

ICOMOS NEW ZEALAND

TE MANA O NGA POUWHENUA O TE AO

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Submission to the Environment Committee Natural and Built Environments Bill

4 February 2023

Introduction

ICOMOS is an international non-governmental organisation of heritage professionals dedicated to the conservation of the world's historic monuments and sites. The organisation was founded in 1965 as a result of the international adoption of the Charter for the Conservation and Restoration of Monuments and Sites in Venice in the previous year. ICOMOS is UNESCO's principal advisor in matters concerning the conservation and protection of historic monuments and sites and is the cultural heritage advisory body to the World Heritage Committee. The New Zealand National Committee was established in 1989 and incorporated in 1990.

ICOMOS New Zealand (ICOMOS NZ) has 155 members made up of professionals with a particular interest and expertise in heritage issues, including architects, engineers, heritage advisers, archaeologists, lawyers, and planners.

In 1993 ICOMOS NZ published the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value. A revised ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value was approved in September 2010 and is available on the ICOMOS New Zealand website.

The heritage conservation principles outlined in the Charter are based on a fundamental respect for significant heritage fabric and the intangible values of heritage places.

Context of this submission

Like New Zealand's natural environment our built environment is unique and special. It provides us with places to live, learn, work and socialise and is a fundamental part of our local and national identity.

Within this environment, cultural heritage plays a valuable role in contributing to the sense of uniqueness and quality of urban environment we experience. It is a finite resource that helps ground our 'sense of place' and provides wellbeing benefits to present and future generations. Cultural heritage places, for example:

- Enable us to appreciate our collective history of occupation and settlement, including a greater awareness of our people, places and stories

- Act as agents to bring diverse communities together, promoting social inclusion, cohesion and empathy
- Contribute to our tourism economy through enhancing the reputation and attraction of an area, along with their viability as visitor destinations in their own right
- Create, through their conservation, high quality employment and educational opportunities
- Contribute to our resilience in the face of significant change by providing a focus for community sentiment and sense of place
- Provide opportunities for emissions and building waste reduction through retention and adaptive reuse

Currently our cultural heritage is under pressure from various sources such as climate change, natural hazards such as earthquakes and development pressures. Patchy, inconsistent and infrequent identification of places of cultural heritage value across the country, coupled with inadequate protection in policy statements and plans, has also increased the likelihood of preventable loss.

Efforts to ensure this important resource is appropriately protected and managed has been further hampered by emergency and special issue legislation such as the Canterbury Earthquake Recovery Act 2011, Hurunui/Kaikōura Earthquakes Recovery Act 2016, Housing Accords and Special Housing Areas Act 2013 and earthquake prone buildings provisions in the Building Act 2004. More recently it has been subject to the additional pressures exerted by the intensification provisions contained in the Resource Management (Enabling Housing Supply and Other Matters) Amendment Act 2021 and the National Policy Statement on Urban Development 2020.

Scope of this submission

In light of this context ICOMOS NZ welcomes the opportunity to submit on the Natural and Built Environments Bill (N&BEB). Due to the combined length and complexity of the N&BE and Spatial Planning Bills, coupled with the tight time constraints to meaningfully consider their content and prepare a thorough response, our submission is centred around the following 'headline' N&BEB topic areas:

- The Purpose and preliminary matters such as the proposed system outcomes
- The National Planning Framework (NPF)
- Natural and Built Environment plan making
- Consenting
- Compliance, monitoring and enforcement

Given our specific heritage related remit and interests, the clauses that we have chosen to focus our submission on are ones that have particular implications for the effective ongoing management and protection of cultural heritage in New Zealand. A detailed analysis of these is contained in **Appendix 1**.

ICOMOS NZ trusts that the matters raised in our submission will assist the Committee's inquiry into the Bill. To reinforce these, we would like an opportunity to make a further oral presentation to the Committee. Further, given the significant size, scale and transformative nature of the N&BE and SP Bills we would also urge the Committee to devote the time and level of inquiry necessary to ensure they adequately satisfy the objectives sought by the reform process and are appropriately 'equipped' to deliver the system outcomes identified.

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Appendix 1: Natural & Built Environment Bill – Detailed Analysis

Note: Recommended text to be included is underlined, with that to be deleted ~~struck out~~

