented simultaneously after NBE plans come into effect. This will create resourcing challenges, inefficiencies and significant costs.

Alignment with other reforms

As currently drafted, the RM legislation demonstrates significant misalignment with concurrent key reforms, especially Three Waters Reform and the Future for Local Government Review. The different reforms are being progressed on different timetables rather than being developed in parallel. Without alignment between these reform programmes, there is a significant risk that the new RM system will not be workable, efficient nor effective.

What local government wants from reform

To avoid compromising the integrity of the environmental system, and to deliver the reform's objectives, the reform must:

- Enhance local voice. Our repeatedly expressed preference is for the RPC to be a steward of the planning process and for councils to retain decision-making responsibilities. However, this submission responds to the legislation on the table and focuses on trying to enhance local government's involvement in the system it sets out.
- The legislation must ensure that local government can:
    - keep playing an integral part in resource management and land use planning.
    - be able to co-design the National Planning Framework (NPF) in collaboration with the Minister and iwi/hapū.
    - be meaningfully involved in the preparation of, and decision-making on, the RSSs and the NBE plans.
    - have a clear and meaningful role that shows the connection of local communities to RM decisions.
    - be provided with a mandate to take 'ownership' of plans and ensure consenting, monitoring, compliance and enforcement is efficient and effective. Without this, any improvements in the new system will be lost.
- Ensure RPCs will align and integrate with councils' current statutory roles, functions, and accountabilities. This includes RPC's membership composition and procedural decision-making powers, as well as working arrangements between the RPC, secretariat, and host local authority.
- Provide transformational funding and resourcing. Local government cannot be expected to meet the costs of implementing these changes on its own. Central government must provide

substantial funding to support iwi/Māori to participate meaningfully in the new system, which includes supporting increasing local government's capability and capacity to engage with iwi/Māori. Central government funding is also required to develop guidance for all the new processes that are being established in the new system. This guidance could be developed by local government (via LGNZ or Taituarā), or at the very least in partnership with Ministry officials. Lastly, given that CME is currently underfunded, and the new system increases councils' CME roles and responsibilities, funding from central government to support councils' CME role is key to ensuring the successful implementation of the new system.

- Provide utmost clarity about when parts of the NBEA take effect and when parts of the RMA will fall away. Otherwise the objectives of the reform, including the provision of a simpler and more efficient system, will not be achieved due to confusion in the system, resulting in poor environmental outcomes.

- Create alignment across key pieces of legislation, including:
    - between the NBEA, SPA and the CAA
    - between the NBEA, SPA and the LGA.
    - between the NBEA, SPA and the Three Waters Reform.
    - between the NBEA, SPA and the Future for Local Government review.

  All of these reforms affect each other, and their implementation and ultimate success are interdependent. For example, it is a significant missed opportunity that the RM Bills are being advanced before any local government reform (for example, unitary councils could potentially exercise the same functions as the RPC, saving significant costs and reducing the complexity of the new system).

Both RM Bills are transformative and of significant scale and size. We urge the Environment Select Committee to take the time needed to ensure this legislation really delivers for, rather than ultimately fails, New Zealanders. These are Bills that, done right, can deliver a positive environmental and wellbeing legacy. But many changes are required for that outcome to be realised – which is unsurprising given the scale and complexity of what's on the table. We want to work with, and support, central government in delivering reform that really lives up to its promises.

Given the length and complexity of the Bills, and the very tight submission timeframe, our submission focuses solely on our key issues. Many other issues not addressed in this submission require careful consideration. We would welcome engagement from government officials us on those matters. Some of those issues are discussed in the Taituarā submission and we endorse that submission in its entirety.

Part 1 - Opportunities for local voice

Overview

We want devolved decision-making to local government and communities to continue in the new system. RPCs will introduce an unnecessary and complex layer of bureaucracy that also adds cost. We are also concerned the RPCs will fail to align and integrate with any future local government reform (for example, unitary councils could potentially exercise the same functions as the RPC). If the plan-making process remained with local government, this would address issues such as local accountability and implementation arrangements as well as adding considerable efficiency.

The shift to regional plan making will create a number of challenges for councils and communities. If the Government is to persist with proposals for regional planning, our preference is a much more collaborative plan making process that is driven by the councils and communities in each region, in partnership with mana whenua. RPCs should be stewards of that process (for example, by bringing together councils' planning provisions, ensuring consistency and stripping out unnecessary duplication), as opposed to being drivers of plan making.

This is a view that we've repeatedly shared and while we maintain it, we understand the Government has made an in-principle decision to centralise system controls and introduce the RPC model. Rather than repeating our views on the existence of RPCs, this submission focuses on our concerns with the new system as proposed by the legislation on the table. Under the reforms, the Minister and RPC are empowered to lead the preparation, assessment, and decision-making in relation to the new environmental management framework. They will do this in a manner largely independent of councils and communities. This centralisation implies significant changes to the current functions of local government, which concerns us.

We seek amendments to the Bills to ensure that strong local voice is maintained in the new system. Without the meaningful involvement of local government and communities, there will be real challenges to the reform's implementation and ultimate success. Communities must feel they own and can influence the critical planning decisions that shape their unique places. This means that councils must play a greater role in the new planning system.

We are concerned that the reform shifts more control to the centre – primarily the Minister. We recognise that some of the Minister's proposed new powers will be critical to successful operation of the new environmental management system. But this shift will significantly diminish the influence of local government and communities.

NPF – preparation, amendment, and review

Our concerns

We are particularly concerned about the Minister's development of the new NPF. The NPF will be fundamental in establishing New Zealand's environmental management framework and priorities. As laid out in the legislation, the NPF has a very broad purpose and can (and probably will) provide strong direction on countless RM matters with significant implications at national, regional, and local levels. We think that strength of direction the NPF will provide goes too far and is too rigid, in some cases. The NPF potentially removes the ability of local communities to accommodate regional and local variation in RSS and NBE plans. This runs counter to the idea that communities know their places best.

We've seen this happen under the current RM system as national direction has been strengthened. For example, some councils say that the rigid wetland requirements under the National Policy Statement for Freshwater Management 2020, and rigid requirements around intensification under the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act, have failed to allow for regional and local circumstance to be accommodated.

Local government and communities are largely excluded from the development of the NPF, which creates serious issues around its legitimacy, sustainability, and workability. The NPF also risks setting environmental limits that may create unanticipated adverse outcomes at the local, and ultimately practical level. For example, preventing the uptake of new technology or removing the ability to deliver localised solutions to manage the impacts of climate change.

Consequently, we are concerned that the NPF framework will fail to deliver:

- a clear, coherent, flexible, and workable framework;
- an enduring framework that will deliver beneficial outcomes that will work for communities; and
- efficiencies in implementation of the new system.

A way forward

The NPF must provide strategic direction at the national level, critically on resolving conflicts between the key system outcomes. However, the NPF should provide a framework that is enabling, flexible and responsive to local issues – one that allows communities to respond to specific RM issues 'on the ground'. This is a critical issue for us.

Local government and communities must be empowered to fully participate in the preparation of the NPF, including the setting of limits, to ensure the NPF is informed by strong local input. Strong local-level involvement in the development of the NPF would ensure it endures and reduce the risk of unintended outcomes. For example, as key providers of infrastructure, councils must be involved in developing the new national direction on infrastructure.

Our strong preference is that the NPF is established through a co-design process with local government, iwi partners and government officials. Our preferred approach is one based on collaboration and robust engagement, and one that ensures the NPF is informed by local circumstances to strike an appropriate balance between national consistency and local diversity.

Local input would mean the NPF is informed by 'on the ground' experience and tested against real life scenarios, so that it actually works. This could be achieved through a targeted working group co-designing the NPF with the Minister. Such an approach would provide some balance to the proposed nationalisation and centralisation of power with the Minister.

While the imposition of limits and targets are important for protecting the natural environment, they must not impose insurmountable barriers so that growth and development become impossible. Rather than relying on the RPC to request an exemption from the Minister, those affected by limits should be able to directly make their own request. However, applicants making such a request should be required to consult with relevant councils and mana whenua so their views can be factored into exemption decisions.

Pulling the existing national direction (National Policy Statements and National Environmental Standards) into the new NPF is a good idea but filling gaps in existing national direction, most notably on climate change and infrastructure delivery, should be prioritised.

RPC – role, membership, and appointment

We are concerned about RPCs' independence and relative lack of accountability to councils and communities. Councils are expected to fund and resource RPCs – and to implement the plans RPCs develop at arm's length from them. The lack of accountability to local government and communities, coupled with the loss of local voice in the RPC plan-making process, raise serious concerns.

In terms of membership and appointment arrangements, we broadly support one RPC per region (with the exception of one RPC for both Nelson and Tasman Districts) to prepare both the RSS and the NBE plans. However, this feedback does not diminish our reservations about this model as discussed in further detail below.

We commissioned Simpson Grierson to produce a paper that looks specifically at funding and accountability issues with the proposed RPC arrangements (see **Appendix 1**). Our comments in this section should be read in conjunction with that paper.

Constitution of RPCs

The NBE Bill establishes RPCs as a specific form of statutory committee, rather than a joint committee under the LGA. The host local authority is essentially an administering authority for an LGA-type joint-committee; it provides administrative support to the RPC and secretariat and is required to fund and resource the RPC (but without any oversight).

The NBE Bill says:

- RPCs are explicitly required to act "independently" of councils.
    - This independence is reinforced by two things: members of the RPC aren't required to seek prior authority for their decisions from their appointing local authority bodies; and there is no provision for councils to ratify any RPC decisions.

    - We understand the intention of this model is to reduce political involvement in planning decisions.
- The RPC is to be constituted and operate under the NBEA rather than the LGA.

To improve RPCs' accountability, we want explicit recognition that RPC members must bring local or regional knowledge to the RPC table to represent their communities' interests. In our view, this does not cut across RPC members' duty to act collectively with a regional approach.

Appointments to RPCs

We appreciate the Government's efforts to introduce flexibility around RPC membership. However, we are concerned that the significant degree of flexibility proposed will create its own challenges, which will be left to local government and iwi/hapū to sort out.

For example, if membership numbers are equal across all territorial authorities and the regional council, this could mean councils representing larger population bases have proportionately less "say" compared to smaller, rural communities. Smaller communities may together balance out or outweigh the often very different needs of larger communities. Conversely, some smaller councils are concerned that larger metropolitan councils may seek additional seats on the RPC (to represent their larger population bases) and this may outweigh the needs and preferences of smaller, rural communities. There is also concern that regional councils, which have specialist expertise/knowledge, especially in relation to environmental matters, will be just one voice among many.

Proportional RPC membership could better ensure the delivery of the outcomes for bigger centres, which potentially have a greater number of resource management issues. However, we acknowledge the counter view that this would not provide for the diversity of local and Māori interests, nor for communities that are more rural, or for areas where there are many iwi. We ask that further consideration be given to whether the NBE Bill should explicitly provide for a proportional approach in partnership with local government. Irrespective of that, we want to see all RPC membership issues addressed in guidance.

The NBE Bill provides no direction who can be appointed a member of the RPC. Membership could include elected members (who have a democratic mandate on behalf of their communities), council officers, independent experts, or others.

We strongly support elected members being appointed to an RPC. Elected members will be entirely accountable to their communities for their actions and decisions, in accordance with their duties and responsibilities under the LGA. Having elected members on the RPC also appropriately addresses the issue of local ownership.

In our view, having council officers on the RPC is not appropriate because it means they will have to navigate political discussions, which is both unfair to them and entirely inappropriate in our democratic system.

However, if a council wants to appoint a non-elected member to an RPC, we do see benefit in that, as long as that individual has sufficient skills, knowledge, diversity and experience to be able to make decisions on technical matters. For example, all RPC members should be required to complete an updated Making Good Decisions programme (or an equivalent), as well as additional training to

ensure RPC members understand their roles and functions, especially their responsibility to act collectively with a regional approach. Sitting on an RPC would be very different from an elected member's normal role and functions as well as demanding a lot of their time. This has considerable practical implications, which need to be worked through with local government.

To address these points, the NBE bill should be amended to:

- Retain flexibility of RPC membership (i.e. at least one member to be appointed by each council) but explicitly state that both elected members and other independent persons not employed by local councils must have appropriate skills, knowledge, diversity and experience to be able to make decisions on technical matters.
- Require a single appointing policy to be developed for each region, to avoid having multiple, potentially inconsistent appointment policies. This can be achieved by amending clause 14 of Schedule 8.

RPC composition should be consistent with relevant requirements in the LGA, including the purpose of local government and the principles relating to councils. As discussed in the Simpson Grierson paper, the legislation as currently drafted raises questions about how LGA requirements will be given effect to while also supporting the independence of the RPC and its members. Further consideration of these issues is required.

We accept flexibility on the number of mana whenua representatives on RPCs but note that this will require a complex appointment system that adds time, cost, and room for tension to the process. We consider that a minimum of two mana whenua representatives is likely to be too low, and may present challenges in regions where multiple iwi and hāpu deserve representation.

We support the appointment of a central government representative to the RPC (for the purpose of decision-making on RSSs). However, in the absence of specification about the role and function of that representative we are concerned that this representative may fail to bring a coherent and coordinated view of central government's priorities for the region to the RPC table rather than merely reflecting the view of the Department/Ministry they work for which may be misaligned with other government departments, or simply acting as a 'watchdog' rather than a meaningful contributor to the process. We are also concerned about whether this important role can be fulfilled by one central government representative.

We want to see the NBEA specify the role of the central government representatives as co-ordinating priorities across all of central government as well as providing a coherent set of central government priorities for the region. This representative must have the requisite skills, knowledge, and experience to enable them to carry the conversation and gain the trust and confidence of other RPC members. While we don't think the legislation should go so far as to prescribe which agency the central government representative comes from, we do think that representatives from DPMC may provide the cross-agency views and perspectives the RPC and RSS process need. However, the central government representative must contribute to, rather than drive, the RSS process. The drivers of the process should be local government, mana whenua and communities.

Our view (which was shared by the LGSG) is that a National Spatial Strategy (or regional statements of central government priorities) would assist the central government representative in their role. These could sit alongside the NPF to provide regionally and spatially specific information to each RPC

on central government's investment priorities within each region. Taking this approach would mitigate the risk that government priorities frequently change depending on the Minister or government of the day, provide a clear all-of-government perspective, and help to ensure that RSSs are enduring and support long-term strategic outcomes.

We support central government paying the remuneration of the Minister's appointed member on the RPC.

Sub-committees

We support sub-committees being included in the NBE Bill. Sub-committees could provide a practical and meaningful mechanism to enhance local voice in the plan-making process.

However, we are concerned that, as currently proposed, sub-committees are unlikely to play a meaningful role in the development of the RSS and NBE plans because inconsistent drafting in the legislation suggests that they have an advisory role only. This role needs to be broadened so that sub-committees provide not only expert input in the plan-making process but also provide recommendations, for example, develop the drafting for sub-regional chapters of plans. We want RPCs to have "particular regard to" any sub-committee recommendations in their decision making. This would create better opportunities for local voice in the plan-making processes. Direction on the role of subcommittees must be provided in guidance to ensure the sub-committees are efficient and effective.

As further discussed in Part 5 of this submission, we want WSEs to be represented on sub-committees so that they have a direct advisory and 'comment' role in both the RSS and NBE planning processes.

Preparation and adoption of RSSs and NBE plans

As discussed above, our preference is that RPCs are stewards of the plan-making process, with local government retaining a strong role in collaborative plan-making. However, this submission focuses on trying to improve the plan making process as proposed in the legislation.

We support the introduction of mandatory regional spatial planning. The future-focused RSSs will be key planning documents that provide strong regional direction for the locally focused NBE plans. However, sufficient time must be allowed for robust and comprehensive RSSs to be prepared because other planning instruments will hang off RSSs.

We also support the purpose of NBE plans, which is to provide a framework for the integrated management of the natural and built environment (in the region that the plan relates to). However, we are concerned that the requirement for NBE plans to give effect to the NPF and be consistent with the relevant RSS will mean that NBE plans have little scope to respond to local circumstances. Local circumstances and issues must be identified and responded to, otherwise planning outcomes will be poor and the RM reform objectives are unlikely to be achieved.

As NBE plans will have significant implications for resource management at the local level, it is critical that there is strong input from local government and communities in the preparation of these plans. This would ensure the political legitimacy, sustainability, and effective implementation of the new system, all of which will drive the ultimate success of the RM reforms. It is also critical that ample time is allowed for the NBE plans to be prepared so they are done right.

As currently drafted, the process for developing both RSS and NBE plans lacks meaningful input of local voice, nor does it provide direction as to the timing and approach for preparing RSSs and NBE plans.

SCO and SREO interaction with the plan-making process

Notwithstanding our concerns with the shift to regional planning, we are pleased the Government has adopted the LGSG's recommendations for the inclusion of Statements of Regional Environmental Outcomes (SREOs) and Statements of Community Outcomes (SCOs). We think these are one tool that councils and communities could use to ensure that there is local input into regional planning. We support the flexibility for councils to determine whether they wish to prepare SCOs and SREOs and their own processes for developing SCOs and SREOs.

If reform of the RM system proceeds as proposed, our view (and the intention of the LGSG) is that these documents are likely to be helpful in the plan-making process because they are one of the few mechanisms for local voice in the new regional planning documents. Clear and strong SCOs and SREOs will improve local government involvement in, and accountability for, RSSs and NBE plans. This is crucial for efficient and effective implementation.

However, there is a risk that if SCOs and SREOs are prepared they will not meaningfully influence the plan-making process, jeopardising improved outcomes for communities. As proposed, the weighting of the SCOs and SREOs in the RPC decision-making is weak. RPCs are required to have only “particular regard” to SREOs and SCOs in preparing the RSS and NBE plans, and only to "have regard" to the SREOs and SCOs in identifying the major policy issues for a region. This weighting is insufficient. As one of the few mechanisms for local voice in the plan-making processes, stronger direction is required for the plans to deliver enduring outcomes. As we’ve previously raised with the Government on a number of occasions[2], we seek that RPCs be required to "give effect" to SCOs and SREOs in so far as they are consistent with the NPF and the RSSs, or at the very least ensure their decision-making is "not inconsistent with" SCOs and SREOs. If there is inconsistency or conflict between SCOs and SREOs, the RPC should decide how to resolve these conflicts, based on the system outcomes and the purpose of the Act.

