

// **SUBMISSION**



NATURAL AND BUILT ENVIRONMENT BILL AND SPATIAL PLANNING BILL

// Local Government New Zealand's DRAFT submission for member feedback

// DECEMBER 2022

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

Glossary

CAA – Climate Adaptation Act

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

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Executive summary

LGNZ broadly supports the need for resource management (RM) reform. New Zealand's current RM system is complex and time consuming. It's not delivering the best outcomes for our natural and built environments nor our communities.

LGNZ broadly supports the Government's reform objectives (listed in Appendix 2). However, councils are sceptical about whether the three new pieces of RM legislation will deliver on those objectives and provide a simpler, more efficient system. Councils are particularly concerned about whether the new system will retain appropriate local democratic input. Many of our members wonder if the proposals will fundamentally erode local democratic input into planning decisions.

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.
- // That the proposed arrangements for supporting Regional Planning Committees (RPCs) are complex and present funding and resourcing challenges for councils.
- // That new clauses in the bills will generate costs for councils and communities in testing their meanings in court. While we broadly support the purpose and principles of Natural and Built Environments Bill and Spatial Planning Bill, we have some concerns around interpretation and implementation.
- // 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 to support iwi/Māori to participate meaningfully 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 and the Review into the Future for Local Government.
- // 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 lack of clarity around arrangements for transition to and implementation of the new system. This is making it difficult for councils to plan.

Our key recommendations for improvement

1. That the Natural and Built Environment Bill (NBE Bill) be amended to make it mandatory for councils to produce Statements of Community Outcomes (SCOs) and Statements of Regional Environmental Outcomes (SREOs), as a key way for councils and communities to influence regional planning decisions. The Bill should also be amended to require RPCs to “give effect” to those statements.
2. That the NBE Bill be clarified to make it clear that the local government representatives on RPCs are elected members, to ensure stronger accountability back to communities.
3. That further thought is given to the role of sub-committees of RPCs as another mechanism for ensuring that councils and communities can influence regional planning decisions.
4. That the NBE Bill be amended so that regions can choose whether they wish to adopt a joint funding model or fund the activities of the RPC through a regional/unitary model.
5. That the Bills are amended to provide more detail around transition and implementation. This should include specifying which tranche each region will be part of (which should be determined in consultation with local government).
6. That the Government commits significantly more funding to its RM Reform programme and seeks cross-party support for this. This should include contributing funding to establish and operate the RPC and Independent Hearings Panel (IHP) processes, to support iwi/Māori to participate meaningfully in the new system, and to support local government’s capability and capacity to engage with iwi/Māori.
7. That the Government makes a number of amendments to the NBE Bill to clarify the relationship between RPCs and the proposed new Water Services Entities (WSEs).

Introduction

LGNZ broadly supports the need for resource management (RM) reform. 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 reservations about whether the three new pieces of RM legislation will 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.

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,

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.

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.

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 potentially undermines 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 RPCs, not councils. Councils and therefore 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.

Excluding local government and communities, yet requiring them to fund and implement core parts of the new system, will not fulfil the Government's objectives. Despite plans being developed at 'arm's length' from them, councils will have to continue to implement them, through consenting and compliance, monitoring and enforcement. This is likely to impede efficient and effective implementation of the plans, particularly if councils disagree with aspects of them.

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. 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 it should fund the plan development, rather than allowing this to fall on the excluded councils' communities.

We are also concerned that councils and iwi/hāpu will have to fund the strengthened 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 contribute.

There are also concerns about how local authority funding of the RPC and secretariat for plan development fits into current LGA funding processes. This is a critical issue.

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. Local government must:
 - 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.
 - see that the new system recognises and provides for the roles, responsibilities and functions of all councils in environmental management.
 - 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 must have sufficient capacity and capability to implement the new system – and cannot be expected to meet the costs of implementing these changes on its own. This includes the costs of the RPC, secretariat and ensuring that Māori can participate fully in 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.

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- 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 examples, 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.

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.

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.

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.

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 NBEA plans.

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 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.

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 NBEA 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.