Topic	Sub-topic	Clause	Support	Support in part	Oppose	Reason/s	Recommendation
Purpose & Preliminary Matters	Purpose	cl.3				<p>The proposed Purpose clause is generally supported, particularly its focus on supporting inter-generational well-being. We note however that the current introductory phrasing of the clause is awkwardly worded, with the imperative to ‘enable’ protection in parallel with use and development inherently contradictory (i.e. how are use, development and protection able to be mutually enabled given that protection may end up being ‘disabled’ by use or development). Given the significance of this clause we consider this requires further examination.</p> <p>Similarly, given the intended ‘outcomes focussed’ emphasis within the Bill we would have anticipated the use of stronger language to reinforce this. This is particularly evident in cl.3(a)(ii) where the weaker, carry over requirement to ‘promote’ has been applied to outcomes that benefit the environment instead of a more directive requirement to ‘achieve’ such outcomes.</p> <p>Although specific reference to ‘recognising and upholding’ te Oranga o te Taiao is supported, in the absence of adequate guidance we have concerns as to how the concept will be interpreted and implemented in practice given the breadth of its associated definition in cl.7. Equally, lack of clarity concerning the meaning of the terms ‘recognise’ and ‘uphold’ is likely to increase the interpretive risk of them becoming highly contested, resulting in costly and unnecessary litigation.</p> <p>We also note that there continues to be no express mention of the built environment in the Purpose regardless of this being a specific recommendation of the inquiry by the select committee on the earlier released ‘exposure draft’ and direct connections to the built environment in the system outcomes listed in cl.5 (e.g. cultural heritage, climate change, housing, infrastructure). Although the ‘built environment’ is referred to in the definition of ‘environment’ we strongly consider that more explicit recognition within this clause is required.</p>	<ol style="list-style-type: none"> Amend cl.3(a)(ii) as follows: (ii) <u>promotes achieves</u> outcomes that for the positively benefit of the natural and built environment Provide further direction or guidance to inform how the concept of te Oranga o te Taiao is to be interpreted and implemented in practice, including further clarity to assist interpretation of the terms ‘recognise’ and ‘uphold’ Amend cl.3(a) as follows: <u>‘ensure the natural and built environment is protected and its use and development enabled in a way that —’</u> Include a consequential definition of ‘built environment’ in cl.7 - Interpretation (noting that a separate definition of natural environment is already included)
	Te Tiriti o Waitangi	cl.4				<p>Inclusion of a strengthened Te Tiriti o Waitangi clause is strongly supported. However, interpreting how the principles of Te Tiriti are to be given effect to would benefit from further direction to reduce unnecessary confusion and the prospect of lengthy and contentious litigation.</p>	<ol style="list-style-type: none"> Either: <ol style="list-style-type: none"> Include specific direction in the first iteration of the National Planning Framework (NPF) to clarify the practical implications of this directive and what these mean in practice Develop companion guidance to assist understanding of the shift in practice required by those charged with exercising RMA related powers and functions/duties
	System outcomes	cl.5				<p>The system outcomes identified are broadly supported and, with the addition of necessary and sufficient supplementary direction in the NPF, could go some way to progressing the ‘step change’ sought through the resource management system reforms. We are particularly supportive of the explicit inclusion of:</p> <ul style="list-style-type: none"> (e) the recognition of, and making provision for, the relationship of iwi and hapū and the exercise of their kawa, tikanga (including kaitiakitanga), and mātauranga in relation to their ancestral lands, water, sites, wāhi tapu, wāhi tūpuna, and other taonga (g) the conservation of cultural heritage 	<ol style="list-style-type: none"> Reframe cl.5 as a hierarchy of outcomes prioritised according to the strength of the directives applied Include the following in cl.5(c): <u>(iv) a well-designed, high-quality built environment</u> Include a definition of ‘well-functioning’ in cl.7 – Interpretation (noting that for consistency the definition of ‘well-functioning urban environment’ in the National Policy Statement on Urban Development could be considered as a basis) Review and revise the definition of ‘urban form’ in cl.7 – Interpretation