While SCOs and SREOs are not mandatory, we consider that the preparation of SCOs and SREOs should be common practice. SCOs and SREOs are intended to be high-level documents, recording a summary of “the views of a district or local community” or setting out the “the significant resource

[2] Including for example in our submission, Local Government New Zealand’s submission on the Ministry for the Environment’s 2021 discussion paper *Transforming Aotearoa New Zealand’s resource management system: Our future resource management system* (see page 17).

management issues of a region, or of a district or local community". Understanding the issues of the district and region is planning best practice and provides an opportunity for the community to influence planning documents at the start of the process. Guidance emphasising the importance and purpose of SCOs and SREOs must be prepared. This should be led by or done in partnership with local government and iwi/Māori.

We understand existing plans will not be carried over into the new NBE plans. This raises serious concerns that significant work, engagement and investment by local government and communities will be lost. We suggest that some existing plan content could be used in the SCOs and SREOs to an appropriate degree. SCOs and SREOs pulling in existing spatial documents would avoid repetition of process (and cost).

There is also still work to be done to reconcile SCOs and SREOs with existing local government strategic directions, community wellbeing priorities and planning documents (such as Long Term Plans and infrastructure strategies). In addition, the extent that LGA provisions apply to the preparation of SCOs and SREOs must be addressed. While we expect they will apply, this should be clarified.

Spatial planning considerations

RSSs set the scene for the new system, and we see them as one of the more transformative parts of this reform. We consider that a National Spatial Strategy (or regional statements of central government priorities) should sit alongside the NPF to provide national guidance in the preparation of the RSS.

With the RPCs leading substantive planning decision-making functions, we are concerned about the relationship between spatial planning and other aspects of plan making. Strategic spatial planning is about implementing community outcomes and council activities. But LTPs play an important role in informing regional and district planning. This means that spatial planning, land transport and community infrastructure must be integrated. There is also still work to be done to reconcile spatial planning with existing local government strategic direction, community wellbeing priorities and planning documents (such as Long Term Plans and infrastructure strategies). We suggest that Ministry for the Environment officials continue to work with LGNZ and the LGSG on these issues.

Feedback and decision making

We support the requirement for RPCs to refer draft RSSs and NBE plans back to councils for consideration and feedback prior to notification to IHPs. However, we are disappointed the Government has rejected our and the LGSG's recommendation that an RPC should, at its discretion, be able to seek advice from affected councils on any decision to accept or reject an IHP recommendation. The expansive decision-making powers of the RPCs, including the power to make plans final without formal decision-making by constituent councils, concern us and may undermine local democracy.

We ask that the RPC be required to seek advice from affected councils on any decision to accept or reject an IHP recommendation. The RPC should have the discretion to amend the proposed plan in response to any comments received. However, for transparency and accountability, our view is that the RPC must provide reasoning if comments are not adopted.

Given diminishing community input into the planning processes, LGNZ supports the use of subcommittees. These subcommittees should have the power to make recommendations that an RPC must have "particular regard" to decision-making. This will allow for enhanced consideration of local aspirations, issues, and circumstances as well as joint subcommittees to consider cross boundary issues.

In addition, we are concerned about whether councils will be able to appeal RPC decisions –and if so, the practical challenges associated with bringing such an appeal. In our view, councils must be able to appeal RPC decisions, but issues raised should focus on their district. However, where councils decide to appeal decisions by RPCs, who will ultimately defend any appeal and who will pay?

Lastly, we note that communities will need to understand the importance of engaging with these planning processes. This is particularly important given there will be more prescription through the NBE plans. At this point in time, we're not convinced that communities are aware of the shift in approach and significance of it. Central government should share responsibility for this public awareness work with local government.

Membership and appointment of the Independent Hearings Panel (IHPs)

We support the use of IHPs and their functions, which include hearing submissions and making recommendations to the RPC.

We also support provisions around the membership of IHPs, including each region establishing a pool of IHP candidates. This would include candidates nominated by councils in a region (and nominations from iwi/hapū and the RPC).

However, we are concerned that the only substantive role for local government in the IHP process is as a submitter. This entrenches the limited opportunities for local voice in the NBE plan-making process. To alleviate this concern, the NBE Bill should be amended to also require IHPs to ensure that their recommendations "give effect" to the SCOs and SREOs (or alternatively ensure their recommendations are "not inconsistent with" the SCOs and SREOs) subject to the NPF.

The NBE Bill should also provide that the RPC must seek advice from affected councils on any decision to accept or reject an IHP recommendation. In particular, this should include any decisions that will have significant funding implications for councils. And that if the RPC does not adopt any comments or advice received, it must provide reasoning for doing so.

Recommendations

1. Provide strong direction for the meaningful involvement of local government and communities in the new system, including in relation to the development of the NPF, by:

1.1. Requiring Ministers to co-design the NPF, including the setting of limits, with local government and iwi and hapū (clauses 39, 43, 52, 53, 55, 56, 81 and 83 of the NBE Bill). This could be achieved through a targeted working group.
1.2. Providing more flexibility in the NPF so that it is enabling of (and responsive to) local issues, allowing communities to respond to the NPF in a tailored manner according to local level priorities (clauses 34, 39, 44, 51, 52, 53, 56 and 81 of the NBE Bill).
1.3. Providing for a National Spatial Strategy (or regional statements of central government priorities) to sit alongside the NPF (clause 85 and subpart 10 of the NBE Bill).
1.4. Prioritising filling the 'gaps' in existing national direction; most notably, a lack of existing national direction on climate change (clause 85 and subpart 10 of the NBE Bill).

2. Our strong preference is for the plan-making processes to remain primarily the function of councils. However, given this approach hasn't been adopted by the Government, this submission seeks to improve the system as proposed in the current drafting of the bills. On that basis, we seek that the accountability of RPCs is improved, and that there's stronger direction for the meaningful involvement of local government and communities in the membership, procedures and decision-making of RPCs including by:
2.1. Retaining flexibility in the composition of the RPCs and considering whether the NBE Bill should explicitly provide for a proportional approach by allowing for local authority membership on the RPC to be proportionate to, and reflect the size of, the population being represented (clauses 2, 3 and 13 Schedule 8 of the NBE Bill).
2.2. In any case, develop guidance on the appointment, makeup and role and function of RPCs.
2.3. Providing recognition that in practice members can represent the interests of their council and community so long as this does not cut across the duty to act collectively in the interests of the region (clauses 17, 18 Schedule 8 of the NBE Bill).
2.4. Retaining flexibility of who can be appointed to RPCs but amending the NBE bill to provide direction that this can be elected members or other independent persons not employed by local councils who have appropriate skills, knowledge, diversity and experience to be able to make decisions on technical matters (clause 2(2)&(3) Schedule 8 of the NBE Bill).
2.5. Requiring all representatives (iwi and local authority) to have the requisite skills, knowledge, and experience necessary for plan-making, including, at a minimum, completion of the Making Good Decisions programme (or an equivalent) (clauses 3, 5, 11, 14 and 28 Schedule 8 of the NBE Bill).
2.6. Considering with local government the practical implications for elected members' time in terms of performing their ordinary elected member roles and functions as well as the roles and functions associated with being a member of an RPC (clause 3 Schedule 8 of the NBE Bill).
2.7. Amending the NBE bill to require only one appointing policy to be developed for each region to avoid several potentially inconsistent appointment policies (which address not only appointment but removal of RPC members) (clause 14 of Schedule 8 of the NBE Bill)
2.8. Reconsidering the references to the purpose and principles of local government in the provisions relating to composition arrangements and the appointment policies (clauses 3(2)(c) and clause 14(6) Schedule 8 of the NBE Bill).
2.9. Requiring the central government representative on the RPC to bring a coherent and co-ordinated 'all of government' view to the RPC and to have skills, experience and

knowledge of central government and local government matters at a senior level (clauses 2, 3 and 14 Schedule 8 of the NBE Bill).

2.10. Clarifying that the central government representative is to contribute to, rather than drive, the RPC processes (clauses 3 and 14 Schedule 8 of the NBE Bill).

2.11. Broadening sub-committee role and functions to enable sub-committees, in addition to their advisory role, to provide recommendations; for example, developing the drafting for sub regional chapters of plans (clauses 31 and 32 Schedule 8 of the NBE Bill).

2.12. Requiring the RPCs to have "particular regard" to the recommendations of the sub-committee in decision-making (clauses 14, 17, 31 and 32 Schedule 8 of the NBE Bill and clause 24 of the SPA of the NBE Bill).

2.13. Requiring the RPC to provide draft NBE plans/RSSs to any sub-committee for review prior to notification and to provide, alongside the notified version, reasons why any recommendations from the subcommittee were not accepted (clause 20 Schedule 8 and clause 107 of the NBE Bill).

2.14. Developing guidance to provide direction on the appointment, role, and function of subcommittees.

2.15. Requiring RPCs to provide the proposed NBE plan and RSS to the councils for review prior to making final decisions and to ensure they provide, alongside the final version, reasons why any recommendations from the subcommittee were not accepted. They should also be required to give the RPCs view on whether the plans "give effect to" or are "not inconsistent with" the SCOs or SREOs (clauses 3, 14 and 17 Schedule 8 of the NBE Bill and clause 24 of the SP Bill).

3. Strengthen the role of councils in the preparation of RSS and NBE plans, including by:

3.1. Amending the NBE plan purpose and requirements to enable NBE plans to respond to local circumstances when giving effect to the NPF and being consistent with the relevant RSS (clauses 96, 102 and 105 of the NBE Bill).

3.2. Requiring RPCs to "give effect" to SREOs and SCOs, or at the very least ensure decisions are "not inconsistent with" SCOs and SREOs, subject to consistency with the NPF (clause 107 of the NBE Bill and clause 24 of the SP Bill).

3.3. Amending the purpose of SCOs so that the purpose of both SCOs and SREOs is to identify issues for communities at the district and regional level respectively, as opposed to "views", which is ambiguous and potentially all encompassing (clause 645 of the NBE Bill).

3.4. Developing guidance on the role, purpose, and content of SCOs and SREOs, and on the processes for developing them. Ministry for the Environment officials should work with local government to develop guidance around SCOs and SREOs to:

3.4.1. reconcile the SCOs and SREOs with existing local government strategic directions, community wellbeing priorities and planning documents (such as LTPs and infrastructure strategies) (clauses 107 and 645 of the NBE Bill); and

3.4.2. emphasise that SCOs and SREOs are best practice as they provide an opportunity for community voice at the beginning of the planning process; and

3.4.3. provide guidance on the content of SCOs and SREOs.

3.5. Amending the NBE bill or alternatively providing guidance that where there is inconsistency or conflict between SCOs and SREOs, the RPC is to decide which takes precedence, based on the system outcomes and the purpose of the NBEA.

3.6. Requiring the IHP to ensure that their recommendations "give effect" to the SCOs and SREOs, or alternatively ensure their recommendations are "not inconsistent with" the SCOs and SREOs subject to consistency with the NPF (clause 126 Schedule 7 of the NBE Bill).
3.7. That the Bills clarify whether the Part 6 LGA decision-making requirements apply to the development of SCOs and SREOs, and if so to what extent (clauses 107 and 645 of the NBE Bill).
3.8. Requiring the RPC to provide draft plans to the sub-committee for review prior to notification and to provide, alongside the notified version, reasons why any recommendations from the subcommittee were not accepted (clause 20 Schedule 8 and clause 107 of the NBE Bill).
3.9. Requiring RPCs to provide the proposed plan to the councils for review prior to making final decisions on the RSS and NBE plans and to provide, alongside the final version (clause 20 Schedule 8 and clause 107 of the NBE Bill):
    3.9.1. reasons why any recommendations from the sub-committee were not accepted:
    3.9.2. RPCs view on whether the plans "give effect to" or alternatively are "not inconsistent with" the SCOs or SREOs, subject to the NPF.
3.10. Providing appeal rights for councils against the RPC's decision to adopt an RSS (clause 98 and amendment of the process set out in Schedule 7 of the NBE Bill).

4. Clarifying the role of existing plans in the new system, including the role of plans (especially freshwater plans and intensification planning instruments) currently being developed around the country (Schedule 1 part 1 of the NBE Bill)
5. Further consideration is given to:
    5.1. the practical challenges associated with councils bringing such an appeal against the decision of the RPC.
    5.2. reconciling spatial planning with existing local government strategic directions, community wellbeing priorities and planning documents (such as Long Term Plans and infrastructure strategies).
6. Central government committing full funding for the development of guidance on all new processes and procedures proposed under the bills (including for example, on those matters set out above and, in the recommendations, below) either by local government and iwi/Māori (via LGNZ and Taituarā) or at least in partnership with local government and iwi/Māori. Guidance will avoid the ad hoc development of processes and procedures, drive a culture shift, and ensure the new processes and procedures are done right from the start.

Part 2 – purpose and preliminary matters

Purpose clauses

We broadly support the intent of the purpose clauses but wonder whether interpretation issues will undermine that intent and create complexity.

Key questions about purpose clause

- What is the meaning of "uphold" Te Oranga o te Taiao? This requirement must be crystal clear to avoid unnecessary litigation.
- How does Te Oranga o te Taiao integrate with the concept of Te Mana o te Wai (which is integral to Three Waters Reform and the freshwater reforms)? How will the concept of Te Mana o te Wai be integrated into the new RM system? We are concerned the lack of reference to Te Mana o te Wai in the NBE Bill will lead to fragmentated and poor planning outcomes.
- What is the meaning of “compromising” wellbeing of future generations? It is absolute yet vague and uncertain, which will leave its meaning open to challenge. Potentially, depending on interpretation, it is the sole bottom line in the NBEA Bill, which would then 'trump' all other requirements. As mentioned in our previous submission, it is also inconsistent with comparable wording in the Government's objectives for the reforms.
- How will the two key seemingly conflicting purposes in clauses 3(a) and (b) the NBE Bill be reconciled?
- What is the meaning of “promotes outcomes” for the benefit of the environment?
- What is the meaning and effect of the SP Bill purpose singling out only that part of the NBE Bill’s purpose that requires "recognising and upholding Te Oranga o te Taiao"? The drafting difference infers that the two purposes are not wholly aligned but does not aid in the how or why. It should simply refer to the purpose of the NBEA. Alternatively, reasoning should be set out as to why a varied approach is justified, and the implications of that varied approach.
- How is the inclusion of system outcomes as well as effects management in the new purpose to be reconciled? LGNZ questions the need for carrying over the RMA effects-based framework and whether mixing it with the 'outcomes' framework can work practically.

Uncertainty of interpretation is an issue throughout the bills, particularly in relation to proposed new definitions and new concepts. Uncertainty of interpretation risks matters being contested (including through the courts). This generates inefficiencies and ineffectiveness, making it harder to achieve the RM reform objectives. It also has significant cost implications for councils and communities. We would like to see the legislation provide clarity on the questions above, so that that unnecessary changes from RMA definitions and terminology and concepts are avoided where practical to help minimise the potential costs for councils and communities. Alternatively, guidance

will need to be provided new terms such as "trivial" to provide certainty of meaning and reduce the risk of such terms being contested. We suggest further work needs to be done to identify potential costs of developing a new suite of case law to underpin the NBEA and SPA.

Outcomes and decision-making principles

We support the shift to a requirement to promote outcomes for the natural and built environments. We also support the NBE Bill's strengthened outcomes for climate change, housing/urban development, and infrastructure (now a standalone outcome), including that the NPF must provide direction on enabling development capacity and infrastructure. This will help to ensure that the new system delivers the outcomes New Zealand needs, including improving housing supply, affordability, and choice, and supporting infrastructure. And we support strengthened recognition of Te Tiriti o Waitangi.

However, we have reservations about carrying the RMA's effects-based management framework through to the new system. We are concerned that mixing effects-based management with outcomes will increase complexity, be unwieldy and create challenges in realising the broader RM reform objectives. Retaining an effects-based management approach is likely to result in a continued information burden, leading to matters being contested, resulting in cost and delay. Further consideration of this approach is required.

There's a lack of direction or guidance in the NBE bill about how competing priorities (and conflicts between and among outcomes) will be managed. This is critical to achieving a balance between good outcomes for the natural environment and the growth and development of communities. Reconciling conflicting interests, objectives and outcomes is complex, and can result in significant costs and delays for all participants.

Guidance on nationally significant issues is critical. The Government must make the hard, nationally significant calls within the NPF (or the NBEA itself). If it doesn't, then the system will fail to achieve its objectives. Leaving it to local government to navigate such national level issues creates the risk of significant inconsistencies within or across regions, with the risk that natural resources may be unsustainably managed. However, it is essential that councils have enough flexibility to respond to their particular local circumstances in RSSs and NBE plans – because communities know their places best.

According to the Bill, conflicts between system outcomes will be resolved by the Minister (through the NPF) or by RPCs. We think nationally significant conflicts should be resolved in the NBEA itself, to provide certainty for all. Alternatively, as previously submitted, nationally significant conflicts should be resolved at the national level through the NPF, rather than at the local level through RPCs and NBA plans. However, flexibility should however be retained for councils to accommodate local and regional variation and ensure they are workable at the local level. The Taituarā submission makes these points as well.