We recognise the difficulties in making the RPCs entirely accountable to councils, and agree that RPCs should operate with an element of independence to reduce political involvement. But to improve RPCs' accountability, we want explicit recognition that RPC members must bring local or regional knowledge to the RPC table. They need this knowledge 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. We agree that some flexibility in determining the makeup of the RPCs is necessary. 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 larger councils that represent larger population bases have proportionately less "say". 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. The proposed approach will also reduce input from regional councils, which have specialist expertise/knowledge, especially in relation to environmental matters. Furthermore, if an RPC is perceived as operating with a greater focus on particular districts or areas, this will create tension. This tension could create conflict about councils joint funding and resourcing of RPCs. We wonder whether the NBE Bill should provide an option for proportional RPC membership. This would better ensure the delivery of the outcomes for bigger centres, which potentially have a greater number of resource management issues.

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. If the local authority members on RPCs are not elected members, we are concerned this may create serious issues in terms of accountability to the local community and undermine the democratic mandate of elected members.

We are concerned that having only council officers or independent experts would not provide the desired level of accountability and would also create potential conflict issues in relation to their employment. Having a mix of members (elected members and staff/experts) raises similar issues as well and potentially puts council staff and independent experts in the position of navigating political discussions, which is entirely inappropriate in our democratic system.

We continue to endorse the LGSG's recommendation that the NBEA require only elected members to be appointed to an RPC.² 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 only elected members on the RPC also appropriately addresses the issue of local ownership.

However, we do see the benefit in having RPC members with sufficient skills, knowledge, diversity and experience to be able to make decisions on technical matters. Completing the Making Good Decisions programme (or an equivalent) should be required, with additional training to ensure RPC members understand their roles and functions – in particular their responsibility to act collectively with a regional approach. We also recognise that sitting on an RPC would be very different from an

² See [Enabling local voice and accountability in the future resource management system](#), February 2022, page 15,

elected members' normal role and functions, and would also be very demanding on their time. This has considerable practical implications, which need to be worked through with local government.

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, there are questions about how these 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 question whether a minimum of two mana whenua representatives may present challenges in some 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. Firstly, because the establishment of these sub-committees is at the discretion of the RPC (rather than being mandatory). And secondly, because the role and functions of sub-committees are unduly limited by the NBE Bill. These roles and functions need to be broadened so that sub-committees provide not only expert input in the plan-making process but also, for example, develop sub-regional chapters of plans. We want the role of the sub-committees strengthened to ensure sub-committees can advise RPCs, which would create better opportunities for local voice in the plan-making processes.

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 NBEA planning processes.

Preparation and adoption of RSSs and NBEA plans

We broadly 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 NBEA plans.

We also broadly support the purpose of NBEA 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, the requirement for NBEA plans to give effect to the NPF and be consistent with the relevant RSS should be subject to NBEA plans being able to respond to local circumstances.

As both of these planning documents will have significant implications for resource management at the local level, it is also critical that there is strong input from local government and communities. 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. We think RPCs should be stewards of the plan-making process, with local government retaining a strong role in collaborative plan-making. As currently drafted the process for developing both RSS and NBE plans lacks meaningful input of local voice.

SCO and SREO interaction with the plan-making process

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 support the flexibility for councils to determine their own processes for developing SCOs and SREOs.

Our view (and the intention of the LGSG) is that these documents must play an important and strong role in the plan-making process because they are one of the few mechanisms for local voice in the new regional planning documents. 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 SCOs and SREOs will not meaningfully influence the plan-making process, jeopardising improved outcomes for communities. As proposed, the weighting of the SCOs and SREOs is weak. RPCs are required to have only “particular regard” to SREOs and SCOs in preparing the RSS and NBEA 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 occasions³, we seek that RPCs be required to “give effect” to SCOs and SREOs, or at the very least ensure their decision-making is “not inconsistent with” SCOs and SREOs.

Furthermore, SCOs and SREOs are not mandatory, creating a risk that there may be insufficient incentive for councils to prepare them (especially for authorities that are less well resourced). If SCOs and SREOs are not produced, the interests of those councils not receive the same attention from the RPC. RPCs may also be more strongly influenced by councils that are able to prepare them.

The SCOs and SREOs are proposed to be high-level documents, recording a summary of “the views of a district or local community” or setting out the “the significant resource management issues of a region, or of a district or local community”. The scope of these statements is too limited. To be effective, SCOs and SREOs must be able to prescribe including certain matters in plans. For example:

- providing “views” on environmental outcomes rather than reserving environmental outcomes to regional councils;
- prescribing the matters for which regional councils are responsible (given regional councils’ specialist knowledge of matters relating to the natural environment); and
- prescribing when different rules may be appropriate for different parts of regions.