Topic	Sub-topic	Clause	Support	Support in part	Oppose	Reason/s	Recommendation
						<p>However, we note with concern the lack of a clear hierarchy between the outcomes identified, with these currently presented as an undifferentiated list in no clear order of importance. The risk with this approach is that the outcomes could end up becoming the object of parochial or politicised trade-offs. This is further exacerbated by the fact that any conflicts between outcomes are intended to be left to the discretion of the Minister in determining the content of the proposed National Planning Framework (NPF), and to regional planning committees (RPCs) when determining the content of plans or case-by-case decisions on resource consents or designations.</p> <p>Regardless of any supplementary guidance that might be provided through the NPF the prospect of costly and time-consuming litigation to resolve such conflicts appears inevitable in the absence of clear priorities being signalled in the Bill. To deliver greater certainty we consider that cl.5 needs to more clearly framed as a prioritised hierarchy that reflects the contrasting nature of the wording applied to the outcomes sought (e.g. directive terms such as 'protection', 'restoration', 'reduction', 'conservation' vs weaker terms such as 'recognition', 'provision'). This would also reinforce the clearer 'protective' emphasis recommended for the wording of cl.3.</p> <p>Additionally, like the Purpose clause, we note that there is an absence of any express mention in the proposed outcomes of the built environment or the quality of this environment. As over 85% of New Zealander's reside in cities and towns we consider this an obvious omission that needs to be addressed, particularly given the clear intensification agenda advocated by Central government through such measures as the National Policy Statement on Urban Development and the Medium Density Residential Standards. Adequate consideration of the built environment is further compromised by the lack of definition as to what constitutes a 'well-functioning urban area' and an inadequate definition of 'urban form'.</p> <p>As a further general observation we note that variable references to 'outcomes' are applied throughout the Bill, including 'system outcomes' (cl.5), 'framework outcomes' (cl.60), 'plan outcomes' (cl.105), 'environmental outcomes' (cl.102) and simply 'outcomes' (cl.128). In the absence of supporting direction/guidance to clarify the intended distinction between these outcome classes we are concerned that an elevated risk of interpretive and administrative confusion could result.</p>	5. Clarify the intended distinction between the outcome classes referred to throughout the Bill (e.g. system outcomes, framework outcomes, plan outcomes)
	Definitions	cl.7				<p>Amendment of heritage related terminology in the Bill from 'historic heritage' to 'cultural heritage' is supported as the current term inadequately reflects the breadth of our current and evolving heritage – this includes pre-historic places and more recent places such as post war/early modernist buildings.</p> <p>Equally, the proposed definition of 'cultural heritage' is generally supported, noting that it is largely a roll-over of the current definition of 'historic heritage' in the RMA. However, we note that two related terms in the proposed definition are currently undefined: 'surroundings' and 'cultural landscapes'. Given the potential interpretive and administrative implications in terms of certainty and efficiency this void creates we consider that associated definitions of these terms should also be included in cl.7.</p>	<p>1. Include a definition of 'surroundings' as follows (based on the definition of 'setting' in the ICOMOS New Zealand Charter):</p> <p>a) <u>'means the area around and/or adjacent to a place of cultural heritage value that is integral to its function, meaning, and relationships; and</u></p> <p>b) <u>includes -</u></p> <p>i. <u>the structures, outbuildings, features, gardens, curtilage, airspace, and accessways forming the spatial context of the place or used in association with the place; and</u></p> <p>ii. <u>cultural landscapes, townscapes, and streetscapes; perspectives, views, and viewshafts to and from a place; and relationships with</u></p>

Topic	Sub-topic	Clause	Support	Support in part	Oppose	Reason/s	Recommendation
							<p><u>other places which contribute to the cultural heritage value of the place</u></p> <p>c) <u>may extend beyond the area defined by legal title, and may include a buffer zone necessary for the long term protection of the cultural heritage value of the place</u></p> <p>2. Include a definition of 'cultural landscapes' as follows (based on the definition of 'cultural landscapes' in the ICOMOS New Zealand Charter):</p> <p>a) <u>'means an area possessing cultural heritage value arising from the relationships between people and the environment; and</u></p> <p>b) <u>includes –</u></p> <p>i. <u>cultural landscapes that may have been designed, such as gardens, or have evolved from human settlement and land use over time, resulting in a diversity of distinctive landscapes in different areas; and</u></p> <p>ii. <u>associative cultural landscapes, such as sacred mountains, that may lack tangible cultural elements but have strong intangible cultural or spiritual associations</u></p>
National Planning Framework	<i>Purpose</i>	cl.33				<p>Inclusion of a specific provision that sets out the purpose of the NPF is broadly supported as it sets the context for what the framework is anticipated to cover/contain. Although we note the primary role of the NPF is to 'further the purpose of the Act' we would also suggest that an equally important function is to progress achievement of the proposed system outcomes, particularly given that this is expressly directed in cls.5 and 57. In light of this we consider that more explicit recognition of this should be included in cl.33.</p> <p>Additionally, reference is made in this clause to providing direction on 'matters of national significance', noting that the term 'national significance' has no corresponding definition in cl.7. This, in turn, creates ambiguity concerning matters that come within the sphere of being considered 'nationally significant', particularly in the absence of any direction to help inform the exercise of ministerial discretion as to what these might be.</p>	<p>1. Amend the introductory content of cl.33 as follows: 'The purpose of the national planning framework is to further the purpose <u>and system outcomes</u> of this Act by—'</p> <p>2. Either:</p> <p>(a) Include specific criteria to inform what constitutes a 'matter of national significance' (noting that this could be based on the criteria in s.45(2) RMA for determining whether national direction is desirable)</p> <p>(b) Include a definition of 'national significance' in cl.7 – Interpretation, including cultural heritage</p>
	<i>Targets</i>	cls.47-52				<p>Specific provision for setting targets is supported, particularly as these are intended to act as a key mechanism to driving improvement in the state of the natural and built environment, including cultural heritage.</p> <p>Given that targets are intended to be designed to assist in achieving the system outcomes outlined in cl.5 we would strongly support their development and application as part of national direction in the NPF centred on the conservation of cultural heritage. These could, for example, included targets geared towards reducing instances of 'demolition by neglect'.</p>	<p>1. Explore the application of targets as part of developing cultural heritage related national direction in the NPF</p> <p>2. Review and revise the provisions relating to targets to increase clarity and certainty regarding compliance and associated activity settings</p>