We want to stress that our support for national level guidance on outcomes is subject to three factors:

1. The NPF resolving nationally significant issues only and not creeping into regional or local issues which is the role of the RSS and NBE plans, both of which should retain flexibility to address local issues so long as that is not contrary to a limit or a rule in the NPF;
2. Criteria under which outcomes are to be managed being included in the legislation. If the Minister is given wide discretion to resolve conflicts the process is open to change with the appointment of each new Minister. Without clear direction within the NBEA itself there will be significant uncertainty and a changing framework depending on the government of the day; and
3. Local government and communities having sufficient opportunities to have a say in how those conflicts are resolved (as discussed in Part 1). The Minster must co-design the NPF with local government and iwi/Māori and collaborate with local government and iwi/Māori on key conflicts and how they are managed. If a strong local voice is not provided for, then our preference is that any such conflicts are resolved at the local level.

Te Tiriti o Waitangi

We support the greater emphasis on Te Tiriti o Waitangi, including the requirement to "give effect" to the principles of Te Tiriti, and providing a more strategic role for iwi/Māori in the RM system.

We support Treaty settlements and other arrangements being given the same or equivalent effect as per the RMA under the NBEA.

However, we have some concerns relating to the Tiriti o Waitangi provisions. The requirement to “give effect to” the principles of Te Tiriti o Waitangi potentially introduces uncertainty about how it should be interpreted and implemented. For example, does the principle of redress require funding be provided by those in the new system? If so, central government should bear that cost. Providing this clarity should be a specific requirement of the NPF, developed in partnership with iwi.

We are concerned the responsibility to fund the increased role of iwi/hapū in the new system falls almost exclusively on local government. Local government cannot be expected to meet the costs of this reform on its own. Central government must commit to full funding of iwi/Māori participation in the new system as envisaged under the NBE and SP Bills, particularly given its role as the Treaty partner. This includes supporting iwi/hapū to build the necessary capability and capacity to engage.

There are risks that the time allowed for RPCs to enter engagement agreements with iwi/hapū groups will be insufficient. We also wonder whether engagement agreements between RPCs and iwi/Māori groups may duplicate or be inconsistent with existing arrangements between councils and iwi/hapū groups.

We note that the provision for a minimum of two iwi/Māori representatives on the RPC may not be sufficient to ensure that the new system "gives effect" to Te Tiriti. Guidance may be required to make it clear two is a minimum and that additional representatives may be required to appropriately represent iwi/Māori interests.

Recommendations

7. Provide clarity on the purposes of the NBE and SP Bills (clause 3 of the NBE Bill and SP Bill).
8. Either align NBE and SP Bills' purposes or provide rationale for differences (part 1 of the NBE Bill, and clause 3 of the NBE Bill and SP Bill).
9. Retain strengthened outcomes for climate change, housing/urban development, and infrastructure (clause 5 of the NBE Bill and clause 3 of the SP Bill).
10. Retain strengthened recognition of Te Tiriti o Waitangi (clauses 4, 252, 662 and 663 of the NBE Bill and clauses 5 and 56 of the SP Bill).
11. Clarify the following matters:
    11.1. The meaning of "uphold" Te Oranga o te Taiao (clause 3(b) of the NBEA and clause 3(a)(i) of the SP Bill).
    11.2. How Te Oranga o te Taiao integrates with the concept of Te Mana o te Wai and how, if at all, will the concept of Te Mana o te Wai be integrated into the new RM system (clauses 3 and 6 of the NBE Bill, clauses 3 and 7 of the SP Bill).
    11.3. Delete "compromising" from clause 3(a)(i) of the NBE Bill and replace with "supports the wellbeing of present and future generations".
    11.4. How the two key seemingly conflicting purposes will be reconciled (clause 3 of the NBE Bill and SP Bill).
    11.5. The meaning of "promote outcomes" for the benefit of the environment (clause 3(a)(ii)).
    11.6. How the application of giving effect to the principles of Te Tiriti will be achieved within the new system as a specific requirement of the NPF, developed in partnership with iwi/hapū (by amending subpart 4 part 3 of the NBE Bill).
12. Further consider and direct how the inclusion of an outcomes framework alongside an effects-management-based framework in the new purpose is to be reconciled, including how this will work in practice.
13. Avoid unnecessary changes from RMA definitions, terminology and concepts. Where new definitions and concepts are introduced, ensure certainty of meaning to avoid matters being contested in the courts.
14. Provide direction and criteria in the NBE bill itself about how competing priorities and conflicts between and among outcomes will be managed, or alternatively require national level conflicts between and among outcomes to be resolved exclusively by the NPF and not through the RPC. However, flexibility must be provided to accommodate local and regional variation.
15. Ensure that the NPF is co-designed with local government and iwi/hapū (clauses 3, 5 and 6 of the NBEA).
16. Central government must commit to fully funding iwi/Māori participation in the new system, including building local government capacity and capability to support iwi/Māori participation. This could be either within the NBEA itself, separately within the NPF, or otherwise (either in part 1 of the NBEA, in the NPF and NBE plan making schedules 7 and 8, or alternatively leave to the NPF).
17. Provide sufficient time to establish engagement agreements between RPCs and Māori groups (clauses 3 and 7 of Schedule 8 of the NBE Bill).
18. Ensure no inconsistency, and reduce duplication, between engagement agreements and existing arrangements between councils and iwi/hapū (clause 3(3) Schedule 8 of the NBE Bill).

19. Develop guidance to make it clear that the provision of two iwi/Māori representatives on the RPC is a minimum only and additional representatives may sit on the RPC to appropriately represent iwi/Māori interests.

Part 3 - Regional Planning Committees

Host council and secretariat arrangements

Our overriding view is that the RPCs will create added cost, delay, and complexity in the system.

RM reform is out of step with any potential local government reform resulting from the FFLG review. In our view, the working arrangements of the RPCs and the secretariats would be more straightforward if any reform of local government had been progressed first, or at least in parallel with the RM reform. This might have made RPCs redundant if there were equivalent regional bodies that could undertake those roles and responsibilities. We agree with Taituarā that this has led to overly complex arrangements (particularly in relation to the RPC, secretariat, support, and funding), as well as creating potential costs and inefficiencies for local government.

We support the councils in each region nominating and identifying the RPC's host council. The default should be the regional council if no other nominations are received.

However, the proposed working arrangements between RPC, secretariat and host council are complex and unworkable. Given the critical role RPCs play, this may lead to system failure. A number of our concerns with these arrangements are outlined in the advice prepared by Simpson Grierson (contained in Appendix 1). That advice should be read in conjunction with the comments we make below.

The proposed legislative framework for the working arrangements of the secretariat is flexible, allowing regions to determine their own working arrangements within the secretariat and also between the RPC, host council and secretariat. We support this approach.

However, given the expansive powers of the RPC, we anticipate the working arrangements are much more likely to be determined by the RPC than councils and it is likely that the complex working arrangements will be challenging to navigate, leading to inefficiencies and ineffectiveness.

Notably, the 'host' council must be treated as having delegated to the RPC all rights, powers, and duties in relation to employment of the director and the secretariat. However, the host local authority remains the legal employer of the director and the secretariat. This raises issues in terms of resourcing, funding, and employment relationships.

In practice, this may mean a significant number of councils' current planning staff transfer to the secretariat (and into the technical employ of the host council). Secondment arrangements may also be adopted. These arrangements may mean that councils don't have sufficient resource remaining to fulfil their own plan-making role, including the development of the SCOs and the SREOs and

feeding into NBE plans and RSSs. They may also struggle to carry out functions like consenting and compliance, monitoring, and enforcement.

There are other examples where the working arrangements are uncertain, complex, and likely to prove unworkable. The director of the secretariat is appointed by the RPC to provide technical advice and administrative support to the RPCs. This director can unilaterally make appointments to the secretariat, even though the costs of remunerating the new employees will fall on councils and the host council will be the legal employer. This raises numerous, significant issues in relation to expenditure and control over public money, as well as employment matters. The host local authority will retain legal responsibility for all employees, despite the director having all the rights, powers, and duties of an employer in relation to secretariat staff. This raises a number of challenges; for example, what happens if the director wants to fire a council employee?

Furthermore, councils are responsible for "ensuring" the director's legal obligations are met. We have significant concerns about imposing a requirement like this on councils when control over the director and secretariat rests with the RPC. Councils, using public money, become the insurer for the director over whom they have no control. Such arrangements also appear to raise significant employment law and improper expenditure of public money implications. If (like the RPC) the director and secretariat are expected to be "independent", this raises more potential accountability and employment law issues.

We support requirements for secretariats to have appropriate technical expertise but have concerns whether there will be the necessary capability and capacity in the system. It is critical that central government provide sufficient funding to enable councils to build their capacity and capability in the new system, both generally as well as in relation to Māori participation.

Amendments to the legislation are required to address some of the above concerns, for example:

- To require the director to be appointed by the host council in consultation with the other relevant councils;
- To ensure that the RPC and director are held accountable to the host local authority through increased reporting mechanisms; and
- To require RPCs to work within the accountability and financial constraints that councils prescribe (our concerns about the funding implications of RPC arrangements are further discussed in Part 4 below).

Local authority staff whose employment will be impacted by the NBE Bill need guidance on all of the above concerns.

Recommendations

20. Amend the NBE Bill to
    20.1. Clarify that the director is appointed by, and can be removed by, the host local authority in consultation with the other councils (clauses 33 and 34 Schedule 8 of the NBE Bill).

20.2. Enable councils to have strategic control over the working arrangements by requiring RPCs to work within the governance relationship scope and financial (including budget and resourcing) constraints as provided by the councils, rather than the RPC having all control (clauses 33, 34 and 35 Schedule 8 of the NBE Bill).
20.3. Clarify the legal employment relationship between the RPC, director, secretariat, and host local authority (clauses 33, 34 and 35 Schedule 8 of the NBE Bill).
20.4. Clarify that the director reports to the host authority and set out the key obligations and reporting requirements for the role (clauses 33 and 34 Schedule 8 of NBE Bill).
20.5. Clarify that the director cannot appoint or remove staff without the agreement of the host authority and, if the employee is employed by a different authority, that council too (clauses 33(2) & 33(3) Schedule 8 of the NBE Bill).
20.6. Clarify that the RPCs are to work within the accountability and financial constraints that councils prescribe, such that no public money may be spent without agreement of the host and all funding councils, and that all public money spent must be transparently accounted for and reported on (clauses 33 and 34 Schedule 8 of NBE Bill).
20.7. Remove the obligation on councils to ensure that the director's legal obligations are met. If retained, require the director to report to all councils three monthly on all legal risks and the manner in which they are being managed, and require the director to implement any comments received back from the funding councils. Make councils only liable for the risks reported by the director (clause 33(5) Schedule 8 of the NBE Bill).

21. Consider further the employment law and expenditure and control over public money implications of the proposed working arrangements (clauses 33, 34 and 35 Schedule 8 of the NBE Bill).
22. Provide guidance to clarify the working arrangements of the RPC, secretariat, and host council, including their roles, functions, operation, and linkages with one another. This should be developed by or in partnership with local government (via LGNZ and Taituarā), and funded by central government.
23. Clarify whether the RPC, secretariat and director are to operate independently of the host local authority or not (clauses 33, 34 and 35 Schedule 8 of the NBE Bill).
24. Ensure integration and alignment with local government reform (for example, unitary councils could potentially exercise the same functions as the RPC, addressing issues such as accountability and working arrangements) by progressing the RM reform in parallel with local government reform.
25. Central government commit to funding to build the capacity and capability of councils to efficiently and effectively implement the new system, including:
    25.1. resourcing councils to ensure there is sufficient capacity within councils to continue administering the current RMA system and participate in the new plan-making processes while staff also move to the secretariat (clause 36 Schedule 8 of the NBE Bill).

Part 4 - Funding and Resourcing

Funding the new system generally

Transformational reform requires transformational funding. Central government must adequately fund the implementation of the changes that it wishes to achieve meaningful change. Full funding from central government is required to:

- support iwi/Māori participation in the new system;
- develop guidance (either led by local government and other relevant stakeholders, or in partnership with them, via LGNZ and Taituarā) on all new processes and procedures in the new system;
- build the capacity and capability of councils to implement the new system, generally and also in relation to supporting iwi/Māori participation in the new system;

Central government must also contribute funding for councils' CME roles and responsibilities, which increase under the new system. Otherwise, the underfunded status quo is likely to endure irrespective of legislative changes. This is a critical issue for us.

Despite centralising processes and decision-making in the new system within the hands of the Minister and the RPCs, to the near exclusion of local government and communities, the NBE Bill proposes councils bear the costs. This means local government and communities will fund the plan-making processes and the implementation of the new system as a whole.[3] While we have concerns that it is essentially an unfunded mandate and uses public money without legitimate controls and transparency, we accept that it is appropriate for councils to meet the costs of the RPCs and the development of planning instruments because this is akin to the processes that councils currently fund under the RMA.

However, councils simply do not have the funds to implement all the changes alone. Without adequate funding from central government, the implementation of the new system will be under resourced. Iwi and hapū will also be under resourced, subject to any litigation concerning resourcing to give effect to the principals of Te Tiriti, limiting their critical involvement in the new system.

We are concerned central government has allocated massively insufficient funding to this reform. Central funding appears to be allocated primarily to national-level policy work by the Ministry for the Environment. We wonder whether there will be longer-term cross-party commitment to fund the system, which is essential for it to be successful.

[3] The NBE Bill requires local authorities to fund the remuneration and expenses of all members on the RPC including iwi members.

At a minimum, we want to see funding for upskilling council staff on all the new processes and procedures under the new system, as well as for iwi/Māori participation in the new system. At the very least, this should apply during the transition until the first-generation NBE plans take effect. We also consider that, as the Treaty partner, central government must take the lead on funding Māori participation in the system (which will significantly increase under the reforms).

A number of comments on funding arrangements are made in the advice from Simpson Grierson contained in Appendix 1. That advice should be read in conjunction with the comments made below.

Funding the RPCs, secretariat and IHPs

The NBE Bill proposes that each RPC be jointly funded and resourced by the local authorities in that region. This joint funding approach poses potential problems, especially as the Bill is silent on how each local authority's funding contribution is determined. All the NBE Bill requires is that councils work together in "good faith" to agree the amount of funding to be provided to the RPC, and the share they will each provide. Without direction around funding, some councils may be unable or unwilling to provide their portion of funding.

For example, if some communities perceive an RPC as operating with more focus on some districts than others, this could lead to questions about whether funding contributions have been fairly apportioned. These tensions could lead to ongoing disputes between councils, and result in delays to an RPC's budget being agreed. As an alternative to a joint funding model, regional or unitary councils could be the host council, with full responsibility for funding the RPC. However, they may see inequity between being the host council (and solely responsible for funding) if they have only one seat on the RPC. Conversely, territorial authorities might think this approach would better reflect the RSS and NBE plans' regional focus.

We would like to see the NBE Bill amended to:

- Allow regions the flexibility to decide funding on a joint funding model or a sole regional/unitary council funding model.[4] This would simplify funding decisions, consolidating funding within a single local authority that is democratically accountable across the region. Because this model may not always be appropriate, it should be an option available to councils rather than being mandatory. For example, some regional councils may not wish to take on this role.
- Link funding decisions with the composition of RPC, rather than deciding them separately.

We also consider that it will be helpful to provide direction on funding arrangements by way of guidance (funded by central government but developed by or in partnership with local government) to reduce the risk of disputes arising.

It is not entirely clear from the current drafting whether the intention is that councils hold RPCs' purse strings. For example, there is an absence of specified timeframes in which funding contributions are determined. This raises questions about whether RPCs or councils actually control

[4] The advantages and disadvantages of this model are discussed in detail in the paper prepared Simpson Grierson contained in Appendix 1

the RPCs' budgets and resourcing plans. Furthermore, councils cannot direct the use of funding or alter the amount of funding without the RPC's consent.

The costs of RPCs and secretariats will be substantial: there must be transparency and clear accountability to councils for RPC use of funding. The budgeting process will play a significant role in ensuring the RPC and secretariat do not incur significant expenditure on behalf of the councils. Budgets must therefore be agreed to by councils and resourcing plans must be set in consultation with them. This will strengthen accountability between councils and RPCs. We would like the NBE Bill to be amended to:

- Specify timeframes for the delivery of various funding decisions;
- Clarify that the RPC's draft budget must be commented on by councils, with the final budget agreed by the appointing councils;
- Clarify that resourcing plans for the secretariat must be prepared by its director in consultation with the RPC and constituent councils; and
- Specify that the RPC's draft statement of intent receive feedback from councils.

The NBE Bill explicitly says that RPCs have separate legal standing from the appointing councils, allowing councils to bring appeals against RPC decisions. However, because RPCs are committees of each of the appointing councils, if a local authority was to bring an appeal, it would be required to fund both its own costs and the RPC's costs. These costs would be entirely disproportionate in terms of the limited control that councils will have over the RPC decision-making process. They risk silencing local voice, leading to poor planning outcomes. A funding source other than local authorities needs to be identified for the RPCs' legal proceedings, either in the NBE Bill itself or guidance.

The NBE Bill states that funding disputes between councils will be determined by an independent decision-maker appointed by the Minister. This would potentially mean the Minister inappropriately incurring costs borne by rate payers. In our view, the Local Government Commission should be specified as the appropriate body to determine funding disputes and relevant considerations should be specified in the NBE Bill.

Funding mechanisms

The Bills do not define any mechanisms available to councils to fund RPCs. This implies that LGA methods used by councils to fund RMA processes and planning activities will continue to apply. But LGA funding criteria, such as the need for funding to relate to the "community", could impose limitations on council funding of RPCs. As explained in detail in Appendix 1, that's because the "critical filter" through which funding must be considered is the "community" served by the activity being funded. Where more than one authority is funding an RPC, which is the "community" being served in terms of the LGA? While all councils within a region will technically benefit, the region as a whole benefits the most.

Simpson Grierson considers amendments to resolve these issues are required. A key amendment would be that the NBE Bill and/or LGA ensure councils are not required to identify the community outcomes nor report on the progress toward these outcomes in their long-term plans and annual reports – because they have limited control of the outcome of RPC processes.