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

This also leads to questions about the status of current plan development work (in particular, freshwater planning and the intensification planning instrument processes) and how will this be efficiently and effectively integrated into RSS and NBEA plans. Again, the SCOs and SREOs could be a mechanism to reflect this significant work.

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). We suggest that Ministry for the Environment officials continue to work with LGNZ and the LGSG on the scope and content of SCOs and SREOs.

³ 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).

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. We want to see further mechanisms for local government influence over spatial planning.

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.

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 NBEA plans. Central government should take some responsibility for this public awareness work.

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 NBEA plan-making process. To alleviate this concern, the NBE Bill should be amended to 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).

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. And that if the RPC does not adopt any comments or advice received, it must provide reasoning for doing so.

We are concerned about funding and resourcing of IHPs. The NBE Bill is silent on who will fund them and if this falls to councils there will not be sufficient resourcing to establish IHPs.

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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. 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.
 - 1.3. Providing for a National Spatial Strategy (or regional statements of central government priorities) to sit alongside the NPF.
 - 1.4. Prioritising filling the 'gaps' in existing national direction; most notably, a lack of existing national direction on climate change.
2. Improve the accountability of RPCs, and provide strong direction for the meaningful involvement of local government and communities in the membership, procedures and decision-making of RPCs by:
 - 2.1. Providing flexibility in the composition of the RPCs by allowing for local authority membership on the RPC to be proportionate to, and reflect the size of, the population being represented.
 - 2.2. 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.
 - 2.3. Amending the legislation to make it clear that local authority representatives on RPCs are to be elected members.
 - 2.4. 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).
 - 2.5. 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.
 - 2.6. Reconsidering the references to the purpose and principles of local government in the provisions relating to composition arrangements and the appointment policies.
 - 2.7. 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.
 - 2.8. Clarifying that the central government representative is to contribute to, rather than drive, the RPC processes.
 - 2.9. Making sub-committees mandatory
 - 2.10. Broadening sub-committee role and functions to enable sub-committees, to for example, develop sub regional chapters of plans.
 - 2.11. Requiring the RPCs to have "particular regard" to the advice of the sub-committee in decision-making.

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- 2.12. 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.
 - 2.13. 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.
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.
 - 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;
 - 3.3. Making SCOs and SREOs mandatory.
 - 3.4. Extending the scope of SCOs and SREOs so that in addition to providing high level views and issues, they can prescribe certain local matters to be included in plans unless contrary to a limit or rule in the NPF.
 - 3.5. Clarifying that existing plan content may, where relevant, be provided through the SCOs and the SREOs to be included in the NBE plans.
 - 3.6. Requiring Ministry for the Environment officials to work with local government to develop guidance around SCOs and SREOs and reconcile the SCOs and SREOs with existing local government strategic directions, community wellbeing priorities and planning documents (such as LTPs and infrastructure strategies).
 - 3.7. 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.
 - 3.8. 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.
 - 3.9. 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.
 - 3.10. 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:
 - 3.10.1. reasons why any recommendations from the sub-committee were not accepted:
 - 3.10.2. RPCs view on whether the plans "give effect to" or alternatively are "not inconsistent with" the SCOs or SREOs.
 - 3.11. Providing appeal rights for councils against the RPC's decision to adopt an RSS.
 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
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Part 2 – purpose and preliminary matters

Purpose clauses

We broadly support the purpose of the NBE Bill and therefore the purpose of the SP Bill, which largely reflects that. However, we are concerned about interpretation and implementation of the purposes of the two Bills.

Key questions about purpose text

- 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 fragmented 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.

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. 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 see 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 at the national level is critical. The Government must make the hard, national-level 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 creates the risk of significant inconsistencies within or across regions, with the risk that natural resources may be unsustainably managed. Under the RMA, hard environmental decisions about which national level outcomes should be prioritised are left to local government, creating inevitable conflict during plan-making and consenting processes.

According to the Bill, conflicts will be resolved by the Minister (through the NPF) or by RPCs. We think key conflicts should be resolved in the NBEA itself, to provide certainty for all. Alternatively, as previously submitted, national-level conflicts should be resolved at the national level through the NPF, rather than at the local level through RPCs and NBA plans.