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						<p>Regardless, we note that the draft provisions relating to ‘targets’ could end up having unintended consequences. For example:</p> <ul style="list-style-type: none"> • While consent authorities cannot grant consent contrary to a limit or target, it is unclear what compliance with a target entails since it is inherently about achieving something in the future • While any activity that breaches a limit would be treated as a prohibited activity (cl.154(4)), there is no parallel in relation to targets. In practical terms this could potentially mean that where an environment is significantly degraded and is slowly improved over time to meet a minimum level target, an activity that could result in a reversal is not prohibited unless it would make it worse than at the date the Bill is enacted <p>We also note that there is provision in cl.53 for monitoring limits and targets. This is a requirement that we strongly support as regular monitoring of system outcomes, and targets for cultural heritage is something that is not currently well-managed, and should be included in the Bill.</p>	
	Scope	cls.56-58				<p>Inclusion of mandatory content in the NPF that provides clear direction for each of the system outcomes listed in cl.5 and direction to assist with resolving environmental conflicts (including those between or among the system outcomes) is strongly supported – this is in stark contrast to the current discretionary nature of national direction under the RMA.</p> <p>Regardless, in the absence of further qualifying information regarding the anticipated scope and level of detail relating to these directions in the Explanatory Note accompanying the Bill we have reservations as to its potential effectiveness given the rider in cl.57(2) that it ‘need only be in such detail as is appropriate to the particular system outcome or outcomes’. In the absence of sufficient detail and direction to properly inform regional spatial strategy (RSS) and NBE plan content these matters are likely to be highly contested during their associated development processes – an outcome that would be both unintended and contrary to the objectives of the system review.</p> <p>Equally, aside from an indication in the resource management system overview document prepared by MfE that new national direction is intended to be developed for cultural heritage and the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu and other taonga,¹ there is lack of clarity as to when this is likely to occur. This is a matter of deep concern as issues centred around the identification, protection and management of cultural heritage, including Māori heritage, are long standing and were identified and extensively canvassed in the Parliamentary Commission for the Environment investigation into Historic and Cultural Heritage in New Zealand in 1996, the government initiated Historic Heritage Review in 1998-1999 and recent stakeholder outreach undertaken in 2018 by the Ministry of Culture and Heritage as part of the Strengthening Heritage Protection project. A key theme that emerged from each of these exercises is the absence of clear direction to achieve more effective and consistent identification and protection of historic/cultural heritage.</p> <p>We are also highly concerned about the lack of direction/guidance in the Bill regarding how competing priorities (and conflicts between and among outcomes) are intended to be managed. This will be fundamental to implementing the NPF and critical to achieving a balance between good environmental outcomes and the growth and</p>	<ol style="list-style-type: none"> 1. Confirm that national direction relating to cultural heritage and the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu and other taonga will be included in the first iteration of the NPF 2. Provide further clarity regarding the scope and level of detail relating to the anticipated direction for each of the system outcomes listed in cl.5, noting that work on the NPF should already be well advanced given a draft is required to be released within 6 months of the Bill being enacted. 3. Either: <ol style="list-style-type: none"> (a) Provide direction or criteria in the Bill setting out how competing priorities and conflicts between and among outcomes are to be managed (b) Require national level conflicts between and among outcomes to be resolved exclusively through the NPF

¹ Refer MfE (2022), Our Future Resource Management System: Overview, pg.19

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						<p>development of communities including, for example, the tension between maintaining existing cultural heritage/character values while accommodating growth.</p> <p>While it is acknowledged that reconciling conflicting interests, objectives and outcomes is complex, the downside is that inadequate or ineffective national and local level guidance/direction around resolving such conflicts is highly likely to result in:</p> <ul style="list-style-type: none"> • Failure of the proposed resource management system to achieve its underlying objectives and the anticipated outcomes listed in cl.5 • Significant costs and delays for all participants in the proposed system • A risk of significant inadequacies and inconsistencies in local level practice within and across regions if left solely to RPCs to determine 	
	Content	cl.60				Confirmation of the general content that can be covered by the NPF is supported as it provides a level of certainty regarding the intended framework parameters. We are also supportive of the discretion available within the framework to state methods (e.g. cultural heritage assessment methodologies) and direct inclusion of specific provisions in RSSs and NBE plans as this has the potential to increase consistency across regions and reduce costly and time consuming litigation.	1. Retain as proposed
	Effects management framework	cls.61-67 & Sched. 5				<p>Inclusion of a management framework that sets out how environmental effects on significant biodiversity areas and significant cultural heritage are to be managed, including principles to inform offsetting for adverse effects, is strongly supported. Although there is provision for exemptions we note that the circumstances applying to these are quite limited including, in the case of a specified cultural heritage place, 'activities required to ensure that the place and its cultural heritage values endure' (cl.66(1)(p)).</p> <p>Regardless, we have serious reservations concerning the inclusion of sub-clause (e) in cl.61. As proposed this sub-clause provides a further redress 'out-clause' in the event that adverse effects are unable to be avoided, minimised, remedied or offset, noting that this is intended as a form of compensation to remedy 'more than 1 minor residual adverse impacts' of an activity.</p> <p>However, we note that the purpose typically applied to the concept of 'offsetting' is to counter-balance unavoidable impacts development activities have on the environment - a way of ensuring that development causes no net loss by enhancing the state of the environment elsewhere. Given the breadth of this concept and the underlying principles set out in Sched.5, cls.1 – 11, we strongly question the necessity of retaining cl.61(e), particularly as the preceding offset sub-clause offers adequate scope to address the circumstances to which sub-clause (e) potentially applies. In this regard we also curiously note the absence of a definition of 'offset' or 'offsetting' in cl.7. In light of the relative importance of this concept in the proposed effects management framework we consider it would be highly advisable that a corresponding definition is included in the Bill.</p>	<ol style="list-style-type: none"> 1. Delete cl.61(e) and cls.12 – 20 and 22 -24 in Sched.5 2. Include a definition of 'offset/offsetting' in cl.7 – Interpretation
	Effect of NPF	cls.68/69				Specific provision requiring RPCs to make any amendments to give effect to a provision in the NPF in RSSs and NBE plans is supported as it reinforces the key role that national direction is intended to assume in the new resource management system and will help increase the development efficiency and level of consistency associated with these planning instruments. We would note however that use of powers to direct amendments to these instruments without reliance on a Schedule 7 process need to be sparingly and cautiously exercised given the absence of any opportunity for public input.	1. Provide direction or criteria in the Bill to inform the determination and application of cls.68(3) and 69(2)
	Development & decision-making process	Sched.6, cl.2				Provision for pre-notification engagement on an NPF proposal is broadly supported. However, we note that aside from the National Māori Entity, iwi authorities and groups that represent hapū on the proposal and individuals or organisations representative of the local government sector that the Minister is able to exercise wide discretion as to	1. Amend Sched.6, cl.2(b) by including the following: <ol style="list-style-type: none"> iii. 'individuals or organisations that are representative of the sector to which the proposal applies.'