Another area worth addressing is the extent to which LGA provisions will apply to the regional planning decisions under the new system. For example, the Bills are silent on whether councils will be required to include any relevant information on their new funding activities in their annual report. Ratepayers deserve utmost transparency and accountability about the costs of the RPCs. Whether targeted rates should be established for RPC costs requires further consideration and clarification.

Funding Māori participation

We are strongly supportive of the enhanced role for iwi and hapū in the new system. However, funding will be crucial for iwi and hapū to play this much more integral and strategic role. Iwi/hapū are best placed to comment on the financial support that they will need to effectively participate. We anticipate the costs of supporting Māori participation in the new system, including Māori representatives on the RPCs, will be substantial. We are increasingly concerned that iwi/hapū are spending Treaty settlement funds to engage with local and central government processes.

The NBE Bill proposes that the cost of funding and resourcing Māori participation be imposed exclusively on councils. It is unfortunate that central government, as the core Treaty partner, is washing its hands of these obligations and passing them to ratepayers to fund. We are concerned that imposing this cost on local government will mean underfunding. This would mean the status quo – where iwi/hapū are unable to participate meaningfully in the RM system – will continue. In our view, the Crown must provide the necessary financial support. The NBE Bill should be amended to explicitly require central government to fund the participation of iwi/Māori in the new system.

Local government will also need support and resourcing from central government to build its capability and capacity to effectively engage with Māori. Current capacity and capability are variable.

Funding implementation

We are concerned that without a strong local government voice in the plan-making processes, councils face an unfunded mandate to implement the new RM system. We are very concerned about requiring councils to fund the implementation of plans over which they have had limited involvement in developing.

Councils are being asked to deliver on an RPC's compliance and enforcement strategy; and prepare an annual report on the costs, drivers and funding associated with discharging their functions, duties, and powers under the Bills. These are additional to councils' business as usual and include significantly increased CME responsibilities under the new system. For example, the NBE Bill requires councils to monitor permitted activities (clause 783 (1) (g). Without sufficient funding to enable rigorous CME, the RM Reforms are unlikely to be successful.

As outlined a number of times in this submission, guidance will be crucial to the successful implementation of the new system. Guidance, developed with or by local government, is required on all new processes and procedures proposed under the Bills. Training of council staff will also be key. A real step change in guidance and training is required to avoid the ad hoc implementation of the new system and drive the culture shift the Government is seeking. This guidance and training

must occur in advance of the new system coming into force so that the new system is implemented correctly from the outset. Central government funding for this guidance is critical.

We also have significant concerns about costs associated with developing the suite of case law interpretating the NBEA and SPA. The Government should factor this into funding considerations, particularly funding for councils.

We also want to see more clarity around the funding mechanisms for ensuring RSS priority actions are delivered. The SP Bill says the Minister may make grants and loans to assist in achieving the purpose of the SPA to "any person". It is uncertain whether this applies to councils. This should be clarified.

Recommendations

26. Central government commitment to support and fund implementation of the new processes and parts of the new RM system, including:
    - 26.1. For appeals lodged against RPC decisions (clauses 132-135 Schedule 7 of the NBE Bill); or otherwise provide alternative funding source other than local authorities for RPC legal proceedings; and
    - 26.2. To build local government capability and capacity in all new processes and procedures under the Bills through training and guidance.
    - 26.3. To build local government capability and capacity to effectively engage with iwi/Māori in the new system through training and guidance.
    - 26.4. Increased support for councils in their monitoring, compliance and enforcement and all reporting roles (by amending part 11 subparts 1 and 2 of the NBE Bill);
    - 26.5. Developing guidance for councils on all new processes and procedures in the new system in partnership with LGNZ and other relevant stakeholders.
27. Central Government fund all iwi and hapū participation in the new system. The Crown must commit to providing financial support to iwi/hapū to participate meaningfully in the new system, as the Treaty Partner (Include a new provision in Part 1 of the NBE Bill or alternatively secure a commitment through the NPF).
28. Ensure longer-term cross-party commitment to fund the system if reformed.
29. Provide flexibility for how funding contributions between councils should be agreed including a joint or proportional funding model, or a regional/unitary funding model (Schedule 8 clause 36).
30. Require each local authority's respective contribution (if a joint-funding arrangement is adopted) to be agreed at the time of composition of the RPC, with this able to be amended from time to time by agreement, or otherwise referred to the Local Government Commission (Schedule 8 clause 36).
31. Require the RPC to prepare and make publicly available their draft budget for the next financial year alongside their annual draft statement of intent and submit it to the appointing bodies by a specified statutory timeframe (amend clause 38 of the NBE Bill).
32. Require councils to review the draft statement of intent and budget and use that to determine the amount of funding to be provided to the RPC (clause 38 of the NBE Bill).
33. Require the RPC budget to be agreed to by the councils (clause 38 of the NBE Bill).

34. The RPC must adopt the statement of intent (including the final budget) by a specified statutory timeframe and once agreement has been reached with the councils (clause 38 of the NBE Bill).
35. Enable councils to have control, or at the very least a consultation right, in respect of the resourcing plans (clause 34 of the NBE Bill).
36. That the Select Committee consider whether the Local Government Commission is an appropriate decision-maker for funding disputes, and that relevant considerations and procedural requirements are set out in the legislation to guide any determination on funding matters (including potential involvement from affected councils) (clauses 8, 36 and 37 of the NBE Bill).
37. That specific provision is made in the NBE Bill and/or LGA that exempts councils from identifying and reporting on the community outcomes that regional planning contributes towards, as required for long-term plans and annual reports (part 11 subpart 6 of the NBE Bill, or alternatively by amending the LGA).
38. That councils be provided with an increased role/involvement in the RPC budget setting process by:
    38.1. Specifying timeframes for the delivery for the various funding decisions to make clear that councils get to agree the RPC budget (clauses 37 and 38 Schedule 8 of the NBE Bill);
    38.2. Clarifying that the draft budget for the RPC is to be commented on by councils and that the final budget is to be agreed to by the appointing councils (clauses 37 and 38 Schedule 8 of the NBE Bill);
    38.3. Clarifying that resourcing plans for staffing the secretariat is required to be prepared by the director of the secretariat in consultation with the RPC and with constituent councils (clauses 33 and 36 Schedule 8 of the NBE Bill); and
    38.4. Specifying that the draft statement of intent for the RPC is to be commented on by councils (clause 38 Schedule 8 of the NBE Bill).
39. Clarify whether LGA provisions will apply to the new funding roles of councils under the new system; for example, whether councils will be required to include any relevant information on their new funding activities in their annual report (clause 839 of the NBE Bill and clause 67 of the SP Bill).
40. Require RPCs to provide audited accounts on an annual basis or at another time as requested, procurement policies and any contracts entered into (clause 36 Schedule 8 of the NBE Bill).
41. Clarify the funding mechanisms to be employed for funding the new system including through guidance.
42. Central government commitment to fund their own RSS priority actions (clause 36 Schedule 8 of the NBE Bill and clause 63 of the SP Bill).
43. Clarify whether the Minister may make grants and loans to assist in achieving the purpose of the SPA to councils (clause 63 of the SP Bill).
44. Guidance be developed for funding under the new system; for example, on RPC funding arrangements, including how councils can ensure transparency and accountability is provided to ratepayers about the costs of the RPCs.

Part 5 – Alignment with other reform

The RM Reform programme closely links with other reform and policy programmes of this Government, especially:

- the Three Waters Reform;
- the Future for Local Government Review;
- the introduction of New Zealand's first Infrastructure Strategy; and
- the Government's work on climate change, including the introduction of National Adaptation and Emissions Reduction Plans and CAA.

We are concerned there is little alignment and integration between RM reform and these other significant programmes. This creates a risk that each programme's objectives will not be met and that there will be duplication, planning and service delivery gaps as well as a lack of clarity around roles and responsibilities. This particularly applies to the Three Waters Reform and the Future for Local Government review.

The Future for Local Government review highlights the importance of maintaining local voice and communities influencing outcomes at the local level. So the approach proposed in the NBE and SP Bills appears to be at odds with the objectives of the Future for Local Government work.

For the purposes of this submission, given limited time, we have solely focused on alignment with the Three Waters Reform and the Future for Local Government review and reform, and commented on the slower development of the proposed Climate Adaptation Act.

Alignment with the Future for Local Government Review

We're concerned that the RM Reform programme proposes a number of significant changes to local government's roles and functions before the outcomes of the Future for Local Government Review are known.

The FFLG Review is wide-ranging. It's considering the future roles and functions of councils, and how to allocate roles and functions as between central and local government; how to increase opportunities for community-led decision-making; building Te Tiriti-based partnerships; what the future local government system should look like, and how to address funding and financing challenges.

The outcomes of the FFLG Review are unlikely to be known for some time, given the Review Panel's final report isn't due until June 2022. It will be up to this Government (and successive governments) to make decisions about which of the Panel's recommendations should be progressed.

We're concerned that the RM Reform programme pre-empts this, by proposing a number of substantive changes to the roles, functions, and structure of local government, which fundamentally impact on Te Tiriti-based partnerships, opportunities for community-led decision-making and funding arrangements. Some changes that the RM Reform programme proposes are at odds with thinking emerging through the FFLG Review, such as a strong preference for increasing opportunities for citizen-led decision-making.

We would have preferred to wait for the outcomes of the FFLG Review before making other significant changes to local government's roles and responsibilities.

As discussed above, we have a number of concerns about the proposed RPC model. Had local government reform been completed in advance of the RM reform or at least advanced in parallel, clear entities and structures could have been established without the need for an RPC to assume responsibility for the regional issues. Unitary councils could potentially exercise the same functions as the RPC, including the development of the RSSs and NBE Plans, saving significant costs and reducing the complexity that the new system will create.

This position is supported by the 'Expert review into the Resource Management Act' led by Hon Tony Randerson KC from July 2019 - June 2020, which says on page 6:

> *There are two matters outside our terms of reference that we wish to briefly comment upon. The first relates to the reform of local government. It has become clear to us that the resource management system would be much more effective if local government were to be reformed. The existence of 78 local authorities in a nation of just five million people is difficult to justify. Much could be achieved by rationalisation along regional lines, particularly in improving efficiencies, pooling resources, and promoting the coordination of activities and processes. Reform of local government is an issue warranting early attention.*

We are concerned that the failure to finalise any outcomes of the FFLG Review ahead of or in parallel with RM reform has the potential to lead to less-than-optimal outcomes.

If the RM reform was implemented in stages, alignment and integration with the FFLG Review outcomes could be achieved. This staged approach would involve full development of the NPF, followed by development of RSSs (including model(s)) when councils are ready. In turn, councils could then develop their NBE plans (including model(s)) when ready. This approach is discussed in further detail in Part 7 below.

Alignment with Three Waters Reform

Given the estimated $130b+ investment required in three waters over the next 30 years, the WSEs are predicted to be one of the biggest users of the NBEA regime. However, except for one reference to the Government Policy Statement on water services under the Water Services Entities Act 2022

(WSE Act) in the SP Bill, and a mention of it in Schedule 15 of the NBE Bill, there are no other references to the WSE Act or WSEs in the draft legislation. Integration between the reforms is entirely missing.

There must be alignment between RM and Three Waters Reform. For example, new housing developments need water infrastructure in place. The lack of integration and alignment between these concurrent reforms is of significant concern. Not addressing it will lead to inefficient and ineffective outcomes, and the timely and cost-effective delivery of three waters infrastructure will be jeopardised.

Planning

WSEs must have an active role in plan-making

Neither reform process provides clarity about WSEs' role in the new plan-making processes. This role will be critical for timely and strategic delivery of three waters infrastructure, as sought by both reforms.

Discussions with MfE and DIA have led us to conclude that the Government largely intends WSEs to be 'plan takers' rather than 'plan makers'. This means councils will be expected to fulfil the role of 'plan maker' on behalf of WSEs during the development of the NPF, RSS and NBE plans. This appears an immediate mismatch with WSEs' objectives, which include "*support and enable planning processes, growth, and housing and urban development*." Having WSEs as 'plan takers' only will not help the successful delivery of Three Waters Reform. To support the WSE objectives, WSEs should also have a clear function to provide input to the Minister and RPCs during the planning processes. That said, we strongly support councils and communities being the key drivers of plan-making, with WSEs' role being more in the nature of informing and inputting.

We have other related concerns:

- Councils will be required to invest resourcing in a process that will deliver outcomes for the WSEs;
- Come 1 July 2024, relevant staff will transfer to WSEs, leaving councils without the capability and capacity to be meaningfully involved in three waters matters, including planning; and
- How councils will obtain necessary information about WSEs' planning needs and accurately disseminate this information to the Minister and the RPCs. It seems more efficient for WSEs to provide this information to RPCs directly.

In our view, it would be more efficient and effective for WSEs to be play an active inputting and informing role in the plan-making process and participate directly in the plan-making process relating to three waters.

The preparation of the NPF is likely to begin prior to the full establishment of the WSEs. We think the DIA National Transition Unit and/or WSE Establishment Chief Executives (and ultimately the WSEs themselves after 1 July 2024) should be involved in developing NPF content as it relates to three waters infrastructure and service delivery.

Similarly, RPCs and WSEs must have a strong relationship. This needs to exist before the stage of developing implementation plans and agreements under the SPA, which are mechanical and follow plan setting. It makes more sense for WSEs to be involved early in the process. We consider that RPCs should have to enter into relationship agreements with WSEs, akin to engagement agreements under the SPA. We note that the Water Services Legislation Bill requires WSEs to enter into relationship agreements but not with RPCs (clause 467). Requiring WSEs and RPCs to enter into a relationship agreement would ensure greater integration of statutory processes. WSEs must be able to provide direct advice to RPCs. Their planning/policy documents should be provided to RPCs, and RPCs should have regard to that advice and those planning/policy documents. In some cases, RPCs and WSEs may wish to have a seat on an RPC for a WSE representative. We think this should be an option rather than prescribed. We also envisage it will be critical for WSEs to provide expertise and information to the RPC secretariats.

Input into plan-making and integration of planning processes

Having been largely ignored by RM reform, WSEs have limited opportunity to meaningfully participate in new plan-making processes. This creates considerable risk that the NBE and SP Bills will fail to deliver meaningful outcomes for three waters, and they may instead unwittingly create obstacles.

There are some mandatory requirements for consultation with requiring authorities and this will include WSEs if they successfully obtain such status from the Minister. But opportunities for DIA's National Transition Unit and WSEs to participate in developing the NPF and preparing RSS and NBE plans are little different from any other person.

While the SP Bill does require RPCs to have "particular regard" to the Government Policy Statement (GPS) for water services when preparing the RSS, the ability of WSEs to participate meaningfully in RSS development must be strengthened. This would provide confidence that WSEs can be actively involved and secure the delivery of Three Waters Reform objectives. There are many other key plans to be prepared under the WSE Act including: the Statement of Strategic and Performance Expectations (prepared by the Regional Advisory Group); Te Mana o Te Wai Statements (prepared by mana whenua); a Statement of Intent (prepared by the WSE board); and Asset Management Plans and an Infrastructure Strategy (prepared by the WSE itself). These are all relevant to, and would add value and efficiency to, the RSS and NBE plan process. They should have to be considered by the Minister and RPCs. There is simply no need to duplicate statutory planning processes; each should work with the other.

As for the NBE plan process, there are even fewer avenues for WSEs to participate. There is no reference to the GPS for water services (let alone other relevant WSE Act plans) in the NBE Bill.

Finally, there is no direction as to how Te Mana o Te Wai will fit within the NEA and SP Bills. Te Mana o Te Wai is central to Three Waters Reform.

Consenting and designations

To meet demand and achieve three waters reform objectives, new three waters infrastructure is urgently needed. This infrastructure needs to be consented and designated. However, the removal of RMA controlled activity status and non-comply status in the new RM system is potentially a handbrake. For critical projects, controlled activity status provides a highly efficient and effective pathway. It avoids argument over the activity occurring (as consent cannot be declined) and focuses attention on avoiding, remedying, and mitigating effects. Experience suggests this provides far more beneficial community engagement and environmental outcomes, with more focus on the issues that matter.

We are also concerned that imposing bottom-lines through the NPF may have unintended consequences that stymie the delivery of three waters infrastructure. WSEs must have a strong voice in the development of these bottom-lines as well as be able to obtain exemptions from them.

The RM system should provide a clear pathway for the construction, operation, maintenance, and upgrade of three water infrastructure. Otherwise there is a risk there will be conflict in decision-making for RPCs that jeopardises future urban growth and catching up on the infrastructure deficit. At the very least, WSEs' plans and strategies should be a key consideration during consenting.

We are concerned about the proposed amendments to Schedule 12 of the RMA (Part 3 of Schedule 15 of the NBE Bill) that will affect three waters infrastructure resource consents. The amendments impose a more limited duration (with consents expiring three years after the relevant NBE plan) unless an exception for three waters infrastructure is granted by the consent authority. There are some drafting discrepancies in this part of the Bill that generate concern about whether this new part will affect three waters resource consent applications that are lodged between the NBEA coming into force and the NBE plan for the relevant region being notified or applications granted during this timeframe. Councils are concerned that there may be a huge number of consents that need to be re-consented at the same time after NBE plans come into effect. This will create resourcing challenges. There are also discrepancies about when the exemption for three waters would apply. These discrepancies must be resolved.

In general, our comments in the Part 6 below also apply to WSEs. We are concerned about uncertainty around when the NBEA and SPA provisions will apply to consenting.

Climate Adaptation Act

We support the Government's intention to develop a Climate Adaptation Act as the third piece of legislation in the RM Reform programme. These three pieces of legislation are supposed to be developed side by side to effectively manage development and land use, build resilience, and enable adaptative pathways in the face of climate change impacts, which are growing in intensity. However, we are concerned the CAA is on a considerably slower track than the NBEA and SPA.

Councils and their communities have been grappling with how to build resilience and adapt to the impacts of climate change for many years. These impacts are increasingly more frequent and intense. Councils and communities see a real need for much greater clarity around how to build resilience and adapt.