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

1. The NPF resolving national level issues only and not creeping into regional or local issues which is the role of the RSS and NBEA 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 Minister must co-design the NPF with local government and iwi/hapū, and collaborate with local government and iwi/hapū 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 provide funding to ensure iwi/hapū can participate 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.

Recommendations

5. Provide clarity on the purposes of the NBE and SP Bills.
6. Either align NBE and SP Bills' purposes or provide rationale for differences.
7. Retain strengthened outcomes for climate change, housing/urban development and infrastructure.
8. Retain strengthened recognition of Te Tiriti o Waitangi.
9. Clarify the following matters:
 - 9.1. The meaning of "uphold" Te Oranga o te Taiao
 - 9.2. 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.
 - 9.3. Delete "compromising" from clause 3(a)(i) of the NBE Bill and replace with "supports the wellbeing of present and future generations".
 - 9.4. How the two key seemingly conflicting purposes will be reconciled.
 - 9.5. The meaning of "promote outcomes" for the benefit of the environment (clause 3(a)(ii)).
 - 9.6. 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/hapu.
10. 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.
11. Ensure that the NPF is co-designed with local government and iwi/hapu.
12. Commit central government, either within the NBEA itself or separately within the NPF, to ensuring the availability of sufficient funding and resourcing to support the participation of iwi/Māori in the new system, including building local government capacity and capability to support iwi/Māori participation.
13. Provide sufficient time to establish engagement agreements between RPCs and Māori groups.
14. Ensure no inconsistency, and reduce duplication, between engagement agreements and existing arrangements between councils and iwi/hapu.

Part 3 - Regional Planning Committees

Host council and secretariat arrangements

Subject to our overriding view that the RPCs will create added cost, delay and complexity in the system, 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, unfunded, 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. 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.

The RPCs must be specifically required to work within the accountability and financial constraints that councils prescribe. 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. This should also include delegating to the RPC any rights, powers, and duties that are reasonably necessary to carry out their responsibilities, functions, and duties. 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.

Significant concerns about the funding implications of RPC arrangements are further discussed in Part 4 below.

Amendments to the legislation are required to address all of the above concerns. In particular, we seek that the NBE Bill be amended so that the director is appointed by the host council in consultation with the other relevant councils, and that the RPC and director be held accountable to the host local authority through increased reporting mechanisms.

Recommendations

15. Provide more specificity and clarity on the working arrangements of the RPC, secretariat and host council, including their roles, functions, operation and linkages with one another.
16. 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.
17. Clarify the legal employment relationship between the RPC, director, secretariat and host local authority.
18. Clarify that the director is appointed by, and can be removed by, the host local authority in consultation with the other councils.
19. Clarify that the director reports to the host authority and set out the key obligations and reporting requirements for the role.
20. 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.
21. Clarify 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.
22. Clarify whether the RPC, secretariat and director are to operate independently of the host local authority or not.
23. Ensure integration and alignment with potential local government reform (for example, unitary councils could potentially exercise the same functions as the RPC, addressing issues such as accountability and working arrangements).
24. Central government commit to funding, or at least sharing the funding of:
 - 24.1. the RPC and secretariat; and
 - 24.2. 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.
25. 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.
26. Consider further the employment law and expenditure and control over public money implications of the proposed working arrangements.

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. Otherwise, the 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.⁴ We strongly disagree with this approach. It is essentially an unfunded mandate and uses public money without legitimate controls and transparency.

Even if you agree with this approach, councils simply do not have the funds to implement all of the changes alone. Without adequate funding from central government, the plan-making processes (including the RPC and secretariat) 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.

At a minimum, we want to see funding for the RPCs and secretariats shared 50/50 between central and local government. 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).

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 Bill requires is that councils work

⁴ The NBE Bill requires local authorities to fund the remuneration and expenses of all members on the RPC including iwi members.

together in “good faith” to agree the amount of funding to be provided to the RPC, and the share they will each provide. While this provides flexibility, in our view it leaves significant scope for disagreement. Furthermore, without direction around funding, some councils may be unable or unwilling to provide their portion of funding without increasing their rates.

This approach will also increase tension if relationships between councils are already difficult. 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 to decide on a sole regional/unitary council funding model.⁵ 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.