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NBE Plan Making						who else they engage with. As representation from relevant sectors aside from local government will be invaluable in helping to constructively shape the direction and content of specific NPF proposals (e.g. ICOMOS NZ/Heritage NZ in relation to cultural heritage) we strongly consider that provision should be made for the scope of mandatory engagement to be extended to include individuals or organisations that are representative of the sector to which a proposal applies.	
		Sched.6, cl.9/15/20				Inclusion of a requirement for a Board of Inquiry (BoI) to be appointed to hear and consider the NPF proposal (and any subsequent changes/ additions) and make recommendations to the Minister is strongly supported, particularly as currently proposed this is the only formal opportunity in the Bill, aside from a general pre-notification engagement requirement, for organisations such as ICOMOS to shape the direction and content of the NPF.	1. Retain as proposed
		Sched.6, cl. 21				Provision is made for ultimate decision-making responsibility on a NPF proposal to rest with the Minister. Although we understand the rationale for this we are deeply concerned that there is no further recourse on the merits of the proposal in the event that recommendations of the BoI are rejected. We note that this stands in sharp contrast with the decision-making framework around NBE plans, where any Independent Hearing Panel (IHP) recommendations rejected by a RPC are able to be appealed to the Environment Court, and strongly consider that similar provision to that in cl.132 should be included in relation to the NPF.	1. Include a new clause after Sched.6, cl.22 as follows: <u>Right of appeal to Environment Court if the Minister rejects BoI recommendation and makes alternative decision</u> 1. <u>This clause applies if—</u> (a) <u>the Minister rejects a BoI recommendation on the NPF proposal; and</u> (b) <u>the Minister makes an alternative decision to that recommended by the BoI; and</u> (c) <u>any person made a submission in respect of the provision or matter recommended by the BoI.</u> 2. <u>Once the Minister notifies their decisions on the NPF proposal proposed plan, the person may appeal to the Environment Court in respect of the differences between the alternative decision and the recommendation.</u> 3. <u>The appeal is limited to the effect of the differences between the alternative decision and the recommendation.</u>
	Scope	cls.97/104/109				Recognition and incorporation of spatial planning into this Bill and the companion SPB is strongly supported, as is the requirement that NBE plans are 'consistent with' RSSs. We consider that this will help to 'legitimise' the adoption and implementation of a spatial approach to land use planning at a regional scale, provide strategic direction to help inform the development and content of NBE plans and reduce the likelihood of key matters of strategic importance being relitigated at a plan level. We note however that the obligation for plans to 'be consistent' with RSSs is currently referenced in 3 clauses of the Bill, with two of these, cls.104 and 109, being an exact facsimile and creating unnecessary duplication.	1. Delete either cl.104 or cl.109 to avoid unnecessary duplication in the Bill
	Content & regional policy issues	cls.102/107/ Sched.7, cl.14				Identification of the matters to be included in NBE plans is supported as it sets out the scope of parameters to be addressed in the plan making process. Although we are generally comfortable with the list of matters proposed we have particular concerns regarding 2 of those listed: provide for system outcomes and resolve regional conflicts relating to any aspect of the natural and built environment. We note that the intent under cl.57 is that the NPF will provide direction relating to each of the system outcomes set out in cl.5 along with direction on resolving environmental conflicts, including those between or among the system outcomes. Although the inclusion of these mandatory directives is strongly supported we are highly uncertain as to what form they will take and the corresponding level of detail	1. Include new cl.107(1) as follows: <u>(1) In preparing or changing a plan a regional planning committee must ensure, to the extent relevant, that the plan or change is consistent with</u> - (a) <u>a statement of community outcomes prepared by a territorial authority or unitary authority; and</u> (b) <u>a statement of regional environmental outcomes prepared by a regional council</u> 2. Amend Sched.7, cl.14(3) as follows:

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						<p>that is to be provided (noting that this only needs to be as much as appropriate). In the absence of sufficient detail and direction to properly inform plan content these matters are likely to be highly contested during the plan making process – an outcome that would be both unintended and contrary to the objectives of the system review.</p> <p>Inclusion of a requirement for RPCs to have ‘particular regard’ to statements of community outcomes and regional environmental outcomes in preparing plans and ‘regard’ to them in identifying major regional policy issues is also supported. However, as these are one of the few avenues available in the Bill to enable matters of local importance to inform the content of NBE plans and plan changes we strongly consider that they need to be accorded greater weight where they have been prepared and adopted. This, in turn, could also act to incentivise their development, noting that these instruments are not mandatorily required by either this Bill or the companion SPB.</p> <p>Further, we support the inclusion of the New Zealand Heritage List/ Rārangī Kōrero in the list of matters to which RPCs must have regard.</p>	‘In identifying the major regional policy issues, the regional planning committee must have <u>particular regard to—</u> ’
	Rules	cl.130				Inclusion of a similar ‘roll over’ provision to that in s.86B of the RMA outlining those circumstances where rules in proposed NBE plans have immediate legal effect is supported. As this extends to include cultural heritage this will provide places scheduled in plans with interim protection until relevant provisions become operative, including protection from pre-emptive demolition.	1. Retain as proposed
	Consultation	Sched.7, cls.22/31				Provision to consult the Department of Conservation (DoC) during the preparation and subsequent notification of NBE plans is noted. However, we are concerned that similar provision has not been extended to the Minister for Culture and Heritage and Heritage New Zealand Pouhere Taonga (HNZPT) regarding cultural heritage, and more particularly ‘specified cultural heritage’, as this will be a region-wide matter addressed in all NBE plans. Given this we strongly consider that a parallel consultation requirement relating to the Minister for Culture and Heritage and HNZPT should be included in these clauses.	<ol style="list-style-type: none"> Amend cl.22(1) by inserting after (c) the following: <ol style="list-style-type: none"> <u>‘The Minister for Culture and Heritage; and</u> <u>the relevant regional office of Heritage New Zealand Pouhere Taonga; and</u> Amend cl.31(1) by inserting after (b) the following: <ol style="list-style-type: none"> <u>‘The Minister for Culture and Heritage and each appropriate regional office of Heritage New Zealand Pouhere Taonga; and</u>
	Places of national importance	cls.555/556/559				<p>Inclusion of provisions to identify and protect places of national importance is strongly supported, particularly the firm directive that any activities likely to have ‘a more than trivial adverse effect on the attributes of a place of national importance identified in the NPF, a plan/proposed plan or heritage place on a closed register’ are to be disallowed by a rule, resource consent or designation (subject to some minor exceptions). This, in turn, should help to facilitate more certain and effective protection of ‘specified cultural heritage’ as it would reduce the extent to which relevant rules can be contested in plan making and consenting processes.</p> <p>Regardless, the absence of a definition or parameters around what constitutes a ‘trivial adverse effect’ is of concern as it is likely to give rise to unintended and costly interpretive debates and associated litigation. Additionally, we are highly concerned about the ‘ring fencing’ of cultural heritage solely to those places that are ‘specified’ (i.e. New Zealand Heritage List Category 1; National Historic Landmarks), particularly as:</p> <ul style="list-style-type: none"> the current breadth of places covered by these lists is somewhat limited (e.g. only 1 National Historic Landmark - Te Pitowhenua/Waitangi Treaty Grounds) and unrepresentative of places of valued local/regional significance currently scheduled in plans there is insufficient consideration given to Māori heritage and the values framework that underlies recognition of cultural heritage at an iwi/hapu level. 	<ol style="list-style-type: none"> Include a definition of ‘trivial adverse effect’ in cl.7 – Interpretation Extend the definition of ‘specified cultural heritage’ in cl.7 – Interpretation to include Category 1 or equivalent places scheduled in NBE plans