As well as this urgent need for the Climate Adaptation Act, we're concerned that it's difficult to make judgements about whether the new RM system will be less complex, more cost-effective, and efficient without seeing all parts of the new system. To meet the Government's reform objectives, the NBEA, SPA and CAA (and the proposed NPF) must align. We can't assess this when a critical component of the reform package remains missing.

We encourage the Government to make considerable progress on the CAA before the end of this parliamentary term. We also want central government to partner with local government in developing the CAA. Councils have vital on-the-ground experience working with communities to build their resilience and support them to adapt to the impacts of climate change.

Recommendations

Local Government Review and Reform

Provide for the alignment and integration between the RM reform and Future for Local Government Review and Reform. This could be achieved through the staged implementation of the NBEA and SPA such that the NPF is developed first, followed by RSSs and then NBE plans. This recommendation is discussed further below.

Provide for the alignment and integration between the RM reform and Three Waters Reform by providing an explicit and meaningful role for the DIA National Transition Unit and/or WSEs. This could be achieved through the following amendments:

Overall

45. Include within clauses 3(b) and 4 of the SPA the Water Services Entities Act 2022 as legislation that must be integrated with the SPA and add specific recognition to the provision of Three Waters infrastructure by WSEs into clause 102 of the NBE Bill.
46. Better integrate the NBEA with other legislation, including the Water Services Entities Act 2022, by adding a new decision-making principle (clause 6) that requires all decision-makers to have regard to statements, plans and strategies prepared under other legislation, or at least the Water Services Entities Act 2022.
47. Require RPCs to enter into relationship agreements with WSEs that address the key elements of relationships between the RPC and the Regional Representative Group, WSE Board and the WSE, specific mechanisms to integrate processes and deliver efficient and effective outcomes to ensure the success of both legislative regimes. This may be most readily achieved by adding it to Schedule 8 of the NBE Bill.
48. Enable WSEs to:

48.1. request exemptions under the NBEA, or to let the Minister consider and approve exemptions directly from nationally significant infrastructure operators (clause 44);
48.2. be eligible for all exemptions to apply to them by being expressly listed (clauses 66 and 81); and
48.3. have other relevant legislation, or specifically state the Water Services Entities Act 2022, as a relevant consideration matter (clauses 67 and 566).

49. Amend the SP Bill and NBE Bill to clarify that it is the DIA National Transition Unit/WSE Establishment CEs (until 1 July 2024) and the WSEs (or their chief executives) who have the primary responsibility for advocating for the interests of three waters infrastructure in the new system rather than councils (see the recommendations below that establish a meaningful role for WSEs in the new system)
50. Require a representative from the WSE within the secretariat to provide expertise and information to the planning process (amend Part 3 of Schedule 8 of the NBE Bill to provide for this).
51. Provide flexibility to regions to determine that a representative of a relevant WSE could sit on the RPC.

More specifically with regard to planning

52. Amend clause 58 of the NBE Bill to require the NPF to provide clear direction on, and application for, Te Mana o Te Wai within the NBEA planning framework, to assist integrating the NBEA with the Water Services Entities Act 2022 and enable WSEs to deliver their objectives and functions.
53. Require early engagement / early comment with WSEs Chief Executives in preparation of:
    53.1. the NPF (clause 2 Schedule 6 of the NBE Bill);
    53.2. the draft RSS (clause 2 Schedule 4 of the SPA); and
    53.3. NBE plans (clause 22 Schedule 7 of the NBE Bill).
54. Ensure that WSEs have a direct role within the Limits and Targets Review Panel so that the implications of any limits and targets on the implementation of the Water Services Entities Act 2022 and the objectives and functions of WSEs is clear (clause 3 Schedule 6).
55. Require the Minister, RPC, or IHP/BOI "*to have particular regard to all relevant statements and plans prepared under the Water Services Entities Act 2022*" when preparing plans; making decisions; or identifying major regional policy issues. This would require amending the SP Bill (clause 24) and NBE Bill (clauses 21 and 107, Schedule 6 clauses 6, 19 and 21, and Schedule 7 clauses 14. 60, 61 and 126).
56. Require RPCs to consult with WSEs when undertaking:
    56.1. proportionate plan change processes (Schedule 7 clauses 44(5) and 45(3)); and
    56.2. urgent plan change process (Schedule 7, clauses 48(5)).
57. Provide for WSEs to nominate candidates to IHPs (Schedule 7 clause 94).
58. If an RPC appoints a subcommittee that relates to or covers three waters matters, enable the WSE to appoint a member (Schedule 8, clause 32) and also Freshwater subcommittees (Schedule 8, Clause 42).
59. Require RPCs to consult with WSEs before making final decisions (NBE Bill Schedule 7 clause 127).
60. Ensure that WSEs have a role in the preparation of RSSs (by being expressly included in clause 1, Schedule 4 of the SPA).

61. Enable WSEs to have an opportunity to review the final draft RSS and NBEA before final decisions are made by the RPC with the RPC to have "particular regard" to their comments when making its final decision (amend the SP Bill (clause 5 Schedule 4) and NBE Bill (clause 30 Schedule 7)).
62. Enable the Minister under the SPA to:
    62.1. expressly obtain Three Waters information from WSEs by adding them to clause 58(1); and
    62.2. directly amend an RSSs (clause 60) to comply with clause 4 (which as above should be amended to include the Water Services Entities Act 2022).
63. Require the Minister to also consult with the WSE before setting an RSS notification date (Schedule 1, clause 1(3)).
64. Enable WSEs to provide information to the Board of Inquiry for a streamlined planning process (amend Schedule 6, clause 24(3).
65. Enable WSEs to nominate candidates to the IHP (Schedule 7 clause 94).

With respect to consenting and designating

66. Reinstate "controlled activity" status; if not generally then for nationally important matters (as set out in the NPF), which must expressly include three waters infrastructure.
67. Provide a specific opportunity for 'exemptions' for three waters infrastructure from NPF restrictions such as limits (clauses 44-46) and the effects management framework (EMF) (clauses 64-67).
68. Ensure there is a clear consenting pathway for critical infrastructure, albeit where there may be inconsistencies with limits, the EMF and 'places of national importance'.
69. Require decision makers "*to have particular regard to all relevant statements and plans prepared under the Water Services Entities Act 2022*" when making decisions on consenting or designations (amend clauses 223 and 512).
70. Enable greater integration with other statutory processes when:
    70.1. considering adaptive management conditions (clause 233); and
    70.2. cancelling consent conditions (clause 277),
    70.3. by referencing to achieving other legislative provisions and statements, strategies, or plans, or specifically referring to the Water services Entities Act 2022.
71. Confine appeals to matters raised in submissions (amend clause 253).
72. Resolve the discrepancies in the drafting of the proposed amendments to Schedule 12 of the RMA (Part 3 of Schedule 15 of the NBE Bill) to provide certainty about which consents will be subject to the maximum three-year duration and when.

Climate Adaptation Act

73. That the Government commits to making considerable progress on the CAA before the end of this parliamentary term, working in partnership with local government to do so.

Part 6 - Implementation of planning documents

Overview of concerns

As we've discussed at length in this submission, local government is concerned that despite councils having very limited involvement in the development of the RSS and the NBE plans, they are expected to lead and fund the implementation of those planning documents.

Funding issues are addressed above. This part of our submission focuses on implementation issues, in particular the issues associated with councils retaining responsibility for CME according to rules they have not set. By developing plans at arm's length rather than collaboratively, there is a risk that councils as well as communities may not have sufficient ownership of or buy-in to the new system, leading to a lack of awareness, understanding and potentially indifference. Furthermore, disconnecting planning functions from contributing functions such as consenting and compliance jeopardises integrated management and increases the possibility of duplication of effort. If effective implementation is lacking, the entire system and RM reform objectives are unlikely to be achieved.

Effective and efficient implementation is key to the success of the RM reforms. Without the meaningful involvement of local government and communities, there will be real challenges to the reform's ultimate success. Communities must feel they own and can influence the critical planning decisions that shape their unique places. Councils must be involved in the development of the rules that they will be responsible for enforcing around quality policy development and efficient and effective plan implementation. This means that councils must play a greater role in the new planning system.

We have discussed above alleviating this concern via strong mechanisms in the NBEA and SPA to ensure that strong local voice is maintained in the plan-making process and RPCs are accountable to their communities.

Consenting

We support requiring applicants to consult with Māori and to fund that consultation.

We also support continuing the COVID-streamlined consenting process for housing and infrastructure with some changes.

However, for the most part, the proposals around consenting are not substantially different from current arrangements. We are concerned that the status quo's inefficiencies will remain.

We have other specific areas of concern, including, but not limited to:

- Removing "controlled activity status" as currently provided for under the RMA (these are consents guaranteed subject to conditions) deletes an important way of ensuring delivery of small-scale projects in a timely and efficient manner and creates a risk that small-scale projects will be subject to a more arduous consenting process.
- Removing "non-complying activity status" as currently provided for under the RMA deletes an important way of ensuring delivery of larger-scale projects in a timely and efficient manner and creates a risk that such projects will be prohibited.
- The imposition of bottom-lines via limits, a more stringent EMF for significant biodiversity and cultural heritage and restrictions on development in 'places of national importance' will all make it more challenging to consent the construction, operation, maintenance, and upgrade of housing and critical infrastructure. Activities that don't have 'exemptions' to limits and the EMF but are nonetheless critical to our communities' ongoing economic and social well-being, will find development even more challenging, if not impossible, to consent. This includes farming, forestry, and other industry.
- Decision-making criteria does not encompass local government planning documents, such as council infrastructure strategies and plans.
- Expanding the notification provisions so that they are all-encompassing is contrary to the objectives of the RM reform, which intends to provide greater efficiencies.
- More realistic and reasonable timeframes for processing requests that reflect the scale and significance of the application are required, to enable good-decision making and recognise councils' resourcing issues.
- Expanding appeal rights so that matters not raised in submissions can still be the subject of an appeal. We are concerned this approach is contrary to the objectives of the RM reform, which intends to provide greater efficiencies.
- Uncertainty for existing consent holders and potential applicants, particularly in relation to duration and review and cancellation of consents. The NPF and NBE plans can impose reviews and limitations on existing consents, including duration, or even cancel existing consents in response to the inclusion of new rules and limits in plans. This creates uncertainty for consent holders and applicants, potentially disincentivising investment in development.
- As above, there are discrepancies in the drafting of the proposed amendments to Schedule 12 of the RMA (Part 3 of Schedule 15 of the NBE Bill) that generate uncertainty and significant concern about whether consent applications for critical infrastructure will have a maximum three-year duration or whether exemptions will be available for such infrastructure.

Compliance, monitoring, and enforcement

In addition to the status quo council monitoring, compliance, and enforcement, the NBE Bill proposes additional CME requirements. For example, councils are required report every three years on the efficiency and effectiveness of plans. Councils must implement and fund a monitoring and reporting strategy, and compliance and enforcement strategy, with the RPC taking the lead on preparing this. While the RPC must invite the councils to provide input to the committee preparing

the strategies, the RPC does not have to adopt that input nor provide reasoning as to why the input wasn't adopted. We want this to be required.

Furthermore, the Bills propose to significantly increase the council monitoring function. For example, the NBE Bill requires councils to monitor permitted activities (clause 783 (1) (g)). The scope for permitted activities is likely to increase under the new system so such monitoring will be timely and costly for councils.

CME is currently underfunded. In particular, permitted activities are generally not well monitored, nor enforced, by local authorities. Councils only tend to get involved in permitted activities when they receive a complaint. Aside from logistics (such as ensuring there is adequate staff resource for such roles), the proposed new CME requirements impose a heavy burden on local government. While we appreciate the inclusion of cost-recovery provisions, we consider that, as is the case now, the true cost of the CME role can never fully be recovered. Therefore, without a sufficient funding contribution from central government to enable rigorous CME, the RM Reforms are unlikely be successful.

Any efficiencies achieved in the rest of the system will be unravelled if CME aren't efficient and effective. As above, councils must feel a sense of responsibility for implementing plans, and councils must have sufficient resource to ensure system users are complying with environmental rules and restrictions.

To achieve the RM reform objectives, local government will need a sufficient funding contribution from central government to fulfil its CME roles in the new system.

As above, training and guidance for councils (developed by or with them) on CME will be crucial to the successful implementation of the new system.

RSS implementation plans

RSS implementation plans will help to ensure RSSs are delivering on strategic priorities and system outcomes. We strongly support requirements around the preparation and adoption of RSS implementation plans. This includes requirements to consult around the development of those plans.

We support flexibility around who is responsible for implementing RSS priorities. If councils are required to deliver on implementation plans and agreements, this could pose challenges if councils feel their involvement in RSS development has been limited.

However, central government needs to clarify how they intend to deliver on strategic outcomes sought through RSSs. Central government should be involved in decision-making on RSSs and also commit to the delivery of strategic outcomes, including beyond current limited funding timeframes. Further clarity about funding mechanisms for ensuring delivery of central government's RSS priorities is required.

Recommendations

74. Ensure local government has a significant role in the development of the NPF, RSS and NBE plans so that councils can take "ownership" of the planning documents and the RPC remains a steward.
75. Central government commits sufficient funding and resourcing to enable local government to implement the new compliance, monitoring, and enforcement responsibilities (subparts 1 and 6 Part 11 of the NBE Bill).
76. Reinstate "controlled" activity status as per under the RMA as well as non-complying status to ensure appropriate projects can be delivered in a timely and efficient manner (Part 3 subpart 3 including clause 117 of the NBE Bill) or alternatively provide guidance on how to deal with previously controlled and non-complying activities under the RMA.
77. Ensure there is a clear consenting pathway for critical infrastructure, albeit where there may be inconsistencies with limits, the EMF and 'places of national importance' (clauses 58(d), 315, 316, 317 and 318 of the NBE Bill).
78. Ensure decision-making includes consideration of local government planning documents such as council infrastructure strategies and plans (clauses 6, 89, 90, 91, and 92 of the NBE Bill).
79. Remove the expanded notification provisions and appeal rights to ensure appeals can only be raised on points raised in earlier submissions before the consent authority (clauses 205-207 and 327 of the NBE Bill).
80. Ensure that restrictive requirements concerning the duration and review of consents do not create insurmountable barriers for consenting critical infrastructure (clauses 266 to 276, and 277 to 284 of the NBE Bill).
81. Ensure that councils have meaningful involvement in the monitoring and reporting strategy prepared by the RPC and have control over any funding implications to ensure accountability and transparency of the expenditure of public money (clause 785 of the NBE Bill).
82. Clarify how central government will deliver on the strategic outcomes that they seek through the RSS, including funding mechanisms (clause 57 of the SP Bill).
83. Ensure that guidance is developed for all processes and procedures for implementing the new system (eg consenting and CME), and funded by central government.

Part 7 - Transition and implementation of bills

As previously discussed, implementing the new system poses significant resourcing and capacity challenges for councils. Local government may not have sufficient capability and capacity to implement such transformative change while operating business as usual and facing other reforms. For the reform to be successful, central government needs to help fund local government's new role in the system. This includes capacity and capability building, training, the provision of guidance and CME. Central government also needs to fully fund the parts of the new system that it should be responsible for. These includes national level policy development and the development of guidance.

Allowing sufficient time for transition is critical. Timeframes need to be flexible to ensure there is sufficient capacity, capability, and training available to implement the new system.

We strongly support a flexible, staged transition so that the NPF, RSSs and NBE plans are prepared sequentially, with model plans are developed to guide others. This approach provides flexibility, and could be staged as follows:

1. The NPF is required to be notified within six months of the NBEA receiving Royal Assent;
2. Regions that are ready complete their RSSs, which provides model RSSs. Other regions prepare their RSSs when ready or alternatively within 10 years (at the latest)
3. Regions that are ready complete their NBE plans to provide model plans, other regions then prepare their NBE plans when ready, or alternatively five years afterward. This will make transition more manageable for councils and communities.

While the above approach should broadly be provided for in the Bills, separate guidance should allow for a significant degree of flexibility in timeframes for preparing planning documents. Time is required to:

1. Allow for the establishment of the new processes and procedures, such as the RPCs in advance of preparing the RSSs; and
2. Enable regions to apply learnings from the model regions so that future plans are done correctly.

Enough time is required to ensure this transformational change is done right at the outset.

Timeframes for implementing most of the NBEA are largely dependent on Orders in Council, which could be made at any time at the discretion of the Minister. For those parts of the NBEA that either come into force on Royal Assent or have a specified time period for implementation, there is much uncertainty about how those parts will fold into the RMA, if at all.

This significant uncertainty about when provisions of the new system will take effect and how they will link with the RMA is making it very difficult for councils to plan for upcoming work, including budgets and resourcing. Councils must know what role current plan-making processes, including in particular for freshwater and urban development, will have in the new system, if any, so they can

potentially stop progressing current planning work at the right time and ensure that funding and resources are not wasted.

In terms of consenting, transitional uncertainty is likely to stifle investment in development, including critical infrastructure and have practical implications on councils' consent processing. Unfortunately, there is no clarity about how consent applications lodged before the NBEA comes into force, or after the NBEA comes into force but before the NPF is notified, or after the NBEA comes into force but before the NBE plans are operative, will be impacted by the NBEA provisions.

The following issues are of particular concern for consenting:

- Several parts of the NBEA will commence on royal assent but there is no direction about how these provisions will impact on existing and ongoing RMA consenting (if at all).
- Several parts of the NBEA will commence at a future date to be determined by the Minister through an Order in Council, but there is no direction about how these provisions will impact on consenting (if at all).
- Schedule 1 Subpart 1 clause 2 of the NBE Bill, which commences on a date appointed by an Order in Council, states that every existing RMA document continues in force according to its terms "subject to the NBEA." Councils need guidance on when this provision will come into force and what the effect will be on consenting. Otherwise, there are significant uncertainties about whether the RMA documents are to be read subject to the NPF (including outcomes and limits), once the NPF is notified if the NPF is a matter to have regard to in consenting.
- Schedule 15 imposes a three-year expiry for consents granted between the NBEA coming into force and the NBE plans being notified. Care must be taken to ensure that will be workable for councils. Consideration needs to be given to the number of consents requiring re-consenting within the three years. This could potentially impose a huge burden for some councils, and we are concerned that it will not be practical to implement, undermining public confidence in the system.