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 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 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 – so councils must have a greater level of control of that process. We would like the NBE Bill to be amended to:

- Specify timeframes for 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

⁵ The advantages and disadvantages of this model are discussed in detail in the paper prepared Simpson Grierson contained in Appendix 1

- Specify that the RPC's draft statement of intent receive feedback from councils.

If councils are to provide any funding of the RPC, at the very least budgets must be agreed to by councils and resourcing plans must be set in consultation with them. This will strengthen accountability between councils and RPCs.

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.

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.

The NBE Bill is also silent on who is funding the IHPs. Local government is concerned councils will be asked to meet this additional cost. This should be clarified in the NBE Bill, and central government funding should be provided to support IHPs.

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 the LGA could be amended to resolve these issues. 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. This warrants 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.

Local government will also need support and resourcing 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, and without adequate funding from central government to support the RPC and secretariat roles or iwi/hāpu involvement, councils face an unfunded mandate to implement the new RM system. 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 Act. These are additional to councils 'business as usual' monitoring, compliance and enforcement, which they are required to continue under the new system.

We are very concerned about requiring councils to fund the implementation of plans over which they have had limited involvement in developing. Central government has developed, and is imposing, the new centralised system. It should fund the system rather than pass the costs to local ratepayers.

We also have significant concerns about costs associated with developing the suite of case law interpreting 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.

We consider that annual reports prepared by local government could inform and direct the financial contributions that central government should be making towards regional planning processes.

Recommendations

27. Central government commitment to support and fund, or at the very least share, the funding on a 50/50 basis, for local government's implementation of the new system (at the least during the transition until the first generation NBE plans take effect), including for:
 - 27.1. RPC and secretariat RSS and NBE plan-making processes;
 - 27.2. IHP plan-making processes;
 - 27.3. Monitoring, compliance and enforcement and all reporting;
 - 27.4. Appeals lodged against RPC decisions.
 - 27.5. To build local government capability and capacity to effectively engage with iwi and hapū.
28. Central Government fund all iwi and hapū participation in the new system. The Crown must provide financial support to iwi/hapū to participate in the new system, as the Treaty Partner.
29. Ensure longer-term cross party commitment to fund the system if reformed.
30. Provide flexibility for how funding contributions between councils should be agreed including a joint or proportional funding model, or a regional/unitary funding model.
31. 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.
32. Require the RPC 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.
33. 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.
34. Require the RPC budget to be agreed to by the councils.
35. 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.
36. Enable councils to have control, or at the very least a consultation right, in respect of the resourcing plans.
37. 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).
38. That specific provision is made in the NBEA 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.
39. That councils be provided with an increased role/involvement in the RPC budget setting process by:
 - 39.1. Specifying timeframes for the delivery for the various funding decisions to make clear that councils get to agree the RPC budget; and
 - 39.2. 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;
 - 39.3. 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.



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- 39.4. Specifying that the draft statement of intent for the RPC is to be commented on by councils
40. 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.
 41. Require RPCs to provide audited accounts on an annual basis or at another time as requested, procurement policies and any contracts entered into.
 42. Clarify the funding mechanisms to be employed for funding the new system.
 43. Central government commitment to fund their own RSS priority actions.
 44. Clarify whether the Minister may make grants and loans to assist in achieving the purpose of the SPA to councils.

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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 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 commented on the slower development of the proposed Climate Adaptation Act.

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 NBEA, 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 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 NBEA 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 controlled activity 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. 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. 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

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 NBEA.
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 NBEA.
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 SPA and NBEA 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 NBEA 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 NBEA 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 NBEA);
 - 53.2. the draft RSS (clause 2 Schedule 4 of the SPA); and

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- 53.3. NBEA plans (clause 22 Schedule 7 of the NBEA).
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 SPA (clause 24) and NBEA (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 (NBEA 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 SPA (clause 5 Schedule 4) and NBEA (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:
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- 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.

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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. Councils will retain responsibility for consenting, compliance, monitoring and enforcement according to rules they have not set. We have discussed above alleviating this concern via strong mechanisms in the NBEA and SPA to ensure that 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:

- Removing "controlled activity status" deletes an important way of ensuring delivery of appropriate projects in a timely and efficient manner.
- 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 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 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 of consents. The NPF and NBE plans can impose reviews and limitations on existing consents, including duration. 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 monitoring, compliance and enforcement, the NBE Bill proposes that councils report every three years on the efficiency and effectiveness of plans. Councils must implement and fund a monitoring and reporting 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 strategy, 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.