Topic	Sub-topic	Clause	Support	Support in part	Oppose	Reason/s	Recommendation
						<ul style="list-style-type: none"> The current approach to identifying and listing significant cultural heritage by Heritage New Zealand is difficult to reconcile with outcome 5e, particularly the exercise by iwi and hapū of their kawa, tikanga, and mātauranga in determining what is of cultural heritage value to them locally, regionally and nationally. there is a significant backlog of places nominated for inclusion on the New Zealand Heritage List that are yet to be assessed by Heritage NZ, with this unlikely to be materially addressed in the absence of adequate funding/ resourcing and prioritisation of places currently on the nominations list 	
	<i>Closed registers</i>	cl.560				Provision for cultural heritage to be identified in a closed register is supported, particularly as it recognises and codifies what generally already occurs in practice in several parts of the country.	1. Retain as proposed
	<i>Heritage protection orders</i>	cls.541-554				<p>Retention of heritage protection order (HPO) provisions is broadly supported. However, we note that there are a number of material changes proposed to the existing provisions in ss.187 – 198 of the RMA, some of which may have unintended consequences in relation to the long-term protection of places subject to an order. Of particular concern is the proposal that an HPO ceases to have effect once the place to which it relates is included in the relevant NBE plan.</p> <p>Currently, HPOs provide an elevated level of ongoing heritage protection as they ‘run with the land’ and can only be extinguished via an application by the relevant Heritage Protection Authority (HPA) (s.196 RMA) or in response to an order from the Court (s.198 RMA).</p> <p>By contrast, although an elevated level of ‘interim protection’² will be offered to places subject to an order under the proposed HPO regime, certainty relating to the long-term protection of these places will be largely dependent on the outcome of the associated plan change processes and any appeals arising. This could, in turn, result in these places being offered either no or a sub-optimal level of protection and ongoing management in a plan – something which is grossly at odds with the ‘conservation of historic heritage’ outcome sought in cl.5.</p> <p>Although it is acknowledged that the proposed HPO regime creates a potentially more attractive and responsive avenue relative to the status quo to pursue the short-term protection of cultural heritage, particularly places that are endangered or subject to development pressures, this needs to be weighed against the diminished longer term protective benefit and certainty the mechanism affords.</p> <p>To address this we consider that specific provision should be made for interim as well as more permanent HPOs. The interim order would serve the purpose of providing temporary protection of places eligible for listing on the New Zealand Heritage List Rārangi Kōrero that are in immediate or imminent threat, while the more permanent HPO would provide longer term protection similar to that currently available under ss.187 – 198 of the RMA.</p> <p>Further, although cl.549 signals what can occur where land is already subject to a HPO under the RMA the Bill is silent as to how existing HPOs are to be treated under the proposed regime (e.g. automatic ‘roll over’ into relevant NBE plans; subject to a retrospective proportionate plan change process). We strongly consider that a consequential change is required to this clause to address this apparent gap.</p>	<ol style="list-style-type: none"> Review and refine cls.543 – 548 to achieve a more effective balance between the short vs long term protective outcomes offered by HPOs, including the addition of specific provisions for interim heritage protection orders to supplement more permanent, longer-term HPOs. Amend cl.549 to clarify how existing HPOs are to be treated under the proposed HPO regime
	<i>Development process</i>	Sched.8, cl.32				Inclusion of the ability for sub-committees to be established to provide advice to RPCs is supported, particularly as it has the potential to act as a practical and meaningful	1. Consider the mandatory establishment of RPC sub-committees