We seek that the NBE and SP Bills be amended to provide a clear demarcation about when parts of the NBEA will begin to fold into the RMA and affect consenting. Without such clarity, there will be much complexity, confusion and inefficiencies in processing consents, undermining the objectives of the RM reform.

Recommendations

84. Central government commit sufficient funding and resourcing to enable local government to implement the new system including capacity and capability building, (generally but also to support iwi/Māori participation in the new system), training in the new system and CME.
85. That the Government urgently provides certainty to councils and communities on what the arrangements for transitioning to and implementing the new system are.
86. Ensure timeframes for transitioning to the new system as a whole are sufficiently flexible. This means before undertaking plan-making processes there must be sufficient capacity, capability, and training available. Sufficient time is also required to enable regions to apply learnings from the model regions so that future plans are done correctly.

87. Implement a staged transition to the new system so that the NPF, RSSs and NBE plans are prepared sequentially, and model plans are developed to guide others and councils. This would involve the NPF being required to be notified within six months; the RSSs then developed when councils are ready or within 10 years (at the latest); and the NBE plans then developed when councils are ready, or alternatively five years afterward. This approach will allow for model plans to be developed. Sufficient time is also required to enable regions to apply learnings from the model regions so that future plans are done correctly.
88. Provide direction and guidance about when the transition from the RMA to the NBEA will occur, including more specificity about when parts of the NBEA will come into force (with sufficient time for councils to transition), when parts of the RMA will be repealed and how the different parts of both Acts will link together (clauses 2, 860 and 861 of the NBE Bill).
89. Provide direction and guidance on how the transition from the RMA to the NBEA will impact planning and consenting, including what framework, purposes and decision-making criteria are relevant (by amending Schedules 1 and 2 of the NBE Bill).
90. Provide clarity about when the NBEA provisions will apply to consent applications, which must be absolutely transparent and workable for councils.
91. Clarify what the intended effect of Schedule 1 Subpart 1 clause 2 of the NBE Bill is, including whether or not it is intended that this clause will make the NPF a relevant consideration when processing consent applications lodged before the NPF comes into force (clauses 2, 860 and 861 of the NBE Bill).
92. Consider further whether the three-year expiry provisions in Schedule 15 of the NBE Bill will be workable for councils. If they are to be retained, drafting inconsistencies must be rectified to provide clarity of meaning.

Appendix 1: Regional Planning Committees – accountability and funding issues

Regional Planning Committees – accountability and funding issues

Executive Summary

1. The Government is proposing to create new Regional Planning Committees (**RPCs**) in its resource management reform programme. This discussion paper focusses on two issues: the funding of the RPCs and the accountability arrangements of the RPCs.

2. The Government intends to repeal the Resource Management Act 1991 (**RMA**) and replace it with three new Acts: the Natural and Built Environments Act (**NBEA**); the Spatial Planning Act (**SPA**); and the Climate Adaptation Act (**CAA**). These new Acts will provide the foundation for the regulation of land use activities in New Zealand, as well as strategic resource management planning. Two of the changes proposed are:

   - The development of long-term regional spatial strategies (**Spatial Strategies**), under the SPA; and

   - The integration of regional policy statements, regional plans and district plans into single "natural and built environment plans" (**NBEA Plans**), under the NBEA.

3. The Spatial Strategies and NBEA Plans will be prepared by the new RPCs, which are proposed to comprise representatives from the constituent local authorities, mana whenua, and the Minister for the Environment (**Minister**).[1]

4. Local Government New Zealand (**LGNZ**) has requested advice and commentary on several issues relating to the process, funding and accountability arrangements of these new RPCs.

5. The "**NBEA Bill**" and "**SPA Bill**" (collectively the "**Bills**") were introduced to Parliament on 15 November 2022. This advice has been prepared based on the structure, function and operation of the RPCs as proposed in the Bills (and particularly the NBEA Bill), to inform potential submissions by local authorities and LGNZ.

6. At a high level, the NBEA Bill establishes the RPCs as a specific statutory form of "committee". The form of this committee reflects the Government's intention for the RPCs to operate independently of local authorities. In particular, there is no requirement for members of the RPC to seek prior authority for their decisions from their appointing bodies, nor is there provision for local authorities to ratify any RPC decisions. It is these aspects which provide the RPCs with decision-making independence.

7. The independence of the RPCs and their relative lack of accountability to local authorities sits somewhat uncomfortably with the RPCs being treated as a committee of each of the local authorities, as well as with the funding and resourcing responsibilities of the local authorities (as appointing bodies).

8. The flexibility afforded to RPCs could present challenges, for example if communities perceive that an RPC is operating with a greater focus on particular districts or areas over others within a region. This could potentially lead to tension between local authorities in agreeing joint funding and resourcing of the RPCs. If the proposed Bills are to be enacted in their current form, it will be important for local authorities and the relevant iwi and hapū groups to establish effective processes for reaching

1 The Minister's representative will only participate in the Spatial Planning Act functions of the committee.

agreement on: the constitution of the RPCs (internally and between themselves), their ongoing administrative and funding arrangements, and mechanisms for managing disputes.

9. In considering these issues, we have separated this advice into three parts:

Part A sets out the proposed structure and operation of the Regional Planning Committees, based on the Bills in their current form.

Part B provides commentary and recommendations on the funding aspects of the proposed Regional Planning Committees, and responds to the specific questions asked by LGNZ.

Part C provides commentary and recommendations on the accountability of the proposed Regional Planning Committees, and responds to the specific questions asked by LGNZ.

Part A: Overview of the proposed structure and operation of the Regional Planning Committees

The function and structure of the Regional Planning Committees is largely consistent with the Review Panel recommendations

10. The Government's direction in the Bills is relatively consistent with the recommendations of the Resource Management Review Panel's report, "New Directions for Resource Management in New Zealand" (**Review Panel Report**).[2]

11. This includes the proposals to develop Spatial Strategies and NBEA Plans, which are the function of the new RPCs. As a summary:

- **Spatial Strategies** (prepared under the SPA) will have at least a 30-year outlook, and will set out each region's approach to integrating land and coastal marine area planning, infrastructure provision, environmental protection and climate change matters.[3] NBEA Plans will be required to be consistent with Spatial Strategies.[4]

- **NBEA Plans** will largely be an integration of existing regional policy statements, regional plans and district plans. Among other matters, they will state the environmental limits of the region, give effect to the new national planning framework, and promote the environmental outcomes specified in the NBEA.[5]

12. The Review Panel Report did not specify whether the same committee would be responsible for the development of both the Spatial Strategies and the NBEA Plans. The proposal now, which was supported by the Local Government Resource Management Reform Steering Group's (**LGSG**),[6] is that a single new committee be established with substantive decision-making functions in relation to the Spatial Strategies and the NBEA Plans.

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2 Resource Management Review Panel "New Directions for Resource Management in New Zealand" June 2020.
3 Spatial Planning Bill 2022 (187 - 1) (**Spatial Planning Bill**), clauses 16 - 18.
4 Natural and Built Environment Bill 2022 (186 - 1) (**Natural and Built Environment Bill**), clause 104.
5 Clauses 102 - 105.
6 Local Government Resource Management Reform Steering Group "Enabling Local Voice and Accountability in the Future Resource Management System", February 2022 (**Steering Group Report**).

13. The NBEA Bill establishes the RPCs as a specific statutory body that will act independently of each local authority in the relevant region, while also being a committee of each of the local authorities. The tension between these two aspects is seen most clearly in the juxtaposition of relevant subclauses in clause 100:

> (1) A regional planning committee must be appointed for each region as a statutory body that is a committee of all the local authorities in the region, in accordance with **Schedule 8**.
>
> …
>
> (3) A regional planning committee must, in performing or exercising its functions, duties, and powers under this Act and under the Spatial Planning Act 2022, act independently of the host local authority and other local authorities in its region, in accordance with the local authority within which planning the committee operates (**host local authority**).[7]
>
> (4) A regional planning committee has separate legal standing from its constituent authorities and organisations for the purpose of commencing, or being a party to, or being heard in legal proceedings.

14. Schedule 8 of the NBEA Bill provides the provisions relating to membership, support and operation of RPCs. A summary of the key clauses is set out below.

Flexibility to determine membership

15. Under clause 2 of Schedule 8, there is flexibility in terms of the membership make-up of RPCs. There must be at least six members, but there is no limit on the total number of members.

16. Each local authority in the region *may* appoint one member. At least two members must be appointed by Māori appointing bodies. The Minister *may* appoint one member, although this member is limited to only participating in functions under the SPA.

17. The upper-limit of membership is to be determined by the region's local authorities and an "iwi and hapū committee".[8] These composition matters include the number of local authority-appointed members and the number of members appointed by the Māori appointing bodies.[9]

18. The NBEA Bill sets out a number of relevant considerations when determining membership, including: the need for effective and efficient decision-making; ensuring regional, district, urban, rural, and Māori interests are effectively represented; the purpose of local government (as set out in section 10 of the Local Government Act 2002 (**LGA**)) and the respective populations of the local authorities.[10]

19. The Local Government Commission has the role of facilitating agreement between the parties, and is otherwise the arbiter of composition issues when agreement is unable to be reached.[11]

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7 The meaning of the words "in accordance with the local authority within which planning the committee operates (host local authority)" in clause 100(3) are unclear and are arguably superfluous.

8 The iwi and hapū committee means the committee formed by the iwi and hapū in a region for the purpose of either agreeing with local authorities the composition arrangements and leading the process to determine the one or more Māori appointing bodies (see Schedule 8, clause 1).

9 This being the body chosen by the iwi and hapū committee to make appointments.

10 Natural and Built Environment Bill, Schedule 8, clause 3(2).

11 Schedule 8, clause 8.

Regional Planning Committees are independent for the purposes of decision-making

20. The independence of the RPCs from local authorities - as expressly provided in clause 100(3) (referred to above) - is further highlighted in Schedule 8. Of note, RPC members may fully participate in decision-making without their appointing bodies' prior authority, and decisions of the RPCs do not need to be ratified by the appointing bodies.[12] The NBEA Bill also places a duty on RPC members to work collectively to achieve the purpose of the NBEA and SPA across the region.[13]

21. In effect, RPC members are not required or expected to represent the interests of their appointing body. If there were such a requirement, it would likely cut across the duty to act collectively with a regional approach. The primary measure of influence that appointing bodies have over their chosen member(s) is in the appointment process. An appointing body may remove or replace any of its representatives on the planning committee at any time in accordance with its appointment policy.[14] This policy must be consistent with relevant requirements in the LGA, including the purpose of local government (section 10) and the principles relating to local authorities (section 14).

22. A regional planning committee may delegate functions, duties, and other powers to a subcommittee (or any other person), but any delegation will not confer a power to make decisions on a NBEA Plan (or plan change) or a Regional Spatial Strategy.[15] A RPC may seek advice from subcommittees in exercising its functions. While the Minister had indicated that sub-regional planning (through subcommittees) would be important for the successful development of NBEA Plans and Spatial Strategies, the establishment of subcommittees is at the discretion of a RPC and they are not empowered to make any substantive decisions on plans.[16] Any member of the RPC and any other person may be appointed as members of a subcommittee.

23. RPCs are encouraged to achieve consensus decision-making, including the adoption of the spatial strategies and NBEA Plans. However, the chairperson can initiate backstop majority voting if they consider this cannot be achieved.[17]

24. It will be for the RPC to appoint a chairperson, co-chairpersons, alternate chairpersons or a non-member to be a non-voting independent chairperson.[18] There is provision for mediation where agreement is not able to be reached[19] and referral to the Minister for intervention if this is unsuccessful.[20] The Minister also has wide powers of intervention if the RPC (or one of its members) is unable to effectively fulfil its responsibilities, including replacement of the RPC with a commission.[21]

12 Natural and Built Environment Bill, Schedule 8, clause 18.
13 Schedule 8, clause 17.
14 Schedule 8, clause 14.
15 Schedule 8, clause 31. Subclause 1 provides that, "A regional planning committee may not delegate its power to make decisions on a plan under this Act or a regional spatial strategy, except as otherwise provided in this Act, the Spatial Planning Act 2022, or any Treaty settlement legislation"
16 Schedule 8, clause 32.
17 Schedule 8, clause 20.
18 Schedule 8, clause 21.
19 Schedule 8, clause 24.
20 Schedule 8, clause 20.
21 Schedule 8, clause 27.

Regional Planning Committees will be jointly funded and resourced by appointing bodies (i.e. local authorities)

25. Part 3 of Schedule 8 provides for the hosting and support of the RPCs. This includes the establishment of a secretariat. The RPCs must appoint a director, who fulfils a similar role to the chief executives of local authorities.[22] The role of the director includes the provision of technical advice and administrative support to RPCs. The director is able to appoint any employees as necessary, with these being employees of the "host local authority".[23] The role of the host local authority (as appointed by the local authorities in the region) is essentially the same as an administering authority for an LGA-type joint-committee: providing administrative support to the RPC and secretariat and manage the RPC's finances.[24]

26. Notably, the host local authority must be treated as having delegated to the RPC all rights, powers, and duties of the host local authority as employer of the director, and that are reasonably necessary to carry out their responsibilities, functions, and duties.[25]

27. Clause 36 of Schedule 8 provides the funding and resourcing arrangements of the RPCs. In essence, the RPCs must be jointly funded and resourced by the appointing bodies / local authorities. If multiple local authorities are required to contribute funding for a RPC, those local authorities must work together in "good faith" to agree the amount of funding to be provided to the RPC, and the share of funding to be provided by each authority. In the case of a region with a unitary authority, the authority must determine the amount of funding to be provided to the planning committee.

28. The remuneration of RPC members will be determined by the Remuneration Authority. The remuneration and expenses of a member appointed by the responsible Minister must be paid out of money appropriated by Parliament.

29. Under clause 38 of Schedule 8, the RPC must prepare and make publicly available a statement of intent for each financial year, reflecting the budget agreed for the RPC. Under clause 39, the RPC must prepare and make publicly available an annual report for each financial year. The contents of the statement intent and annual report are to be prescribed by Order in Council, on the recommendation of the Minister.

There are specific (discretionary) mechanisms for enabling local voice

30. The LGSG recommended that two bottom-up mechanisms be incorporated through the resource management reforms.[26] These have been adopted in the Bills, but whether they are utilised is at the discretion of any local authority:

    - Statements of Community Outcomes (SCOs): Under clause 645, territorial and unitary authorities may prepare SCOs to record a summary of the views of a district or local community within the region.

    - Statements of Regional Environmental Outcomes (SREOs): Under clause 643, regional councils and unitary authorities may prepare SREOs to record a summary of the significant resource management issues of the region, or of a district or local community within the region.

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22 Natural and Built Environment Bill, Schedule 8, clause 33.
23 Schedule 8, clause 33.
24 Schedule 8, clause 35.
25 Schedule 8, clause 33(4).
26 Steering Group Report, pages 11 - 15.

- RPCs must have "particular regard" to both SREOs and SCOs when preparing and changing NBEA Plans and RSS,[27] and also "have regard to" both statements in identifying "major regional policy issues".[28]

Inter-relationship with LGA committee provisions

31. As noted above, the NBEA Bill establishes the RPCs as a specific form of statutory committee, rather than a joint committee under clause 30A of Schedule 7 of the LGA. The reason for this is to achieve the intended independence of the RPC's when exercising their substantive planning decisions.

32. The NBEA Bill aligns with this policy intention by establishing the RPCs as a distinct statutory committee, with Schedule 8 detailing the RPCs constitution arrangements, status and decision-making requirements (as set out above). If the RPCs were constituted as LGA type joint committees, and subject to the provisions of the LGA, this would not sit comfortably with the intended independence from the appointing local authorities, as LGA joint committees are established on the basis of voluntary participation and control by constituent councils (which can include ratification of joint committee decisions).

33. The NBEA Bill expressly applies and precludes certain provisions of the LGA, but does not refer to those in Schedule 7 to the LGA (which relate to members, meetings, the establishment of subcommittees and delegations, employment, among other matters). Clause 40 of Schedule 8 of the NBEA Bill provides a savings type provision, which states:

> In the event of a conflict between a provision in this schedule and a provision in the Local Government Act 2002 or the Local Government (Auckland Council) Act 2009, the provision in this schedule prevails.

34. As a result, the provisions in Schedule 7 of the LGA will apply to RPCs to the extent that they are not provided for in (and do not conflict with) Schedule 8 of the NBEA Bill. There is a potential lack of clarity on whether the Schedule 7 requirements could apply to the RPCs (which could potentially constrain the RPCs), which could benefit from amendments to clause 40.

Part B: Funding and resourcing of the proposed Regional Planning Committees

Overview

35. The NBEA Bill requires each local authority in the region to jointly fund and provide resources sufficient to enable the RPC to perform or exercise its functions, duties, and powers.[29] No statutory guidance is provided as to how each local authority's respective contribution is to be determined, apart from that the relevant local authorities are required to work together in "good faith" to reach agreement on the overall amount of funding for RPCs and each local authorities' contribution.[30]

36. Against this backdrop, and given the role of the RPCs, we consider that funding could be one of the more contentious matters associated with this new framework. In our view, there are two options for the funding of the RPCs:

    36.1 The first option involves, as anticipated by the NBEA Bill, each local authority contributing an agreed amount to the RPC for its annual funding.

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27 Natural and Built Environment Bill, clause 107; Spatial Planning Bill, clause 24.
28 Natural and Built Environment Bill, Schedule 7, clause 14.
29 Schedule 8, clause 36.
30 Schedule 8, clause 36(4).