Councils must also develop and implement a compliance and enforcement strategy. As we have discussed above, these new requirements will require significant resourcing and funding.

Any efficiencies achieved in the rest of the system will be unravelled if monitoring, compliance and enforcement aren't efficient and effective. Councils must have sufficient resource to ensure system users are complying with environmental rules and restrictions.

Local government will need sufficient funding from central government to fulfil all of its significant implementation roles in 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.

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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.
75. Central government commits sufficient funding and resourcing to enable local government to implement the new system, including in compliance, monitoring and enforcement.
76. Reinstate controlled activity status to ensure appropriate projects can be delivered in a timely and efficient manner.
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'.
78. Ensure decision-making includes consideration of local government planning documents such as council infrastructure strategies and plans.
79. Remove the expanded appeal rights to ensure appeals can only be raised on points raised in earlier submissions before the consent authority.
80. Ensure that restrictive requirements concerning the duration and review of consents do not create insurmountable barriers for consenting critical infrastructure.
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.
82. Clarify how central government will deliver on the strategic outcomes that they seek through the RSS, including funding mechanisms.

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. There is also uncertainty about central government's ongoing funding commitment to implementation of the new system.

As well as significant central government support to implement the new system, allowing sufficient time to transition is critical. We support staged transition to the new system, in terms of the NPF being required to be notified within six months, the RSS within seven years (at the latest) and the NBEA plans four years afterward. This will make transition more manageable for councils and communities.

Perhaps most critically, councils and communities need clarity about when and how the transition from RMA to NBEA will occur. But there is no clarity in the NBE Bill.

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 for freshwater and urban development, will have in the new system so they can potentially stop progressing existing planning processes 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. 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, 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).

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- 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.

We are also concerned that the NBE Bill makes no provision for introducing the new system in tranches, as the Ministry for the Environment had previously indicated. This means there is no requirement for central government to work with regions sequentially to establish RPCs and develop model RSSs and NBA plans. We support the introduction of the NBEA and SPA in tranches because this would provide practical templates and lessons for other regions. If the NBEA is to be implemented in tranches, councils need to know which tranche they will be part of, so they can start factoring this into their planning.

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Recommendations

83. Central government commit sufficient funding and resourcing to enable local government to implement the new system.
84. Retain staged transition to the new system in terms of the NPF being required to be notified within six months, the RSS within seven years (at the latest) and the NBE plans four years afterward.
85. 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 and when parts of the RMA will be repealed and how the different parts of both Acts will link together.
86. 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.
87. Provide clarity about when the NBEA provisions will apply to consent applications, which must be absolutely transparent.
88. 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.
89. Provide for the new system to be introduced in tranches on a region-by-region basis.



Appendix 1: Regional Planning Committees – accountability and funding issues

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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.

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

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 reached¹⁹ 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.

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.

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.

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 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

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.

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 an 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

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.

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.

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 SCOs⁷³ 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.

Appendix 3: Questions for feedback

We'd welcome any feedback you have on what we say or what's missing in this draft submission. Please provide any feedback by Friday 3 February to submission@lgnz.co.nz

We've also developed a list of questions that we would really like member views on to determine our position:

1. Is there anything that we've missed from our submission outline that you'd like to see included?
2. Is there anything we've included that you don't agree with or think we should change?
3. Do you think the composition of RPCs should be flexible and allow for local authority membership on an RPC to be proportionate to, and reflect the size of, the population being represented?
4. What arrangement for funding RPCs do you prefer?
 - a. Joint funding by all local authorities in a region.
 - b. Regional/unitary authority established as host local authority with sole responsibility for funding the RPC.
 - c. Allowing regions flexibility to decide which funding model they prefer.
5. Do you agree there should be greater involvement by councils in the process of RPCs setting their budgets?
6. Do you think the proposed SCOs and SREOs should be mandatory?
7. Do you think there should be mechanisms to ensure existing plans developed under the LGA 2002 and other local government legislation can feed into regional spatial planning (eg LTPs, land transport management plans)?