² Refer definition of ‘heritage protection order’ in cl.7

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Consenting						mechanism to enhance local input into the plan making process. However, we have reservations concerning the effectiveness of this clause as establishment of sub-committees is at the discretion of RPCs rather than mandatory and their intended role and functions is unduly restricted.	2. Broaden the role and functions of sub-committees to enable more effective and constructive input into NBE plan making (e.g. preparation of sub-regional chapters such as cultural heritage)
		Sched.7, cls.15-17				Inclusion of provisions requiring RPCs to establish and maintain an engagement register for the purpose of identifying anyone interested in being consulted during the plan making process is supported, particularly given the 'arm's length' nature of plan development and the potential disconnect between these committees and local communities of interest.	1. Retain as proposed
		Sched.7, cls.20/34/36				The requirement to include all the relevant evidence supporting an enduring, primary or secondary submission is supported, particularly as it could help to increase process transparency, efficiency and fairness. Although it may act to deter lay submitters from participating in the plan making process due to the additional cost and effort involved (e.g. preparation of expert evidence), it is also likely to reduce the incidence of vexatious or unsubstantiated submissions being made. We note however that there is currently a lack of clarity within these clauses as to the quality, nature and scope of 'evidence' to be supplied in support of a submission and consider that expectations concerning the standard of evidence submitted should be clearly articulated in the Bill, including any variance based on the type of submission being made (e.g. primary vs enduring).	1. Include in Sched.7, cls.20, 34 and 36 further content that clarifies the quality, nature and scope of evidence to be supplied in support of enduring, primary and secondary submissions
		Shed.7 cls 41				Notified NBE plans should have immediate legal effect for the items noted in the RMA clause 86B, as this gives items interim protection until the relevant parts of the plan become operative. This prevents the pre-emptive demolition of heritage (and of significant vegetation and of habitats of significant indigenous fauna).	Include a new clause that allows for a rule in a proposed plan to have immediate legal effect if the rule protects cultural heritage.
		Sched.7 cls.93 - 103				Oversight of the establishment of Independent Hearing Panels (IHPs) and appointment of members by the Chief Environment Court Judge is supported and should ensure an appropriate level of specialist knowledge and rigour is applied to this process. We consider that this is particularly important given proposed limitations on the scope of matters eligible to be further appealed to the Environment Court (i.e. RPC rejection of an IHP recommendation and making an alternative determination; RPC acceptance of an IHP recommendation that extends beyond the scope of submissions). The requirement that all panel members need to be accredited is also supported, noting that approval of relevant qualifications rests with the Minister. However, given the open-ended nature of this remit we consider it would be advisable for further clarity to be provided to illustrate how this discretion is intended to be exercised.	1. Either: (a) List the range of matters in Sched.7, cl.97 that the Minister needs to consider in approving the qualifications establishing a panel members accreditation (b) Introduce supporting regulation that sets out the matters for consideration
	Appeals	Sched.7 cls.132/133				Inclusion of a right of appeal to the Environment Court if IHP recommendations are rejected or the panel arrives at an alternative decision are supported. Although we recognise that restrictions on the scope of appeal rights have been introduced in an effort to 'streamline' the plan making process we have serious reservations as to whether this will result in optimal environmental decision making. This is particularly the case where controversial or highly contested decisions on plan content are made on plan by RPCs with no further recourse to the Environment Court available to affected parties (i.e.. where the recommendation of an IHP has been accepted).	1. Review and reconsider the nature and extent of proposed limitations on the scope of appeal rights
	Decisions	cl.223				This clause replaces current s.104 RMA and requires consent authorities to 'have regard to' any actual and potential effects on the environment of allowing an activity, and to 'have regard to' whether, and the extent to which, it contributes to any relevant outcomes, limits, targets, and policies. We note however that given the intent to elevate the significance of outcomes in the new system the direction to consider these relative to effects needs to be strengthened.	1. Include new cl.223(2) as follows: (2) <u>The consent authority must have particular regard to -</u> (a) <u>whether, and the extent to which, the activity gives effect to any relevant outcomes, limits, targets, and policies in:</u> (i) a plan (ii) a regional spatial strategy

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						Inclusion of the requirement to 'have regard' to prior non-compliance resulting in enforcement action being taken is strongly supported as it could usefully act to incentivise compliance with consent conditions, thereby reducing reliance on enforcement. Consideration of positive effects and contributions to outcomes is also supported.	(iii) the national planning framework
	<i>Specified housing and infrastructure fast-track consenting</i>	cls.318/319				<p>Inclusion of fast-track consenting is broadly supported but we have a concern around the acceptance of an application. We note cl.318(2) requires the Minister for Conservation to be jointly involved in determining acceptance or not of an application that relates to an activity within the coastal marine areas. Given that there are close parallels in relation to any applications that would potentially affect 'specified cultural heritage' we consider that this clause be extended further to include joint consideration by the Minister for Culture and Heritage where this is the case.</p> <p>We also note in cl.319 that expert consenting panels are either required to notify an application or invite comment from persons or organisations specified in regulations. As we understand that relevant regulations are yet to be developed in terms of the latter we would strongly suggest that HNZPT is included as a specified organisation where any application affects 'specified cultural heritage.'</p>	<p>1. Amend cl.318(2) as follows:</p> <p>'The Minister must decide whether to accept the application but if the application relates to an activity that -</p> <p>(a) is within a coastal marine area, the decision whether to accept the application must be made jointly with the Minister for Conservation.</p> <p>(b) <u>affects specified cultural heritage, the decision whether to accept the application must be made jointly with the Minister for Culture and Heritage</u></p> <p>2. Amend cl.318(3) as follows:</p> <p>(g) <u>'include any 'specified cultural heritage' potentially affected by the activity'.</u></p>
Compliance & Enforcement	<i>Court orders</i>	cls.718/719/723-730/ 732-750/776				<p>Inclusion of additional compliance options such as monetary benefit orders, consent revocation/suspension and enforceable undertakings is strongly supported and should act to usefully supplement the current range of compliance actions on offer (e.g. enforcement orders, abatement notices, infringement notices). The ability to apply to the Environment Court to:</p> <ul style="list-style-type: none"> • Revoke or suspend a resource consent where it is satisfied that ongoing and severe non-compliance has occurred • Order a person to pay an amount not exceeding the amount that it is satisfied, on the 'balance of probabilities', represents the amount of any monetary benefits acquired by the person, or accrued or accruing to the person, because of an offence or contravention • Pay a pecuniary penalty to the Crown or any other person it specifies if it is satisfied that a party has failed to comply with a statutory requirement <p>are also particularly welcome additions.</p>	1. Retain as proposed
	<i>Financial penalties</i>	cls.765 - 766				Inclusion of enhanced financial penalties associated with contraventions and a prohibition on the use of insurance to cover the cost of fines, infringement fees and pecuniary penalties is strongly supported as this should assist in deterring non-compliance.	1. Retain as proposed