36.2 The second option involves the regional / unitary council being established as the host local authority and having sole responsibility for funding the RPC. If this approach were adopted, the RPCs would (while still independent) be effectively established as a committee of the relevant regional / unitary council.

37. We discuss each of these options below, along with their advantages and disadvantages. We then discuss other aspects of the funding and resourcing framework, which are common to both models.

How should the RPC's costs be apportioned under a joint funding model?

Process for agreeing funding

38. Clause 36 of Schedule 8 of the NBEA Bill mandates a joint-funding model, by providing:

> (1) The local authorities in the region of a regional planning committee must jointly fund and provide resources sufficient to enable the committee and the secretariat to perform or exercise their functions, duties, and powers.
>
> …
>
> (4) If multiple local authorities are required to contribute funding for a planning committee, those local authorities must work together in good faith to agree the amount of funding to be provided to the committee and the share of funding to be provided by each authority.
>
> (5) In the case of a region with a unitary authority, the authority must determine the amount of funding to be provided to the planning committee.

39. There is no requirement that funding arrangements are agreed (and fixed) prior to composition being confirmed. Clauses 36 and 37 anticipate that funding agreements are reached "in good faith", presumably after composition of the RPC has been resolved under clause 3. This creates the potential for funding to be the subject of ongoing negotiations between local authorities.

40. While in practice composition and funding will likely be resolved at the same time, the NBEA Bill treats those matters separately. This could potentially create room for debate, or arguments that local authorities with greater membership should be contributing more funding. We note that there are no statutory considerations to guide how funding contributions should be determined. In addition, there are also no specified timeframes for:

- Annual agreement between local authorities on the amount of funding to be provided to the RPC and the share of funding to be provided by each authority.[31]
- The RPC to prepare and make publicly available the annual draft statement of intent for the next financial year and submit it to the appointing bodies. [32]
- The RPC to prepare and adopt the annual draft statement of intent for the next financial year, which reflects the agreed budget for the RPC.[33]

41. The lack of any statutory deadline for reaching agreement on funding contributions could also lead to the host local authority incurring initial expenses without having any clear basis to seek contributions

31 Natural and Built Environment Bill, Schedule 8, 36(4).
32 Schedule 8, clause 38(1).
33 Schedule 8, clause 38(2).

from the other local authorities. This is particularly as the RPC will incur expenditure before an agreed budget is finalised.

Recommendation 1

That statutory guidance is provided on the process and timeframes for agreeing funding arrangements, in particular whether:

- Each local authority's respective contribution (if a joint-funding arrangement is adopted) should be agreed at the time of composition of the RPC, with this able to be amended from time to time by agreement, or otherwise referred to the Local Government Commission.

- A RPC should be required to prepare and make publicly available the annual draft statement of intent (including a draft budget) for the next financial year and submit it to the appointing bodies by a specified statutory timeframe. In turn, local authorities should then be required to review the draft statement of intent and budget and use that to determine the amount of funding to be provided to the RPC.

- The RPC must adopt the statement of intent (including the final budget) by a specified statutory timeframe and once agreement has been reached with the local authorities. The mechanism for resolving funding disputes under clause 37, Schedule 8 would remain applicable (we comment on this dispute resolution process below).

Lack of statutory considerations for joint-funding contributions

42. The Bills do not provide any statutory considerations for determining each local authority's respective funding contribution. While this provides a measure of flexibility to councils, in our view, it also leaves scope for disagreement. Clause 37 of Schedule 8 provides for funding disputes to be determined by an independent decision-maker appointed by the Minister, but also does not provide any relevant considerations. It is also unclear what process this decision-maker would follow to reach the determination, including whether the relevant councils would be provided the opportunity to make submissions in this process.

43. In our view, the Local Government Commission could be an appropriate body to determine funding disputes. The Commission is familiar with local government, reorganisation proposals, and matters associated with remuneration, which will mean that it is well-placed to investigate any disputes. We also consider that relevant considerations should be incorporated to inform any decision on funding disputes, and to provide some measure of certainty to local authorities as to how the determinations will be arrived at.

Recommendation 2

That the Select Committee consider whether the Local Government Commission is an appropriate decision-maker for funding disputes, and that relevant considerations and procedural requirements are set out in the legislation to guide any determination on funding matters (including potential involvement from affected local authorities).

Potential difficulty in apportioning funding between territorial authorities

44. One of the potential difficulties with apportioning funding in relation to spatial / policy planning is the variance in benefit derived from a RPC's activities. While there are several examples of innovative joint-funding arrangements having been agreed by LGA joint-committees,[34] many formulas will realistically lead to some inequity in a spatial / RMA planning context. For example, an agreement that each local authority contribute based upon their number of rating units (or separately used or inhabited parts) may insufficiently recognise the demands of planning activities in sparsely populated areas.[35]

45. One reason for this difficulty is that the extent of activities undertaken within a particular district annually may vary, depending on the projects commenced or development pressure within certain districts. This variation could generate tension between member entities, and require review on a case-by-case basis. A solution for this could be to have a standard agreed apportionment, reviewed annually, with a refund / reallocation process if it is clear that the benefit has been greater for certain member councils. However, this may also add another layer of complexity, monitoring and tension to the matter of funding.

How would a regional / unitary council funding model operate?

46. Funding the RPCs solely through regional / unitary councils would simplify funding decisions, consolidating funding with a single local authority that is democratically accountable across the relevant region (as per the Spatial Strategies and NBEA Plans). Given the intended role and function of the RPCs in producing "regional" strategies and plans, there is a degree of logic and simplicity with this option.
47. Under this model, once the RPC's budget has been set, the regional / unitary council would be able to determine how the RPC is to be funded. If funded through rates, the regional council would be able to determine how the cost of the RPC's activities should be appropriately distributed throughout the community, potentially using differential and/or targeted rates.[36]

48. If a regional / unitary council model is adopted, it may be appropriate for the proposed funding mechanism (for example, the differentials proposed to be adopted) to be subject to approval from the constituent territorial authorities. This could also add a level of unnecessary complication to financial planning, and bring politics into a scenario where it would be the regional council that is fundamentally accountable.

49. We also acknowledge that there may be scenarios where the regional council will not want to take on this role, or that of the host authority. The resourcing implications of taking on the host authority role may be significant, and certain regional councils may prefer that other councils play the role of host authority, and contribute to funding (for example, larger metro councils).

50. Providing for the option of a regional / unitary council funding model will require amendment to clause 36(1) of Schedule 8. As currently drafted, clause 36(1) anticipates contributions from each of the relevant local authorities, and it will not provide for a single-funding model.

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34 One example is the Canterbury Waste Joint Committee, where the territorial authorities within the Christchurch region have agreed to determine funding based upon each territorial authority's proportion of the region's population. Refer Canterbury Waste Joint Committee Agreement, June 2011. Another example is the Greater Christchurch Partnership, which agreed a funding formula funding formula involving contributions by Canterbury Regional Council (37.5%); Christchurch City Council (37.5%); Selwyn District Council (12.5%) and Waimakariri District Council (12.5%). Refer Memorandum of Agreement Greater Christchurch Partnership Committee, dated 10 September 2021, available here.

35 Such as identification and protection of wetlands, outstanding natural features and landscapes and significant indigenous vegetation and significant habitats of indigenous fauna, which tend to be more common in such areas

36 Pursuant to Schedule 2 of the Local Government (Rating) Act 2002.

Recommendation 3

That the NBEA Bill be amended to provide local authorities with the option of deciding a sole regional /unitary council funding model.

Possible concerns with a regional / unitary council model

51. While our current thinking is that a regional / unitary council funding approach would be a better fit with the product developed by the RPCs, their independent nature may still raise complexity in circumstances where a regional council does not endorse the process adopted or eventual decisions made by a RPC, and intends to challenge / appeal any decision. In that case, the regional council would be required to fund both its appeal and the RPC's defence (if the RPC is separately represented, and that expense has not already been budgeted for).

52. Another potential downside of a single-council funding model is that regional councils may consequently seek to have more members appointed to the RPC (relative to territorial authorities). Conversely this issue may also arise for a joint funding model, where those councils paying more will expect more members. In practice, there is potential for political disagreements with either model. Given the criteria included in Schedule 8, we do not necessarily consider that funding arrangements are necessarily relevant when considering the constitution of RPC membership.

53. The regional / unitary council model could also result in a concern that territorial authorities have no control over regional planning processes. However, as the RPCs are established as fully independent entities, the provision of funding will not provide any greater means of control. While perceptions around control are relevant, establishing a simple funding regime is in our view more important.

Existing examples

54. The regional funding model has been adopted by the Local Government Commission in its 2018 West Coast reorganisation proposal. In this scenario, the region prepares a combined plan (Te Tai o Poutini Plan), with a joint committee (Te Tai o Poutini Plan Committee) responsible for preparing and approving the proposed plan.

55. The committee is made up of members of the four West Coast councils and local iwi. The reorganisation scheme requires the West Coast Regional Council to collect a rate for the operation of Te Tai o Poutini Plan Committee. The Local Government Commission's Reorganisation Scheme Order provides that:[37]

> **13. Funding**
>
> As provided for in the Local Government Reorganisation (West Coast Region) Final Proposal Order 2018:
>
> (1) Subject to clause 13(b), the costs for there to be a combined district plan and for preparing, notifying, adopting, periodically amending and reviewing the combined district plan will be funded by the West Coast Regional Council by a rate set in relation to all rateable land within the West Coast Region.
>
> (2) The Tai Poutini Plan Committee may agree that the relevant West Coast district council or councils, or their district or districts, is to be responsible for funding work relating to a particular

37 Local Government Reorganisation Scheme (West Coast Region) Order 2019.

amendment to the operative combined district plan which will have only, or predominantly, a localised impact.

56. As another example, Raynor Asher QC produced a report in 2021 which considered which Hawke's Bay local authority should lead and fund the implementation of coastal hazard mitigation projects for the Clifton to Tangoio coast.

57. This area was within the boundaries of the Hawke's Bay Regional Council, Hastings District Council and Napier City Council. The report concluded that the regional council should fund the activity, noting that a single agency model simplifies the funding process, and would not affect the overall cost.[38] Similar logic could support the funding of the RPCs at a regional level.

What legislation and local government processes must councils consider when funding regional planning committees?

58. The Bills are silent as to the mechanisms available to local authorities to fund RPCs, which suggests that the existing LGA methods councils currently used to fund RMA processes and planning activities will continue to apply.

59. This could pose several challenges as the LGA (in its current form) could impose limitations on the use of council funding for the RPCs. The reason for this is that the "critical filter" through which funding must be considered relates to the "community" served by the relevant activity being funded. Where more than one territorial authority is funding a RPC, this raises questions about the "community" being served in terms of section 12 of the LGA. While there will (technically) be benefit to all councils within a region, it will be the region as a whole that would benefit the most.

60. The most relevant LGA provisions are as follows:

- Section 101(3), which sets out the requirements and considerations for councils when determining how to fund particular activities. This provision has been described by the High Court as the "critical filter" by which funding sources in respect of each activity must be considered and determined.[39]

- Section 101(3)(1)(a), which sets out a list of mandatory considerations, which must be considered cumulatively when determining funding sources for each activity to be funded. These are:

  (i) the community outcomes to which the activity primarily contributes; and
  (ii) the distribution of benefits between the community as a whole, any identifiable part of the community, and individuals; and
  (iii) the period in or over which those benefits are expected to occur; and
  (iv) the extent to which the actions or inaction of particular individuals or a group contribute to the need to undertake the activity; and
  (v) the costs and benefits, including consequences for transparency and accountability, of funding the activity distinctly from other activities

38 Raynor Asher QC, "Review and Recommendations for the Clifton to Tangoio Coastal Hazards Strategy Joint Committee", 6 May 2021, available here.
39 *Neil Construction Ltd v North Shore City Council* [2008] NZRMA 275 (HC), at [214].

- Councils are then required under section 101(3)(b) to "stand back" after a proposed allocation of liability for revenue and consider:[40]

  > the overall impact of any allocation of liability for revenue needs on the current and future social, economic, environmental, and cultural well-being of the community.

- A council's revenue and financing policy must state the council's policy on what sources of funding the council will use to fund its different activities.[41] This must show how the local authority has, in relation to the sources of funding identified in the policy, complied with section 101(3).

61. We discuss the different funding sources available to councils for the RPC below.

Are amendments to the LGA's funding provisions required?

62. At this stage, we do not consider it necessary for new, specific statutory considerations to be developed to guide funding decisions for the RPCs. The current (and general) section 101(3)(a) considerations are already relied upon when determining the funding of strategic planning activities, and the functions of joint committees under the LGA. There is no obvious reason why these would need to change. However, the one area where amendment could be of benefit would be to specifically recognise and consider the contribution made by other councils, to the extent that this is not directly considered under criteria (ii) above. This would not present issues if a regional / unitary council funding model is adopted.

63. The definition of activity could also be amended to confirm that funding of the RPCs is an "activity" under section 5 of the LGA.[42] The relevant definition is set out below:

> activity—
> (a) means goods or a service provided by, or on behalf of, a local authority or a council-controlled organisation; and
> (b) includes—
> (i) the provision of facilities and amenities; and
> (ii) the making of grants; and
> (iii) the performance of regulatory and other governmental functions.

64. We note that any funding of the RPCs will need to be included in long-term plan and annual plan budgets, with councils' revenue and financing policy stating their policy on the sources of funding the council will use to fund this expenditure.[43] The same will also apply to annual reports.

65. It would not be appropriate however, nor practically possible, for councils to be identifying the community outcomes to which the regional planning contributes, and reporting on the progress towards these outcomes (as required for long-term plans and annual reports). This is because of the limited ability for any council to control the outcome of a RPC process (given the RPC's independence). Specific provision should be made in the NBEA Bill and/or LGA for this exemption, if the joint funding model is to proceed.

Recommendation 4

40 *Paekakariki Informed Community Inc v Kapiti Coast District Council* HC Wellington CIV-2003-485-2760, 29 September 2004, at [52].
41 Local Government Act 2002, section 103.
42 While the RPCs will be independent, we acknowledge that they will be providing a service on behalf of the respective local authorities, being deemed a committee of each of the local authorities: Natural and Built Environment Bill, clause 100(1).
43 Local Government Act 2002, section 103.

That specific provision is made in the NBEA Bill and/or LGA that exempts local authorities from identifying and reporting on the community outcomes that regional planning contributes towards, as required for long-term plans and annual reports.

What funding mechanisms could councils use to fund regional planning committees?

66. Local authorities have a range of funding tools available to them, including general rates, targeted rates, development contributions, central government subsidies and grants, regional fuel taxes, and fees and charges.[44] Local authority planning functions are most often rates funded, using general rates. A similar approach may be appropriate for the funding of the RPCs, irrespective of the option used.

67. Turning to the section 101(3)(a) criteria above, the use of general rates as the principal funding source would seem to follow from the view that resource management planning is a public good activity that benefits the community as a whole, and that the need to undertake this activity is not necessarily contributed to by any particular group. Outside of private plan changes, there is also limited ability to adopt a user-pays system utilising fees and charges for regional planning processes.

68. Targeted rates can be used in conjunction with general rates in circumstances where there is a particular planning programme that benefits particular rating units. This option helps to distribute planning costs between ratepayers in a more proportionate manner, relative to the benefits derived from the exercise. As an example, Auckland Council sets a targeted rate on rating units in the city centre, which is used to partly fund the costs associated with its city centre redevelopment programme.[45]

Should the Bills direct the use of specific funding mechanisms?

69. Clause 821(2) provides the power for RPC's to fix fees or charges for the processing of independent plan change requests and notices of requirement, but there are no other specific powers for a RPC to fund its own operations. The Bills have not sought to direct, or provide, any other, new funding mechanisms which could be used to fund the RPCs (and therefore reduce the local authority funding). In our view, it is appropriate that the Bills have avoided directing the use of specific funding mechanisms, as this would overlap with policy decisions that should properly remain with the relevant councils to evaluate and determine.

70. If there was an express requirement to use specific funding mechanisms within the Bills, this could inappropriately limit local authorities' discretion to determine, for themselves, how the RPC or other activities will be funded. It would also run counter to the general flexibility provided by the LGA (and Local Government (Rating) Act 2002) for councils to determine how to fund activities. There could, for example, be justifiable policy reasons for utilising funding from outside of the general rate, including the use of central government funding contributions.

71. Finally, the Bills have not considered whether there could be an opportunity to develop new funding mechanisms for regional planning activities, which could alleviate the burden on local authorities and their ratepayers. While "environmental contributions" (the equivalent of the current financial contributions) are provided for, it is not clear whether these contributions can be lawfully used as a type of "levy" for regional planning activities. There is some potential for resource consent levies (similar to building levies) to be collected as a charge on successful resource consent applications,[46]

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44 An inclusive list of these sources is set out in section 103(1)(2) of the LGA.
45 Auckland Council, Revenue and Financing Policy, 29 June 2022 at 14.
46 Recognising that consent-holders (who may or may not be ratepayers) are those that are taking advantage of regional planning, and potentially benefitting more than other ratepayers.

with the resulting funding reserved for the RPC's benefit, although this is a new policy consideration that could be argued to sit outside of the current RMA reforms. We note that if this model is used, the processing consent authority should still be able to recover its own costs in the normal way.

How will RPC members be remunerated?

72. The remuneration of members of the RPCs will be set at a rate determined by the Remuneration Authority. Central government will pay the remuneration of the Minister's appointed member.[47] Local authorities, pursuant to their agreed funding arrangements, will fund the remuneration and expenses of all the other members, including iwi members.

73. The Resource Management Review Panel considered that funding and support should be provided to enable a greater role for Māori in planning.[48] The Bills have provided for this funding to be borne solely by local authorities.[49]

74. Given the current funding constraints on local authorities, it may be that additional funding is required from central government, for either or both appointed council members, and mana whenua representatives.

What happens in situations where a Regional Planning Committee's costs exceed their funding?

75. An RPC's agreed budget in the final statement will need to be set in light of the RPC's anticipated work programme, and will presumably need to cover contingencies, such as appeal processes. However, it cannot be expected that the budgeted funding will cover the RPC's costs.

76. Because the RPCs are not established as separate legal entities (instead they are joint committees, deemed to be a committee of each of the local authorities),[50] they are not able to utilise their own reserves and incur their own debt. As a result, if a RPC exhausts its funding, we expect that the host local authority will satisfy any of the RPC's immediate expenses, and seek to recover those from the other local authorities (pursuant to agreed funding terms).

77. In the event that funding outside of the annual budgeted amount is required, we anticipate that the RPCs will need to make a request to the relevant local authorities. This request would need to be considered by the local authorities in light of their statutory responsibility to "jointly fund and provide resources sufficient to enable the committee and the secretariat to perform or exercise their functions, duties, and powers."[51]

What happens in situations where councils are the ones leading court action against a Regional Planning Committee?

78. While the RPCs have decision-making independence, they are not separate (independent) legal entities, but committees of each of the local authorities in the region. As a result, the decisions made by a RPC will be a decision of the collective local authorities. This raises a question in relation to the legal status of the RPCs, and how they are practically supported through court proceedings.

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47 Natural and Built Environment Bill, Schedule 8, clause 31(1).
48 Resource Management Review Panel Report, page 96.
49 Natural and Built Environment Bill 2022, Schedule 8, clause 36(1).
50 Clause 100(1).
51 Schedule 8, clause 36(1).

79. If legal action were initiated against a LGA-type joint-committee (say, for example, in judicial review) the approach would be to name each of the constituent local authorities as defendants. Generally speaking, it would not be possible for a local authority to challenge its own decision.

80. The NBEA Bill addresses this situation by providing the RPCs with separate juridical status, with clause 100(4) providing:

> (4) A regional planning committee has separate legal standing from its constituent authorities and organisations for the purpose of commencing, or being a party to, or being heard in legal proceedings.

81. This provision assists to clarify that any affected local authority will have the standing to bring an appeal (which reflects their ability to make submissions on any proposed plans). We consider this to be a necessary accountability mechanism, particularly given the lack of control that local authorities will have over the substantive decision-making on strategic planning matters, and because they will become the plan administrators.

82. If a local authority were to bring an appeal against a RPC decision, on the current model it would essentially be required to fund both its own costs and the RPC's costs (as part of the joint group of appointing councils). In practice, it may be that local authorities will need to make provision in their budget for funds for appeal processes, both for the RPC and their own possible appeals.

83. The legal aspects of the process have not been a focus of this advice, but presumably the separate juridical status of the RPCs will allow them to engage their own representation independent of the relevant local authorities (and particularly the host local authority).

How will the Regional Planning Committee's activities be resourced?

84. Clause 31 of Schedule 8 compels councils to jointly resource the activities of the secretariat. Distinct from funding however, there is no statutory process for resolving any resourcing disputes.

85. In practice, we expect that different RPCs across the country will develop their own approaches to resourcing and structuring. If the funding local authorities provide insufficient resources to the secretariat of any RPC, this will likely result in the secretariat director establishing a more permanent secretariat, which the local authorities will be required to jointly fund in any event.[52]

86. We also note that it may be in the interests of the constituent local authorities to resource the RPC so that there is appropriate experience and understanding of their respective regions and districts, and that this may also be beneficial from an economic perspective. This may result in a transfer of planning staff to the secretariat (and the technical employ of the host local authority). Secondment arrangements may also be adopted, in which case the expenses of this will be borne by the secretariat.

87. There are several matters that could warrant further consideration, including whether it is appropriate for the director (appointed by the RPC) to have the ability to unilaterally make appointments to the secretariat, given that the costs of remunerating employees will fall on the relevant funding local authorities,[53] and the host local authority will remain the legal employer. Under the proposed framework it appears that the host local authority will retain legal responsibility for all employees, despite the director having all the rights, powers, and duties of an employer in relation to secretariat

52 We note that the director of the secretariat has broad powers to appoint employees and incur expenses to enable the secretariat to operate efficiently and effectively.

53 Noting that Schedule 8, clause 33 expressly "does not allow the director to commit to expenditure outside the agreed budget in the final statement of intent".

staff. The employment law implications of this approach could warrant further consideration but are outside the scope of this discussion document.

Part C: Accountability

88. Collaboration between local authorities on strategic planning exercises already occurs throughout New Zealand (see, for example, the GCP, and Tasman District Council and Nelson City Council, who have recently concluded a joint Future Development Strategy process). It is not surprising that this occurs given that local authorities (regional and territorial) share many of the same statutory responsibilities and functions under the RMA, as well as under the LGA.[54] Because of this, collaboration or co-operation (including sharing of resources) can be an effective means of achieving outcomes and delivering services in an efficient manner.

89. However, there can be tension between collaboration and community accountability in a local government context. Where collaboration occurs under the LGA, the legislation provides an enabling framework which is geared towards ensuring that accountability is maintained through decision-making. If a non-LGA model is used, it would need to contain its own accountability mechanisms and requirements, or be framed in a way that ensures that there is no potential for conflict between key stakeholders.

90. The Bills have proposed an RPC model that operates outside the LGA framework. The structure reflects the Government's intention for the RPCs to have operational independence from local authorities.

91. While clearly aligned with the Government's intentions, the lack of accountability to appointing bodies sits uncomfortably with the Bill deeming RPCs to be a committee of each of the appointing local authorities, as well as the requirements to prepare an appointment policy that is consistent with the requirements of the LGA (including the purpose and principles), and the related funding and resourcing responsibilities of the local authorities.

How can Regional Planning Committees be accountable to the organisations that fund their operation?

92. The challenge in moving to a regional model is that there will be multiple local authorities that will lose some oversight or control over planning decisions. This is a live issue for local authorities to contend with, but the difficulty is that making the RPCs entirely accountable (or accountable in part) to local authorities will involve politics, and could result in a challenging and potentially unworkable model.

93. One of the stated intentions of these reforms is to reduce political involvement in planning decisions, and the proposal is to achieve this by way of independent committees. Even so, there should still be appropriate accountability mechanisms, and the Bills provide four primary accountability mechanisms for RPCs: appointment, funding, SCOs and SREOs, and appeals. Other than appeals, we discuss these further below.

Appointment

94. The make-up of the RPCs is limited to three different types of appointing bodies: local authorities, Māori , and the responsible Minister. Those bodies are able to appoint members, in accordance with

54 We note that, while regional councils and territorial authorities have a number of different regulatory functions and responsibilities, they share the same essential purpose, role and powers under the LGA framework. Regardless of their differing regulatory responsibilities, collaboration is still effective means of achieving outcomes (and delivering services) in an efficient manner.

a composition arrangement agreed to at the outset between local authorities and the iwi and hapū committee in the region of a RPC.

95. There is no provision for members of a RPC to represent the interests of their appointing body. Instead, members are required to "work collectively to achieve the purpose" of the NBE and SPA Bills, "across the region of the committee",[55] without prior authority from an appointing body.[56]

96. We understand that this feature of the NBEA Bill may be a key concern to local authorities, as it will significantly eliminate the current democratic accountability for planning decisions (at both regional and local levels). However, if there was an ability to act in the interests of a district, rather than region, or a need for prior authority, then that would run counter to design of the RPCs as independent, and potentially conflict with the duty of RPC members to act collectively, and "do all things reasonably possible to achieve consensus in its decision making" (clause 10, Schedule 8).

97. Because of the stated policy intentions sitting behind the RPCs, there are few accountability mechanisms in play for local authorities. The primary means of influence of any appointing body will be through the appointment process, and through the ability to remove or replace that member, at any time, in accordance with its appointment policy.[57]

98. We note that local authorities are not required to appoint members to a RPC. This is discretionary, although composition arrangements are to ensure that, having regard to the purpose of the NBEA and SPA:[58]

- the size of the RPC supports effective decision making and efficient functioning; and
- regional, district, urban, rural, and Māori interests are effectively represented; and
- consideration has been given to the purpose of local government (as set out in section 10 of the LGA; and
- in the case of a region with multiple local authorities, the local authority membership of the committees has been agreed with consideration of the different populations of the individual local authorities and the desirability of applying some weighting in respect of that.

99. Given the requirement to consider the purpose of local government when making appointment decisions, we would expect that each local authority in a region would want to appoint at least one member to the RPC.

100. The appointment policies (for local authorities) are required to be consistent with relevant requirements in the LGA, including the purpose of local government (section 10) and the principles relating to local authorities (section 14). Of note, sections 10 and 14 expressly highlight the importance of democratically accountable decision-making, by directing:

- Enablement of democratic local decision-making and action by, and on behalf of, communities.[59]
- Conduct of Council business in an open, transparent, and democratically accountable manner.[60]

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55 Natural and Built Environment Bill, Schedule 8, clause 17.
56 Schedule 8, clause 18.
57 Schedule 8, clause 14(1).
58 Schedule 8, clause 3(2).
59 Local Government Act 2002, section 10(1)(a).
60 Section 14(1)(a)(i).

- That there be an awareness of, and regard had to, the views of its communities.[61]

101. There may be a question as to how these policies should be prepared in order to give effect to the purpose of local government and the section 14 principles, while also supporting the independence of the RPC and its members.

102. It appears to us that the appointment policies will need to be prepared in accordance with the standard LGA decision-making requirements, and be subject to consultation (where necessary). In practice, it would seem appropriate to appoint members that are well-versed in regional or local issues (as appropriate), so that they can represent the interests of their Council and community. This could include by appropriately representing any communicated Council's interests, and by ensuring appropriate recognition of any applicable SCOs or SREOs adopted by the Council.

103. These members do not necessarily need to be elected members, but could be, and if elected members are appointed then the tension with the declaration that they must make in clause 14 of Schedule 7 to the LGA will be resolved by the express statutory requirement to act to achieve the purpose of the Bills "across the region of the committee".

104. We note that if an appointment policy were prepared and adopted that sought to provide for removal and replacement of a member, as a means of exercising some control of the RPC, this could be considered to run counter to the independence of the RPC, and might trigger Ministerial intervention.[62]

> Recommendation 5
>
> That the references to the purpose and principles of local government in the provisions relating to composition arrangements and the appointment policies be reconsidered.

Funding

105. The director of the secretariat has broad powers to carry out the RPC's functions, including the power to enter contracts and other agreements (on behalf of the host local authority) to enable the secretariat to operate efficiently and effectively. This broad power is constrained by a provision that this "does not allow the director to commit to expenditure outside the agreed budget in the final statement of intent".[63] The budgeting process will therefore play a significant role in ensuring the RPC and secretariat do not incur significant expenditure on behalf of the local authorities.

106. As we have noted above, the funding local authorities are charged with determining the total amount of funding to be provided to the RPCs. There are restrictions in the NBEA Bill that seek to ensure that local authorities cannot direct the use of funding as a potential means of controlling RPC decisions. In particular, the local authorities must not direct the RPC as to the use of the funding, or alter the amount of the funding without the consent of the RPC.[64]

107. While providing an ability for local authorities to direct the use of funding by the RPCs could be considered to run against their independence, because of the direct relationship between the level of funding and a council's overall balance sheet, it may be of interest to local authorities to seek amendments to clause 38 of Schedule 8 to provide councils with greater potential involvement in the budget setting process. This could include provision for comment on draft budgets or statements of

61 Local Government Act 2002, section 14(1)(b).
62 Natural and Built Environment Bill 2022 (186 - 1), Schedule 8, clauses 26 and 27.
63 Schedule 8, clause 33(4)(b).
64 Schedule 8, clause 36(6).

intent. This input could be use in the event that the funding local authorities are interested in making alternative arrangements for the resourcing of the RPCs (e.g. through secondment arrangements, etc), to reduce the financial burden.

Recommendation 6

That local authorities consider amendments to provide an increased role / involvement in the RPC budget setting process.

Statements of Community and Regional and Environmental Outcomes (SCOs and SREOs)

108. As discussed above, the Bills have adopted the recommendations of the LGSG to incorporate bottom-up mechanisms in the resource management reforms.[65] Territorial and unitary authorities may prepare SCOs to provide a summary of the views of a district or local community within the region.[66] Regional councils and unitary authorities may prepare SREOs to provide a summary of the significant resource management issues of the region, or of a district or local community within the region.[67] RPCs must have "particular regard" to these statements when preparing and changing NBE Plans and RSSs,[68] and also "have regard" to them when identifying "major regional policy issues".[69]

109. In our view, and given the independence of a RPC and its members, consideration should be given to whether the preparation of SCOs and SREOs should be mandatory, the scope and detail of the SCOs and SREOs should be further prescribed, and there should be stronger direction, rather than RPCs simply giving "particular regard" to these statements. In addition, and while it may not need to be reflected in the legislation itself, we would expect that the SCOs and SREOs would need to be understood and advocated for by any appointed members when making decisions as part of the RPC.

110. In our view, the primary benefit of the SCOs and SREOs is to provide specific local authority input into RPC decision-making. It is trite to say that the achievement of the NBEA Bill's system outcomes will require a framework that is aware of, and sensitive to, community views.

111. In terms of how this outcome may be achieved, one option (which has parallels to the Te Mana o te Wai statement construct in the Water Services Entities Bill) could be to include a requirement for a RPC to report on how it has sought to achieve the outcomes specified in a SCO or SREO, and provide associated reasons. The benefit of this option is that it will bring those documents into frame for the RPC when making decisions, and highlight their importance.

Recommendation 7

That consideration be given to whether the preparation of SCOs and SREOs should be mandatory rather than discretionary, and that the scope and detail of the SCOs and SREOs should be further prescribed in the legislation. In addition, that consideration be given to including stronger direction in the Bills that require RPCs to consider and respond to the SCOs and SREOs, including as part of their decision-making.

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65 Steering Group Report, pages 11 - 15.
66 Natural and Built Environment Bill 2022, clause 645.
67 Clause 643.
68 Clause 107; Spatial Planning, clause 24.
69 Natural and Built Environment Bill, Schedule 7, clause 14.

Do the Bills sufficiently recognise the relationship between resource management planning and LGA functions and requirements?

112. While not directly related to the accountability of the RPCs, we note the important relationship between planning functions and responsibilities and requirements under the LGA. Strategic, spatial planning is an important aspect in implementing community outcomes and council activities. Because of this, long-term plans generally inform regional and district planning, including making appropriate provision for council services and infrastructure and deciding where it will be located to service growth. The importance of strategic, integrated urban growth is recognised by the National Policy Statement on Urban Development Capacity 2020 in particular.

113. One consequence of shifting substantive decision-making functions to the independent RPCs is that it could complicate the relationship between these important aspects.

114. Under the SPA Bill, spatial strategies will play a crucial role in integrating the performance of functions under the NBE Bill, the Land Transport Management Act 2003, and the LGA. For example:

- NBEA plans are required to be consistent with the relevant RSS,[70]
- Regional land transport plans under the Land Transport Management Act 2003 are required to be consistent with the relevant spatial strategies.[71]
- Councils' long-term plans are required to "set out steps to implement the priority actions for which the local authority is responsible under the spatial strategies and to require annual reporting of the steps taken.[72]

115. Given the interrelationship between spatial planning, land transport and community infrastructure, it may be appropriate for these matters to be considered in an integrated manner. We consider that further mechanisms to provide for council influence over spatial planning could be considered.

Recommendation 8

That the Bills provide more specific statutory mechanisms for councils to inform spatial planning by the RPCs, which recognise existing plans developed under the LGA.

What existing legislation and/or local government processes might need to change to support the new regional planning arrangements?

116. Given that the Bills are generally quite explicit as to the RPCs' status, functions and procedures, the application of the LGA will likely be significantly limited. As a result, there is no clear need for the LGA to be substantively amended to accommodate these reforms.

117. There is already some overlap between these statutes and their processes, with many of the LGA provisions not applying to local authorities' resource management decision-making.

70 Natural and Built Environment Bill, clause 97(b); Spatial Planning Bill, clause 4(1)(a).
71 Spatial Planning Bill, clause 4(1)(b).
72 Clause 4(1)(c) and (d).

118. One area that would be worth addressing in the NBEA and SPA Bills is the extent to which the accountability arrangements under Part 6 of the LGA would apply to regional planning decisions under the new system. As an example, councils will need to make provision in their long-term plan and annual plans to meet the funding of the RPCs. The Bills are silent as to whether councils will be required to include any relevant information on this new funding activity in their Annual Report. This could be an area that warrants clarification.

119. As the RPCs are not local authorities in terms of section 76 of the LGA, it is implicit (that the Part 6 provisions will not otherwise apply to RPCs, or members of the RPCs.

120. Where there is uncertainty however is around the process that local authorities should use if they choose to prepare SCOs[73] and SREOs.[74] While we expect that the LGA decision-making provisions will apply, including section 82 of the LGA, this could be clarified. We also note that there is a disconnect between clauses 643 and 645, with the general obligations set out in subpart 1 of Part 1 of the NBEA Bill only applying to SCOs. It is not clear to us why those same requirements should not apply to the preparation of SREOs.

Recommendation 9

That the Bills clarify whether the Part 6 LGA decision-making requirements apply to the development of SCOs and SREOs, and if so to what extent.

73 Natural and Built Environment Bill, clause 645.
74 Clause 643.

Appendix 2: The Government's RM Reform objectives

The Government's reform of the RM system is guided by five key objectives.

1. Protect and where necessary restore the natural environment, including its capacity to provide for the wellbeing of present and future generations.

2. Better enable development within environmental biophysical limits including a significant improvement in housing supply, affordability and choice, and timely provision of appropriate infrastructure, including social infrastructure.

3. Give effect to the principles of Te Tiriti o Waitangi to provide greater recognition of te ao Māori, including mātauranga Māori.

4. Better prepare for adapting to climate change and risks from natural hazards as well as mitigating the emissions that contribute to climate change.

5. Improve system efficiency and effectiveness, and reduce complexity, while retaining appropriate local democratic input.